

# **THE NATION'S FIRST MEGA-PROJECT:**

## **A Legislative History of the Cumberland Road**

**by**

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*Location controversy. Political considerations. Innovative financing. Overruns and delays. Waste, fraud, and abuse. Jealous States. Constitutional debates. Angry Members of Congress. Modal choices. Presidents, future Presidents, and even a former President debating the meaning of the Constitution. Just what you'd expect from the country's first mega-project.*

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“The advancement of agriculture, commerce, and manufactures by all proper means will not, I trust, need recommendation; but I can not forbear intimating to you the expediency of . . . facilitating the intercourse between the distant parts of our country by a due attention to the post-office and post-roads.”

President George Washington  
First Annual Address to Congress  
Delivered at Federal Hall, New York City  
January 8, 1790

### **Part 1: The Constitution**

Geography was one of the biggest obstacles to holding the United States together after the Revolutionary War ended in 1783. The States along the East Coast shared the Atlantic Ocean for north-south transportation as well as the terrible roads that had been developed in colonial days, often based on trails carved through the forests by Native American inhabitants. But the Allegheny Mountains created an imposing barrier to union with the inland territories north of the Ohio River – known as the Northwest Territory – that became part of the country under the Treaty of Paris that ended the war. With limited ties to the coastal States, and a mountain barrier separating them, the few settlers were linked by trade and interests to the British in Canada – Treaty of Paris notwithstanding – and the Spanish and French to the south.

The Northwest Ordinance of 1787 provided for the creation of five States, ultimately named Illinois, Indiana, Michigan, Ohio, and Wisconsin. To allow the Northwest Territory to develop, the ordinance provided for the sale of public land and statehood when 60,000 people lived within one of the planned States, the boundaries of which had been laid out in 1784.

The problem was simple: how to link two halves of the new country separated by a mountain barrier. The answer was complicated.

## **Opening a Wide Door**

River transportation was the best ways to travel in the early United States. The Northwest Territory was served by the Ohio River along the southern border, where the sale of public land began. The problem was that river travel could not reach the Ohio River from the mid-Atlantic States; on the Potomac River, it could go only as far as Cumberland, Maryland, the farthest point of navigation. With an eye on the western trade, Maryland was planning a road from Baltimore to Cumberland, while Pennsylvania was planning a road from Philadelphia to the Ohio River west of Pittsburgh, which were separated by much rougher, mountainous terrain than was the case in Maryland.

George Washington, traveling the western territories following the war, had seen the problem. In his diary of a 1784 trip, he wrote: “The Western Settlers – from my own observation – stand as it were on a pivot [sic] – the touch of a feather would almost incline them any way.” He was convinced that the nation must “open a wide door, and make a smooth way for the Produce of that Country to pass to our Markets before the trade may get into another channel.”

Under the Articles of Confederation, which the States adopted in 1777, the general government did not have the authority or the resources to provide the needed link across the mountains. The former colonies thought of themselves as independent nations. They did not want a central government with authority over them. Instead, they wanted an agreement showing how the individual nations would interact when necessary, as in the case of the Revolutionary War. The central government, therefore, was intentionally weak. For example, the central government could not impose taxes. It could ask the States for funds, but the States determined whether to provide the funds for the limited activities specified in the Articles. During the war, as a result, General Washington spent a large amount of his time seeking funds for basic needs such as clothing, food and weapons for his troops, often without receiving what he needed.

## **The Constitution**

Another defect of the Articles of Confederation was the inability of the central government to resolve disputes among the State involving interstate commerce. The event that led, unexpectedly, to the Constitutional Convention was a longstanding dispute between Maryland and Virginia regarding navigation rights on the Potomac River. Following a 3-day conference at Washington's Mount Vernon home in Virginia, commissioners from the two States settled their differences. This agreement led to a meeting in Annapolis, Maryland, on September 11, 1786, with other States to discuss commercial regulation among States that often had conflicting interests. The meeting proved fruitless, partly because the New England States had not sent delegates.

Participants, therefore, called on Congress to convene a meeting of all the States to improve the Articles of Confederation. The convention was scheduled for Philadelphia in 1787. Travel difficulties delayed many delegates' arrival. Others never arrived – they had business at home that they considered more important than a meeting to amend the Articles.

Once enough delegates had arrived to begin on May 25, 1787, the participants quickly abandoned the idea of improving the old document. Instead, they would create a document that would correct the well-known defects of their present government and provide a more practical balance between the central and State governments. They proceeded in secrecy, even keeping the windows closed despite the oppressive heat through much of the summer. The goal was to draft a governing document that would create what Thomas Jefferson, who was in France as Minister to that nation during the convention, would later call a "union of sentiment."

As the participants debated the contents of a new governing document, they sorted out the powers that would belong to the general government through its Congress, and those that would belong to the States, as well as the role of the central leader, to be known as President. Arriving at decisions that were satisfactory to big States such as Virginia and small States such as New York, as well as to slave and free States, required difficult compromises, some of which remain controversial to this day.

After agreeing on the structure of the new government, the members appointed a Committee of Detail on July 26 to prepare a draft constitution based on resolutions adopted to that point. The draft, reported to the convention on August 6, assigned the right "to establish post-offices" to the Congress. This right was carried over from the Articles of Confederation, which gave Congress "the sole and exclusive right and power . . . of establishing and regulating postoffices from one state to another throughout all the United States . . . ."

At the suggestion of Elbridge Gerry of Massachusetts, the phrase "and post-roads" was added to the clause, without debate, on August 16 by a vote of six States to five. In a study of postal power, Lindsay Rogers commented on the five opposing States by writing "it is difficult to attribute the opposition to any source other than a general fear of giving the federal government too much power and thus endangering the chances for adoption." The approved draft was assigned to a Committee of Style to produce a final version of the Constitution.

(At the time, the term "post road" referred to any road that had posts or stopping points along the way for rest and food for travelers and their horses – unrelated to carrying the mail. Because the mail was carried on post roads, the service became known as the postal service and the original meaning of "post" was lost to common usage.)

The Committee of Style reported on September 12. On September 14, Benjamin Franklin of Pennsylvania proposed to amend the post office/post roads clause by adding "to provide for cutting canals where deemed necessary." James Madison of Virginia suggested a further amendment: "to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of individual States may be incompetent." He said his primary objective was to "secure an easy communication between the States, which the free intercourse now to be opened seemed to call for." He added that with eventual approval of the new Constitution, "The political obstacle being removed, a removal of the natural ones as far as possible ought to follow."

Roger Sherman of Connecticut objected because the expense would be incurred by all the States through their general government, but a canal would benefit only the place where the canal would be cut, as Rogers explained:

The question, however, was limited to the single case of canals, and when put to a vote was defeated, because there was an antipathy to monopolies, and because, as Gouverneur Morris [of New York] admitted, "It was extremely doubtful whether the Constitution they were framing could ever be passed at all by the people of America; that to give it its best chance, however, they should make it as palatable as possible, and put nothing into it, not very essential, which might raise up enemies.

The vote was 3 to 8, with Georgia, Pennsylvania, and Virginia favoring the motion. Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, North Carolina, and South Carolina opposed it.

Madison's record of the convention reported the dialogue:

**Docr. FRANKLIN** moved to add after the words "post roads" Art I. Sect. 8. "a power to provide for cutting canals where deemed necessary"

**Mr. WILSON** 2ded. the motion

**Mr. SHERMAN** objected. The expence in such cases will fall on the U. States, and the benefit accrue to the places where the canals may be cut.

**Mr. WILSON.** Instead of being an expence to the U.S. they may be made a source of revenue.

**Mr. MADISON** suggested an enlargement of the motion into a power "to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent." His primary object was however to secure an easy communication between the States which the free intercourse now to be opened, seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow.

**Mr. RANDOLPH** 2ded. the proposition

**Mr. KING** thought the power unnecessary.

**Mr. WILSON.** It is necessary to prevent a State from obstructing the general welfare.

**Mr. KING.** The States will be prejudiced and divided into parties by it. In Philada. & New York, it will be referred to the establishment of a Bank, which

has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies.

**Mr. WILSON** mentioned the importance of facilitating by canals, the communication with the Western Settlements. As to Banks he did not think with Mr. King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade.

**Col. MASON** was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by Mr. Wilson.

The motion being so modified as to admit a distinct question specifying & limited to the case of canals,

N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. no. S. C no. Geo. ay.

Rogers added:

This incident in the Federal Convention was to figure in the congressional debates over the incorporation of banks and the construction of postroads. Opinions have differed as to whether the action of the Convention may be said to show that the Constitution did not contemplate the exercise by Congress of a power to incorporate. Madison's record says: "Mr. King thought the power unnecessary . . . Mr. Wilson mentioned the importance of facilitating by canals the communication with the Western Settlements. As to Banks, he did not think with Mr. King that the power in that point of view would excite the prejudices and parties apprehended. As to mercantile monopolies, they are already included in the power to regulate trade." [Rogers, Lindsay, *The Postal Power of Congress: A Study in Constitutional Expansion*, The Johns Hopkins Press, 1916 (Bibliolife Reprint 2014)]

Therefore, when the convention adjourned on September 17, Section 8 of Article I of the proposed Constitution of the United States of America granted to Congress several powers, including:

- "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"
- "To establish Post Offices and post Roads;" and
- ". . . provide for the common defense and general welfare of the United States."

Section 8 ended:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Madison's notes did not address the meaning of the word "establish." As will be seen, Congress would debate the meaning of the word for decades, often at tedious length, whenever the subject of roads was considered during the first half of the 19<sup>th</sup> century. However, the notes were not published until 1836, after Madison's death, and so were not available for whatever guidance they might have provided to those involved in the internal improvements debates before then.

### **Ratification**

When the completed Constitution was submitted to the States for ratification, many contentious issues were debated in State conventions. The central question was whether the States were willing to yield the power they had under the Articles and, if so, what would they get in return. In other words, did the Constitution establish the proper balance of power among the central and State governments?

The power to establish post offices and post roads was rarely one of the primary concerns in the State conventions, as Rogers explained:

In the state conventions there was practically no discussion of the postal power. Its innocuousness was granted. Mr. Jones of New York was alone in finding a latent aggression, and it was resolved, as the opinion of the state committee, "that the power of Congress to establish postoffices and postroads is not to be construed to extend to the laying out, making, altering, or repairing of highways, in any state, without the consent of the legislature of such state." Such a stipulation was destined very soon to become a mere *brutum fulmen*. [The Latin phrase means a harmless thunderbolt, indicating an empty threat or one with no practical effect.]

To encourage ratification, James Madison, Alexander Hamilton, and John Jay wrote papers on the Constitution that were later collected as *The Federalist Papers*. They addressed many of the concerns that being expressed about the proposed Constitution. In paper #14, Madison returned to an argument he had made during the discussion of the canal amendment. First, the general government would not have "the whole power of making and administering laws." The general government would have only the powers enumerated in the Constitution.

Second, he said that "the immediate object of the federal Constitution is to secure the union of the thirteen primitive States, which we know to be practicable; and to add to them such other States [as may wish to join the union]":

Let it be remarked, in the third place, that the intercourse throughout the Union

will be facilitated by new improvements. Roads will everywhere be shortened and kept in better order; accommodations for travelers will be multiplied and meliorated; and interior navigation on our eastern side will be opened throughout, or nearly throughout, the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.

Madison also discussed a “fourth and still more important consideration,” namely that the 13 States were generally bordered by frontiers. Those frontiers that were farthest from “the heart of the Union” would be drawn towards the foreign countries closest to them. For those frontier areas to join the union, they “should derive greater benefit” from doing so than from remaining outside it.

In paper #42, Madison discussed the limitations on the powers conferred by the Constitution. In the final paragraph, he addressed the reference to post roads:

The power of establishing post roads must, in every view, be a harmless power and may, perhaps, by judicious management become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care.

Madison’s discussion did not cover the meaning of “establish” or whether Article 1 of the Constitution allowed Congress to pass laws to build the necessary transportation network of roads and canals for distribution of the mail to hold the new Nation together, but that is the implication.

This question about “establish” would remain central to the internal improvement debates of the 19<sup>th</sup> century. Moreover, succeeding Presidents would take different positions on the meaning of the term. They all supported internal improvements, such as roads and canals, but some believed an amendment was needed before Congress could appropriate funds for road or canal construction. Most, however, found ways to overcome any theoretical reluctance they may have felt about approving internal improvement bills.

(During the Constitutional Convention, Madison and Charles Cotesworth Pinckney of South Carolina had submitted powers on August 18 for consideration by the Committee of Detail to add to those of the general legislature. These powers included such measures as “To grant charters of incorporation,” “To establish a university,” and “To regulate stages on the post-roads.” These powers did not make it into the Constitution.)

## **The Bill of Rights**

When the ninth State, New Hampshire, ratified the Constitution, it went into effect. Many of the States, however, had ratified the Constitution contingent on adoption of

specified changes. The contingent proposals were particularly intended to protect the rights of the States, because State convention delegates feared they were giving up their State's status as an independent nation to become members of a new confederacy that might end up tyrannizing them. The States also were concerned that the Constitution did not specify the rights of individuals.

After the first Congress convened, Representative Madison addressed the contingent proposals many States had imposed on their ratification of the Constitution. He consolidated the recommendations, many of which were duplicative, into a series of amendments that the first Congress whittled down to 12 amendments and approved on September 25, 1789.

On December 15, 1791, the States completed ratification of 10 amendments to the Constitution, which were later commonly called the Bill of Rights. The States had rejected the first two congressionally approved amendments concerning apportionment of members in the House of Representatives and the pay of Senators and Representatives. Thus the third congressional amendment became the First Amendment that we are familiar with simply by its random placement as first among the last 10 of the congressionally approved amendments.

Technically, the original first congressional amendment on apportionment of representation remains pending. However, the States eventually approved the second article on pay in May 1992 as the 27<sup>th</sup> amendment to the Constitution:

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

The Fifth Amendment contains several due process protections but is best known today for providing that no person "shall be compelled in any criminal case to be a witness against himself" (commonly known as the right against self-incrimination). However, it also included this provision:

. . . nor shall private property be taken for public use, without just compensation.

This language, which would be cited in the 19<sup>th</sup> century debates over internal improvements, remains a key protection in modern highway and other transportation programs, as well as other government activities involving acquisition of real property.

The 10<sup>th</sup> Amendment addressed the specific concern of the States that the general government would twist the new Constitution to adopt powers it did not have:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The debate that began in the Constitutional Convention in the 1780s over the allotment and balance of powers has continued into the 21st century, with our political parties over

the centuries differentiating themselves based on their philosophies on the dividing lines of power among the Federal Government, the State governments, and the people. Over 230 years since the States ratified the Constitution in 1787, we are still debating its meaning, often relying on the Supreme Court as the ultimate arbiter.

In short, from the start, when the country was organizing in accordance with the radical new governing document known as the Constitution, people were debating what its words meant. Few areas of governance have escaped the struggle for balance, including the authority of the general government over internal improvements, such as the construction of roads.



Bouquet, Forbes's second in command, suggesting a new road could not be made, at least in time.

On August 2 [1758] Washington sent a much longer letter to Bouquet outlining in detail why the Braddock Road was a preferable route to Fort Duquesne. He claimed that the Indians [sic] long-time use of this trail had shown the value of the route from Wills Creek [at Fort Cumberland] to the Monongahela demonstrating its superiority. The road was opened by the Ohio Company and was improved by himself, and the following year by Braddock. "A road, that has so long been opened, and so well and so often repaired, must be firmer and better than a new one. He acknowledged that the shorter distance between Raystown and Loyal Hanna (near the Forks) [Loyalhanna Creek] was an argument for the direct road but, he said, "I must beg leave to ask, whether it requires more time, or is more difficult and expensive, to go one hundred and forty-five miles in a good road already made to our hands, than to cut one hundred miles anew, and a great part of the way over impassable mountains." Washington then laid out a meticulous table comparing the distances from Carlisle to Fort Duquesne by way of Raystown with the distances from Carlisle via Forts Frederick and Cumberland. He showed the latter, the Braddock Road, to be only nineteen miles longer and much preferable because of the existing road. His letter went on for many pages and listed many reasons for using the Braddock Road.

General Forbes rejected Washington's recommendation, suspecting that the argument was really meant to favor commercial interests based in Washington's home State of Virginia.

General Forbes's army, under direction of Colonel Bouquet due to the general's illness, could follow the road to Carlisle. From there the army would have to build a road through the forests and over the mountains to reach the French fort. By the end of the year, Hrastar wrote, "he was having some doubts that Washington might be right in worrying about completing the mission":

Forbes's men still had to cross Laurel Ridge[,] a formidable peak. Laurel Ridge ranged down across central Pennsylvania to the Braddock Road path where it was much diminished, so much so that accounts of the Braddock Road don't even mention it. Forbes Road would have to contend with the high part of Laurel Ridge whereas the Braddock Road did not. Washington lost his argument but eventually joined Forbes at Raystown, only about thirty-five miles from Fort Cumberland, and was instrumental in the final push to Fort Duquesne.

General Forbes's men built the road to about 10 miles west of Ligonier. They then halted road construction to travel through the woods in hopes of catching the French by surprise. The French, who had apparently been warned of the British force coming their way, had abandoned and burned their fort.

Although deprived of a battle, the British built a fort at the Forks of the Ohio and named it Fort Pitt after British Secretary of State William Pitt. They also completed the road to the site.

The British used Forbes's Road to supply Fort Pitt but supply caravans were vulnerable to attack from Indians. The alternative was to take supplies to the fort via Braddock Road:

It was decided to reopen the Braddock Road in the summer, in order to bring supplies to Fort Pitt from Virginia as well as along the Forbes Road. Bouquet was skeptical if the advantages of this route would outweigh the need to garrison Fort Cumberland which the Virginia troops had previously evacuated leaving a small number of Maryland militia to garrison it. Competition still existed between Pennsylvania and Virginia over the ownership of this land in Ohio country, so Bouquet was hesitant to give Virginia any advantage by reopening the Braddock Road. When it was finally decided to open the road, the Virginians also insisted on the construction of a new road from Braddock Road to the Monongahela. Their reasoning was that there would then be three ways to get supplies to Fort Pitt – by the Forbes Road, by the Braddock Road to the Forks, and by floating Bateaux down the river from a new fort at Redstone Creek.

The Virginians reopened the Braddock Road on August 20, 1759. This was probably just an announcement that the road was now open with no corresponding attempt to improve it. The road had not been used for wagons in over four years. Two days later Colonel Bouquet wrote to General John Stanwix, who had succeeded General Forbes after the latter's recent death [on March 11, 1759] that he had ordered Colonel James Burd to open the road between the Braddock Road and Redstone Creek and to build a fort there. This road was to veer off from the Braddock Road after it crossed the mountains, and head straight to the Monongahela instead of north to the Forks.

Colonel Burd, leaving Fort Cumberland on September 1, soon had reason to complain about the condition of Braddock Road:

It was "not more than 10 feet wide and carries up every Hill almost without a turn and Hills almost perpendicular." This is not surprising. It had been four years since Braddock cut a road that would take heavy military wagons into a virgin forest, ample time for the road to almost revert to its primitive state.

Reaching the Monongahela River, Colonel Burd and his men "built a road over sixteen and a quarter miles long to Dunlap's Creek, one mile upstream from Redstone Creek. Dunlap's Creek enters the Monongahela at present-day Brownsville, Pennsylvania:

As the French and Indian war was winding down in 1759 and 1760 settlers started to move into the Ohio Valley in numbers. This improved road and its extension to the river provided an ideal route for this expansion . . . . Of course it was also

still possible to follow the Braddock Road all the way to the Forks instead of going to the Monongahela via the Burd Road.

At this point, therefore, travelers could reach the Ohio River by Forbes Road, Braddock Road, and its spur, Burd Road:

The settlers moved west into Ohio along the various footpaths and trails, but they couldn't easily move back and forth between Ohio and the east. They were reasonably self-sufficient on their farms but they still needed some goods such as salt and iron and steel that they could not produce themselves. They had to travel back over the mountains, usually at least once a year, to barter for these goods. The lack of roads required them to use the packhorse trails back to the east. Once they reached the Ohio River there were some rudimentary roads, such as Forbes Road in Pennsylvania, and the Braddock-Burd Road in Maryland and Pennsylvania, to allow them to return to Philadelphia or Baltimore for supplies. They could use the Ohio River to travel east, but it was much more difficult traveling upstream to the east than floating downstream to the west.

The roads gradually deteriorated. For example, "The underbrush in the mountains grew rapidly when not cleared regularly so over the decades the original Braddock Road became overgrown." As early highway historian Archer Butler Hulbert put it:

For three score years Braddock's Road answered all the imperative needs of modern travel, though the journey over it, at most seasons, was a rough experience. During the winter the road was practically impassable."

[Hrastar, John, *Breaking the Appalachian Barrier: Maryland as the Gateway to Ohio and the West, 1750-1850*, McFarland and Company, 2018; Shank, William H., *Three Hundred Years With the Pennsylvania Traveler*, American Canal and Transportation Center, 1776; Hulbert, Archer Butler, *The Old National Road: A Chapter of American Expansion*, Press of F. J. Heer, 1901]

## **The Ohio Pioneers**

Historian David McCullough's 2019 history, *The Pioneers*, described how the Ohio Company of Associates, formed in New England, made the arduous, months-long trip across Pennsylvania to the Ohio River to settle Marietta in 1788. With help from the diary of one of the company's leaders, Rufus Putnam, McCullough narrated the trip to Ohio.

On December 31, 1787, Putnam, age 49, left his farm and family in Rutland, Massachusetts, for the journey. Delayed by business in New York, he caught up with the other settlers on January 24, 1788, at Hummelstown just east of Harrisburg:

As they moved on the weather turned worse. The wind blown snow was eight inches deep, the traveling "excessive bad." In the days that followed, the going

grew more difficult still. “So great a quantity of snow fell that day and the following night as to quite block up the road . . . . Our only resource now was to build sleds and harness our horses one before the other, and in this manner, with four sleds and the men in front to break the track, we set forward”

The “road,” as he called it, was the Forbes Road, an old Indian trail that had been widened by the British General John Forbes for his expedition to the forks of the Ohio during the French and Indian War and was no easy pathway even under the best weather conditions.

They finally reached “the Allegheny Mountains, a formidable barrier”:

They crossed the Blue Mountain, Tuscarora Mountain, all on foot, the sleds loaded down with tools, baggage, and provisions. “Traveling both these days very bad. Men and horses much fatigued,” wrote Putnam. The temperature kept dropping. “[The] cold last night and this day may be the coldest this winter,” he recorded on February 5.

A thaw accompanied by heavy rains greeted them on “the westernmost Alleghenies – Laurel Mountain and the Chestnut Ridge.” They had needed a month to get over the mountains.

With their pace increasing, they reached Sumerill’s Ferry on the Youghiogheny River, 30 miles southeast of Pittsburgh on February 14. The cold and snow that had accompanied the party had blocked construction of a boat to carry them to the Ohio River. With help from another party waiting at the site, Putnam’s crew built a galley, named the *Mayflower*, and a smaller flatboat and canoes.

On April 2, the flotilla took off on the Youghiogheny:

So early that afternoon the new *Mayflower* pushed off carrying perhaps thirty men, the others, along with a large quantity tools, tents, and provisions, packed onto the smaller galley and canoes.

They floated to McKeesport, where the Youghiogheny met the larger Monongahela:

From there it was another twenty miles to where, at Pittsburgh, the Monongahela joined the clearer, faster-moving Allegheny to form the Ohio . . . .

Pittsburgh at the time, a crude frontier settlement of no more than 150 log cabins and houses, was described as “an irregular poor built place” alongside old Fort Pitt inhabited by “a lazy set of beings. . . .” But with its key location at the headwaters of the Ohio, Pittsburgh was the Gateway to the West and almost certain to have great promise.

The Ohio Company had finally reached the Ohio River in the spring, the best time for travel by boat:

For thirty miles beyond Pittsburgh, the Ohio flowed not west but almost due north, past sparsely populated river settlements and the ruins of the Seneca village of Logstown, where Queen Aliquippa once held sway. Not far beyond, the river did indeed swing west until the mouth of the Beaver River, where it headed south-southwest. But then the river kept on twisting and turning. So “completely serpentine” was it that, in some places, as was said, “a person taking observations of the sun or stars, will find that he sometimes entirely changes his direction, and appears to be going back.”

On April 5, the boats reached Buffalo Creek. After a break to take on supplies, the boats sailed on to Wheeling on the Virginia side of the river, 140 miles since they had reached the Ohio River. Finally, on April 7, they reached their destination, the Point, as it was known, on the Muskingum River:

As long and arduous as was so much of the journey, there had been no loss of life, nor, as plainly evident, no loss of spirit. “We arrived . . . most heartily congratulating each other on the sight of our new country,” wrote one of them.

They were greeted by about 70 Indians led by the Delaware Chief, Captain Pipe:

All the natives gathered at the Point seemed quite friendly. Pipe himself greeted the new arrivals as brothers. “As long as the sun and moon endured,” he declared, the Delaware, the Wyandots, and Yankees shall be friends and brothers.

Privately Rufus Putnam thought it best to wait and see. [McCullough, David, *The Heroic Story of the Settler Who Brought the American Ideal West*, Simon and Schuster, 2019]

## **Origins of the Cumberland Road**

Under the Treaty of Fort Stanwix in 1768, the Ohio River became the dividing line, with Indian territory to the north and colonial territory to the south, leaving future Kentucky (statehood in June 1792) and Tennessee (June 1796) open to settlement. (General Stanwix built the fort at the site of Rome, New York, in 1762.) The roads to the Ohio River provided a way for settlers bound for the two southern States.

Following the Revolutionary War, the United States gained control of the Northwest Territory from the British and, as McCullough demonstrated, settlers saw Ohio as an opportunity for good land even amidst the Indian population.

Interest in a connection with the west increased after the Treaty of Greenville, approved on August 3, 1795, settled the Indian wars that the influx of settlers to Ohio had prompted. Under the treaty, the Indians were restricted to the northwest corner of Ohio,

leaving the rest open to settlement, with the growth starting in the south then spreading to the north.

After the Treaty of Greenville, pressure increased in Maryland and Virginia for an improved portage road between the Potomac and Ohio Rivers. A good road would help settlers reach the public lands for sale in the new State of Ohio, but would also allow for the back-and-forth trade that would bind the territories to the States across the mountain barrier that separated them. In addition, the new State would need roads within its borders.

The problem was how to pay for the roads to and in the State.

Representative William B. Giles of Virginia, chairman of the select committee on the Northwest Territory, submitted a report to the House on March 30, 1802, that included recommendations on the statehood legislation that would be the model for each of the future States of the Northwest Territory. Regarding the need for the portage road, he was agreeable to a suggestion from Secretary of the Treasury Albert Gallatin in a letter dated February 13, 1802. The letter covered many aspects of the enabling legislation, including roads. Secretary Gallatin recommended a bargain that would benefit the new State and the Nation.

The letter stated:

That one-tenth part of the net proceeds of the lands hereafter sold by Congress shall, after deducting all expenses incident to the same, be applied towards laying out and making turnpike or other roads, first from the navigable waters emptying into the Atlantic to the Ohio, and afterwards continued through the new State; such roads to be laid out under the authority of Congress, with the consent of the several States through which the same shall pass.

Secretary Gallatin closed his letter by writing:

The tenth part of the proceeds of the lands, as it will be co-extensive with the sales, will continue to be considered as an equivalent until the sales are completed, and after the present grant might have ceased to operate on the minds of the people of the new State. The roads will be as beneficial to the parts of the Atlantic States through which they are to pass, and nearly as much so to a considerable portion of the Union, as to the North-West Territory itself. But a due attention to the particular geographical situation of that Territory and of the adjacent western districts of the Atlantic States, will not fail to impress you strongly with the importance of that provision in a political point of view, so far as it will contribute towards cementing the bonds of the Union between those parts of the United States whose local interests have been considered as most dissimilar.

On his copy of the letter, Secretary Gallatin wrote: "Origin of the National Road."

(At the time, the term “turnpike” referred to an improved stone-surfaced or “metalled” road, whether with or without tolls. In most uses associated with the early years of the Cumberland Road, the term referred to an improved road, not a toll road.)

As the House of Representatives considered the legislation, it contained Secretary Gallatin’s idea for road building:

That one-tenth part of the net proceeds of the lands lying in the said State, hereafter sold by Congress, after deducting all expenses incident to the same, shall be applied to the laying out and making turnpike or other roads leading from the navigable waters emptying into the Atlantic, to the Ohio, and continued afterwards through the State of \_\_\_\_\_, such roads to be laid out under the authority of Congress with the consent of the several States through which the road shall pass, provided that the Convention of the State of \_\_\_\_\_ [to draft a constitution] shall, on its part, assent, that every and each tract of land sold by Congress, shall be and remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose whatever, for the term of ten years, from and after the completion of the payment of the purchase money on such tract, to the United States.

In the course of congressional action, the provision contained in the final bill was modified. The Enabling Act of April 30, 1802, signed by President Jefferson, included this final provision:

That one twentieth part of the net proceeds of the lands lying within the said state sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said state, and through the same, such roads to be laid out under the authority of Congress, with the consent of the several states through which the road shall pass: *Provided always*, that the three foregoing propositions herein offered, are on the conditions that the convention of the said state shall provide, by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by Congress, from and after the thirtieth day of June next, shall be and remain exempt from any tax laid by order or under the authority of the state, county, township or any other purpose whatever, for the term of five years from and after day of sale.

Based on actions at the Ohio constitutional convention in Chillicothe, Congress amended the provision in legislation that President Jefferson signed on March 3, 1803. It provided that 3 percent of land sales revenue “shall be applied to the layout, opening and making roads within the said state, and to no other purpose whatever.” This restriction of the funds left 2 percent of land sales revenue for the road to Ohio.

Ohio became a State on March 1, 1803.

The innovative financing for building roads to and in the State meant that the needed roads could be built without taxing residents in the new or other States or drawing on other revenue collected by the general government, mostly from tariffs.

### **Locating the Road**

The question was where the road would originate east of the mountain barrier. With several cities competing to be the eastern terminus, the Senate appointed a committee headed by Senator Uriah Tracy of Connecticut to examine the question.

On December 19, 1805, he reported his committee's findings. "The committee have examined, as far as their limited time, and the scanty sources of facts within their reach would permit, the various routes which have been contemplated for laying out roads pursuant to the provisions of the act first mentioned in this report."

The committee reported that net proceeds of land sales in Ohio beginning July 1, 1802, through September 30, 1805, totaled \$632,604.27. Of that, 2 percent for a road to Ohio amounted to \$12,652. As summarized in the *Annals of Congress*, Tracy added, "it will be discerned that the fund is constantly accumulating, and will, probably, by the time regular preparations can be made for its expenditure, amount to eighteen or twenty thousand dollars."

(The congressional records of the early years – *Annals of the Congress of the United States* (1789 through 1824), *Gales and Seaton's Register of Debates in Congress* (1824-1837), and *The Congressional Globe* (1833-1873) – summarized debates with a mix of quotes and narrative rather than reporting in stenographic form.)

The committee had examined the claims of the several possible starting points. Routes examined were between Philadelphia on the north and Richmond on the south, having considered this wide range because the committee "suppose the roads to be laid out must strike the river Ohio on some point contiguous to the State of Ohio, in order to satisfy the words of the law making the appropriation; the words are, 'leading from the navigable waters emptying into the Atlantic to the river Ohio, to the said State, and through the same.'"

Another factor limited the northern and southern points of the study:

The mercantile intercourse of the citizens of Ohio, with those of the Atlantic States, is chiefly in Philadelphia and Baltimore; not very extensive in the towns on the Potomac within the District of Columbia; and still less, with Richmond, in Virginia. At present, the greatest portion of their trade is with Philadelphia; but it is believed their trade is rapidly increasing with Baltimore, owing to the difference of distance in favor of Baltimore, and to the advantage of boating down the Monongahela river, from the point where the road strikes it, about seventy miles by water, and fifty by land, above Pittsburg.

(The “towns” within the District of Columbia in its original configuration included the small government center, the city and port of Georgetown, and the city and port of Alexandria, then included in the capital city, both reliant on the Potomac River.)

With several viable options and limited revenue dedicated to construction, the committee decided to limit itself to one route. Therefore, the members:

. . . endeavored to fix on that which, for the present, will be most accommodating to the citizens of the State of Ohio, leaving to the future benevolence and policy of Congress, an extension of their operations on this or other routes, and an increase of the requisite fund, as the discoveries of experience may point out their expediency and necessity. The committee being fully convinced that a wise Government can never lose sight of an object so important as that of connecting a numerous and rapidly increasing population, spread upon a fertile and extensive country, with the Atlantic States, now separated from them by mountains, which, by industry and an expense moderate in comparison with the advantages, can be rendered passable.

Distance was a consideration in choosing the route. Senator Tracy mentioned that the distances he would cite were not based on actual measurement. They were, however, believed to be sufficiently correct for comparison purposes.

The present road from Philadelphia to Pittsburgh was 314 miles long by the usual route, with a straight line between the two cities being about 270 miles. Extending that line from Pittsburgh to the nearest location on the river between Steubenville and Grave Creek, brought the total distance to 360 miles on the present road, or 308 miles on a straight line.

From Baltimore to the Monongahela River at or near Brownsville totaled 218 miles or 184 miles on a straight line. From Brownsville, “boats can pass down with facility to the State of Ohio, during a number of months in every year.” The distance from the Nation’s capital to the same points on the river was nearly the same as from Baltimore (“probably the difference is not a plurality of miles”).

From Richmond to the nearest point on the Ohio River by the usual route was 377 miles, but the State’s plan for a road north of the city would shorten the distance by 50-60 miles. The committee found that “two hundred and forty-seven miles of the contemplated road, from Richmond northwesterly, will be as good as the roads usually are in that country, but the remaining seventy or eighty miles are bad, for the present, and probably will remain so for a length of time, as there seems to be no existing inducement for the State of Virginia to incur the expense of making that part of the road passable.”

Distance, however, was only one factor in the committee’s consideration. Each terminus had pluses and minuses for serving settlers and commerce. The route from Richmond approaching the Ohio River was through a “thinly inhabited” section of the State “which, from the nature of the soil, and other circumstances, must remain so, at least for a

considerable time; and from the hilly and rough condition of the country, no roads are, or can be, conveniently made leading to the principal population of the State of Ohio.” These considerations prompted the committee to put this alternative aside for the present.

The committee had no doubt that Pennsylvania, through “spirit and perseverance,” would “complete a road from Philadelphia to Pittsburg, as good as the nature of the ground will permit.” The State was very interested in such a road to facilitate commerce with the western areas, but to do so “they will of course [have to] surmount the difficulties presented by the Alleghany mountain, Chestnut Ridge, and Laurel Hill, the three great and almost exclusive impediments, which now exist on that route.”

Maryland, “with no less spirit and perseverance” than Pennsylvania, was “engaged in making roads from Baltimore and from the western boundary of the District of Columbia, through Fredericktown to Williamsport” between Frederick and Cumberland. Officials in Maryland, however, had no interest in extending their road across the mountains, “and if they had it, it would be impracticable, because the State does not extend so far.”

With both States working on roads to the west, if the general government were “to direct the expenditure of the fund in contemplation upon either of these routes, for the present, in Pennsylvania or Maryland, it would probably so far interfere with the observations of the respective States, as to produce mischief instead of benefit; especially as the sum to be laid out by the United States is too inconsiderable, alone, to effect objects of such magnitude.”

With these considerations in mind, the committee “thought it expedient to recommend the laying out and making a road from Cumberland, on the northerly bank of the Potomac, and within the State of Maryland, to the river Ohio, at the most convenient place between a point on the easterly bank of said river, opposite to Steubenville and the mouth of Grave creek, which empties into said river Ohio, a little below Wheeling, in Virginia”:

This route will meet and accommodate roads leading from Baltimore and the District of Columbia; it will cross the Monongahela river, at or near Brownsville, sometimes called Redstone, where the advantage of boating can be taken, and from the point where it will probably intersect the river Ohio, there are now roads, or they can easily be made over feasible and proper ground, to and through the principal population of the State of Ohio.

From Cumberland to Laurel Hill, the present route was 66 miles (55 miles on a straight line). On this section, “the committee suppose the first and very considerable expenditures are especially necessary. From Laurel Hill to the Ohio river, by the usual route is about seventy miles, and on a straight line fifty-four or fifty-five; the road is tolerable, though capable of amelioration.”

The committee had prepared a bill embodying these considerations for Senate consideration. The Enabling Act of 1802, Senator Tracy reported, had imposed a duty on

Congress to provide a road to the State, but the committee believed that Congress also had “a sense of duty” sufficient to pass the bill:

To enlarge upon the highly important considerations of cementing the union of our citizens located on the Western waters with those of the Atlantic States, would be an indelicacy offered to the understandings of the body to whom this report is addressed, as it might seem, to distrust them. But from the interesting nature of the subject, the committee are induced to ask the indulgence of a single observation.

Politicians have generally agreed that rivers unite the interests and promote the friendship of those who inhabit their banks; while mountains, on the contrary, tend to disunion and estrangement of those who are separated by their intervention. In the present case, to make the crooked ways straight, and the rough ways smooth, will, in effect, remove the intervening mountains, and by facilitating the intercourse of our Western brethren with those on the Atlantic, substantially unite them *in interest*, which, the committee believe, is the most effectual cement of union applicable to the human race.

After a reading of the bill, the Senate ordered it to a second reading. The Senate, acting as a Committee of the Whole, considered the bill and reported it, without amendment, for a second reading. A third reading was ordered. The Senate passed the committee’s bill on December 27, 1805. The *Annals of Congress* did not report any discussion or dissent.

(The reference to crooked ways and rough ways is from the Bible, Luke 3:5: “Every valley shall be filled, and every mountain and hill shall be brought low; and the crooked shall be made straight, and the rough ways shall be made smooth.”)

On December 30, the House of Representatives received the bill from the Senate for consideration. In the House, sectional interests affected views. Because the road would not pass through the southern States, their representatives generally opposed the bill. Although the bulk of the new road would cross the southwestern part of Pennsylvania, most Representatives from that State opposed the bill because the road did not originate in Philadelphia. Similarly, most of Virginia’s delegation opposed the bill because the road would not begin in Richmond.

The House, resolved into a Committee of the Whole, reported the Senate bill “with several amendments thereto.”

The House began considering the bill on March 22. Shortly after consideration began, Representative Michael Leib of Pennsylvania moved to postpone the bill indefinitely. Representative Christopher H. Clark of Virginia supported the motion. The *Annals* summarized his argument:

He thought there was not sufficient time to act on the bill during this session. He declared his wish to be to lay out three roads, one from some point in Pennsylvania, one from some point in Maryland, and one from some point in

Virginia, expending, in the first instance, an adequate sum on the middle road, and afterwards appropriating a like sum to each of the other roads.

Representative John G. Jackson of Virginia provided “a concise history of the fund” for making roads to Ohio. He “stated his opinion that, inasmuch as the compact with Ohio provided for the laying out ‘turnpike or other roads,’ it would be a violation of it to lay out a single road.” When the subject had come up before, he had intended to ask the Treasury Secretary for the amount of funds raised since enactment of the 1802 Act, but “had been frustrated by an adjournment.” He now feared that the subject would not be “deliberately examined, from its competition with other important objects, and believing that the bill contained an exceptionable principle, he should concur in the motion of postponement.”

Opposing the motion was Representative George M. Bedinger of Kentucky. “He observed that he was well acquainted with the route contemplated in the bill, and he considered it the shortest and best for the general interests of the Union.” With a connection via the Mississippi River to the Ohio River, Kentucky residents would find the Cumberland Road to be their best route east to Washington.

Representative Roger Nelson of Maryland also opposed postponement. This bill, he said, was as important as any other business before the House:

He viewed the idea of the [1802] compact being violated by, in the first instance, laying out one road instead of three as strange and unfounded – inasmuch as the laying out [of] one road did not supersede the right of afterwards laying out another. Mr. N. further advocated the bill as fixing a route most convenient to the three States of Pennsylvania, Maryland, and Virginia.

Representative Jackson said he did not oppose considering the bill during the present session “if he could be convinced that the House would pay to it a full and dispassionate attention.” He did not think that was the case. He “spoke at some length against the route contemplated by the bill, and the inadequacy of the fund to forming so vast and difficult a turnpike.”

Representative Matthew Lyon of Kentucky opposed postponement because “the route proposed would be of great benefit to the Western people.”

Pennsylvania Representative Frederick Conrad, by contrast, favored postponement based “on the idea that the proper course of proceeding was for the States first to lay out roads, and for Congress then to aid them by appropriating this fund.” He also favored three roads, one from each of the States involved.

Representative Leib favored postponement because consideration at this time was premature:

What authority have Congress to lay out this road before they have obtained the consent of the States? Considering the expense of laying out this route, he looked

upon the bill as merely making an appropriation for the benefit of commissioners and chain-carriers.

Ohio Representative Jeremiah Morrow opposed postponement. He explained that “this road would be conducive to the interests of the Western people, that it was the best and most direct route, and that the fund would be adequate to the object.”

Representative William Findley of Pennsylvania argued that the way to proceed was to “appoint disinterested Commissioners, and after receiving their report, to designate the route.” He said he had traveled the route specified in the bill “and believed that a better one could be designated.” He favored postponement, followed by appointment of commissioners. His Pennsylvania colleague, Representative John Smilie, agreed.

The House rejected postponement by a vote of 51 yeas and 59 nays.

Opponents, however, were not done. Representative Jackson moved to postpone consideration to March 24 to allow time to gather information from the Treasury Secretary on the quantity of land sold and the funds, thereby, available for the road.

Representative Morrow objected, claiming sufficient information was available “and remarked that there would exist a fund of nearly forty thousand dollars on the 1<sup>st</sup> of next October.”

The motion, by a vote of 51 to 56, failed.

Representative John Claiborne of Virginia moved to recommit the bill to a select committee “considering the information before the House as not satisfactory.” Again, the House rejected the motion, 50 to 58:

The House then took up the amendments agreed to in Committee of the Whole.

Mr. Jackson spoke at considerable length against the route designated in the bill, and concluded by offering a proposition amendatory of an amendment of the Senate – allowing a discretion to lay out the road at any point between Steubenville and Grave river, on the Ohio – so as to allow a like discretion with that contemplated on the Potomac, between the points of Cumberland and Western Port.

The House concurred in the amendment of the Committee of the Whole, and nonconcurred in that of Mr. Jackson.

Mr. Clark offered a motion which went to modify the bill, so as to direct the laying out three roads instead of one.

The Speaker [Nathaniel Macon of North Carolina] declared this motion out of order, as it affected an amendment already agreed to.

Whereupon a question to reconsider the amendment, in order to try the sense of the House of Mr. Clark's motion, was taken, and lost – yeas 44, nays 47.

Mr. Jackson moved to recommit the bill; which motion having been negatived, the bill was ordered to a third reading on Monday.

Final consideration took place on Monday, March 24, 1806. Representative David Holmes of Virginia moved to postpone consideration indefinitely “and observed that, if this motion prevailed, he should offer a motion for the appointment of commissioners, by the President, to explore a route.” After debate that was not spelled out in the *Annals*, the House opposed this motion, 52 to 64:

And then the main question being taken that the said bill do pass, it was resolved in the affirmative – yeas 66, nays 50.

Virginians opposed the bill, 16 to 2, while the Pennsylvania delegation voted against it, 13 to 4. Professor John Lauritz Larson, in his book on 19<sup>th</sup> century internal improvements, provided this commentary on the vote:

Federalists [who supported a strong general government] and westerners overwhelmingly supported the Cumberland Road bill; Republicans [favoring strong States and a strict reading of the Constitution] divided equally, but nearly all the 38 Republicans voting nay came from Virginia or Pennsylvania and stood against the *route*, not the road itself. Of the four Pennsylvania Republicans supporting the bill, two represented Albert Gallatin's present and former congressional districts; of the two Virginians voting yea, one was from Jefferson's son-in-law, Thomas Mann Randolph, and the other James Madison's replacement in Congress, John Dawson. [Madison was Jefferson's Secretary of State.] Madison later would remember this first example of national road building as the ill-conceived product of the session's final hours, but members at the time must have seen it as an administration measure.

Professor Larson provided an overall view of the vote:

On the vote Federalists supported the bill 22 to 3; Republicans divided 37 to 38 against; individuals whose party affiliation is unclear divided 7 to 9 against. North Carolina, generally a hotbed of strict constructionism, divided 4 to 4; New York's 9 Republicans split 4 to 5 in favor, with 2 Federalists joining the majority.

He continued:

Two conclusions had become inescapable by the time the Jefferson administration launched the Cumberland Road experiment. First, many Republicans in Congress and outdoors desired a more energetic national government than Jefferson had promised at his inauguration. Second, as the threat of “monarchical Federalists” had diminished, Republicans turned their taste and talent for factional politics against each other in shameless displays of special pleading and local legislation. These developments placed Jefferson's two most cherished ideological

convictions – majority rule and strict construction – on a collision course.  
[Larson, John Lauritz, *Internal Improvement: National Public Works and the Promise of Popular Government in the Early United States*, The University of North Carolina Press, 2001]

On March 24, the Senate assigned the amended bill to the Tracy committee to consider the House changes. The committee consented on March 25. The following day, the Senate took up the House amendments to the bill “and agreed thereto.”

The final bill was titled “An Act to regulate the laying out and making a road from Cumberland in the State of Maryland to the State of Ohio.” It authorized the President to appoint “three discreet and disinterested” citizens to a board that would lay out the road. The bill was specific about where the board of commissioners should locate the road:

. . . a road from Cumberland, or a point on the northern bank of the river Potomac in the state of Maryland, between Cumberland and the place with the main road leading from Gwinn’s to Winchester, in Virginia, crosses the river, to the state of Ohio: whose duty it shall be, as soon as may be, after their appointment, to repair to Cumberland aforesaid, and view the ground, from the points on the river Potomac herein before designated, to the river Ohio; and to lay out in such direction as they shall judge, under all circumstances, the most proper, a road from thence to the river Ohio, to strike the same at the most convenient place, between a point on its eastern bank, opposite to the northern boundary of Steubenville, in said state of Ohio, and the mouth of Grave creek, which empties into the said river, a little below Wheeling, in Virginia.

If the President agreed with the decisions of the three disinterested citizens on location and marking, the bill authorized him to secure State consent to the project:

If he accepts, he is hereby further authorized and requested to pursue such measures, as in his opinion shall be proper, to obtain consent for making the road, of the state or states, through which the same has been laid out. Which consent being obtained, he is further authorized to take prompt and effectual measures to cause said road to be made through the whole distance, or in any part or parts of the same as he shall judge most conducive to the public good, having reference to the sum appropriated for the purpose.

The Act was specific about the nature of the road. It was to be “laid out four rods in width [about 66 feet or 22 yards], and designated on each side by a plain and distinguishable mark on a tree, or by the erection of a stake or monument, sufficiently conspicuous, in every quarter of a mile of the distance, at least, where the road pursues a straight course so far or farther, and on each side, at every point where an angle occurs in its course.”

Any trees in the roadway “shall be cleared the whole width of four rods.” This was an important point because of the difficulty of clearing entire trees from a roadway in the

midst of a forest. Low stumps were common obstacles in most roadways, with wagons and coaches designed with a high enough body for the wheels to straddle them.

Recognizing that water was the eternal enemy of roadbuilders, Congress also was clear about the surface of the road:

[The] road shall be raised in the middle of the carriage way with stone, earth, or gravel and sand, or a combination of some or all of them, leaving or making, as the case may be, a ditch or water-course on each side, and contiguous to said carriage way: and in no instance shall there be an elevation in said road, when finished, greater than an angle of five degrees with the horizon.

All other details were “left to the direction of the President.”

The bill appropriated \$30,000 for the laying out and construction of the road. Out of this sum, the three commissioners were to be paid “four dollars per day” while working on the project. They were authorized “to employ one surveyor, two chainmen, and one marker, for whose faithfulness and accuracy, they, the said commissioners, shall be responsible, to attend them in laying out said road.” Their pay, “while they shall be employed in said business,” also was specified:

- Surveyor – three dollars per day
- Each chainman – one dollar per day
- Marker – one dollar per day

The bill also requested the President to inform Congress, “as soon as convenience will permit,” of his actions to implement the law so that Congress “may be enabled to adopt such further measures, as may, from time to time, be proper, under existing circumstances.”

The bill went to President Jefferson for signature. He had mixed views.

### **Why President Jefferson Signed the Act**

On December 8, 1801, President Jefferson sent his first annual message to Congress, the 19<sup>th</sup> century equivalent of the State of the Union Address. He began:

It is a circumstance of sincere gratification to me that, on meeting the great council of our nation, I am able to announced to them, on grounds of reasonable certainty, that the wars and troubles which have for so many years afflicted our sister nations, have at length come to an end; and that the communications of peace and commerce are once more opening among them.

As mentioned earlier, he had not participated in the Constitutional Convention in 1787. While serving as Minister to France, he missed the debates, the compromises, and the private discussions among the delegates, as well as the drafting process, that resulted in the Constitution. He interpreted the document as reflecting his own views on the balance

between the States and the general government, a balance that he tilted toward the States. In his message, he explained that he wanted to reduce the burdens of government, “on the expectation that a sensible, and at the same time a salutary, reduction may take place in our habitual expenditures,” adding that “the civil Government, the Army, and Navy will need revision”:

When we consider that this Government is charged with the external and mutual relations only of these States; that the States themselves have principal care of our person, our property, and our reputation, constituting the great field of human concerns, we may well doubt whether our organization is not too complicated; too expensive; whether offices and officers have not been multiplied unnecessarily and sometimes injuriously to the service they were meant to promote . . . .

Agriculture, manufactures, commerce, and navigation, the four pillars of our prosperity, are then most thriving when left most free to individual enterprise.

In later years, he would make clear that he did not believe the Constitution granted Congress the authority to build, as opposed to “establish,” a post road. For that purpose, a constitutional amendment would be needed. However, even if Congress and the States agreed to amend the Constitution to establish the authority, he was not sure it was wise, as expressed in a letter to Representative James Madison that included a discussion of a resolution he had introduced on February 5, 1796. The *Annals* described the resolution:

Mr. Madison, after some general remarks on the subject, offered a resolution, the purpose of which is to authorize the President of the United States to cause a survey of the main post road from Maine to Georgia – the expense to be defrayed out of the surplus revenue of the Post Office.

When the House considered the resolution on February 11, 1796, Representative Madison informed his colleagues that the survey would have two good effects:

. . . the shortest route from one place to another would be determined upon, and persons, having a certainty of the stability of the roads, would not hesitate to make improvements upon them.

Representative Abraham Baldwin of Georgia was pleased the resolution had been introduced. In his view, “the sooner it could be carried into effect the better.” He summarized the need:

In many parts of the country, he said, there were no improved roads, nothing better than the original Indian track. Bridges and other improvements are always made with reluctance whilst roads remain in this state, because it is known as the country increases in population and wealth, better and shorter roads will be made. All expense of this sort, indeed, is lost. It was properly the business of the General Government, he said, to undertake the improvement of the roads, for the different States are incompetent to the business, their different designs clashing with each other. It is enough for them to make good roads to the different seaports; the cross roads should be left to the government of the whole. The

expense, he thought, would not be very great. Let a Surveyor point out the shortest and best track, and the money will soon be raised. There was nothing in this country, he said, of which we ought to be more ashamed than our public roads.

Madison and Baldwin were making the point that in a period when the general government and the States lacked sufficient revenue for a road program, the survey of the best location would encourage local or private interests to improve the roads. The comment about bridges was illustrative. The funds needed to build a bridge to carry the existing road over a river would be wasted if a better, shorter location for the road caused the river crossing to be shifted.

Representative Benjamin Bourne of Rhode Island thought the resolution would result in “very valuable effects”:

The present roads may be much shortened. The Eastern States had made great improvements in their roads, and he trusted the best effects would arrive from having regular mails from one end of the Union to the other.

Representative John Williams of New York agreed about the need to extend post roads throughout the country, but “did not think it right for the revenues of the Post Office to be applied to this end.” He urged his colleagues to wait for a pending report on the Post Office.

Representative Madison responded to explain “the nature and object of the resolution” by saying “it was the commencement of an extensive work.” He believed the Post Office “would have no objection to the intended regulation.”

The House agreed to a resolution appointing a committee to report a bill authorizing the President to initiate a survey of “the general route most proper for the transportation of the mail between \_\_\_\_, in Maine, and \_\_\_\_, in the State of Georgia, and to cause to be laid before Congress the result of such examination and survey, with an estimate of the expense of rendering such route fit, in all its parts, to be the established route of the post.” As Madison had proposed, the Post Office was to pay for the survey out of its surplus revenues.

Representatives Madison and Baldwin were among the five men selected for the drafting committee, with Madison serving as chairman.

Thomas Jefferson, at the time, was a private citizen. He had served as Secretary of State through 1793 during President Washington’s first term, and would become Vice President on March 4, 1797 (with John Adams as President.) On March 6, 1796, he wrote to Madison on other subjects, but added a postscript:

Have you considered all the consequences of your proposition respecting post roads? I view it as a source of boundless patronage to the executive, jobbing to members of Congress & their friends, and a bottomless abyss of public money. You will begin by only appropriating the surplus of the post office revenues; but

the other revenues will soon be called into their aid, and it will be a scene of eternal scramble among the members, who can get the most money wasted in their State; and they will always get most who are meanest. We have thought, hitherto, that the roads of a State could not be so well administered even by the State legislature as by the magistracy of the county, on the spot. What will it be when a member of N H is to mark out a road for Georgia? Does the power to *establish* post roads, given you by Congress, mean that you shall *make* the roads, or only *select* from those already made, those on which there shall be a post? If the term be equivocal, (& I really do not think it so,) which is the safest construction? That which permits a majority of Congress to go to cutting down mountains & bridging of rivers, or the other, which if too restricted may refer it to the states for amendment, securing still due measure & proportion among us, and providing some means of information to the members of Congress tantamount to that ocular inspection, which, even in our county determinations, the magistrate finds cannot be supplied by any other evidence? The fortification of harbors were liable to great objection. But national circumstances furnished some color. In this case there is none. The roads of America are the best in the world except those of France & England. But does the state of our population, the extent of our internal commerce, the want of sea & river navigation, call for such expense on roads here, or are our means adequate to it? Think of all this, and a great deal more which your good judgment will suggest, and pardon my freedom.

Madison replied on April 4, 1796, covering several topics, including Jefferson's question about the post road resolution:

I was not unaware of the considerations you suggest with regard to the post roads; but do not consider my proposition as involving any dangerous consequences. It is limited to the choice of roads where that is presented, and to the opening them, in other cases, so far only as may be necessary for the transportation of the mail. This I think fairly within the object of the Constn. It had, in fact, become essential that something should be done, and something would have been attempted, on a worse principle. If the route shall be once fixt for the post road, the local authorities will probably undertake the improvement &c. of the roads; and individuals will go to work in providing the proper accomodations [sic] on them for general use.

Two days later, on April 6, Postmaster General Joseph Habersham wrote to Chairman Madison of the drafting committee. Following appointment by President Washington, Habersham had taken office on February 25, 1795. A native of Savannah, Georgia, he is credited with implementing several important measures to improve the efficiency of mail delivery before leaving office in 1801.

Habersham was supportive of the proposed survey, but with some cautions:

This route in my opinion should not be too particularly described for the following reasons.

The principal Towns in the respective States through which the Post must be conveyed may be easily ascertained, but in many instances where there are two or more routes between those Towns, accurate surveys must be made, and the best information obtained before it can be determined which route is to be preferred. Through some of the Southern States particularly it is at least doubtful [sic] whether the present main post road might not be altered to great advantage.

The Main Post route as at present contemplated may commence at Wiscasset in Maine and terminate at Savannah in Georgia. If extended further in a Southern or Eastern direction the route will pass through a New County intersected with Rivers or full of Bays & Harbours where the difficulty and expence of making roads will be immense. The following route is recommended to the Committee for the Main Post road. From Wiscasset in Maine through Boston, New York, Philadelphia, Baltimore, Richmond, Raleigh, Columbia and Louisville to Savannah in Georgia. The liberal establishment of Post roads through this widely extended continent appears to be at present commensurate to most purposes of public and private intercourse. Those roads now comprehend upwards of Fourteen thousand Miles, by which not only the Citizens of all the populous Towns but of large portions of new districts of Country are accommodated with the public Mails.

The next most important object is to secure an expeditious and regular conveyance of the Mails through the United States.

Failures on the cross Post roads are attended with little or no inconvenience, but when they happen on the Main line the consequences of them are extensively felt, to guard against them it will be necessary to erect bridges in many places and to improve the state of the roads in general. The surplusage revenue of the Post Office if appropriated for this purpose and aided by private subscriptions will in all probability complete a Turnpike Road of very considerable extent in the course of a few years. If countenanced by the Government individuals will no doubt be induced to lend their aid with spirit in different parts of the Union to accomplish an object of such great national importance.

The committee adopted many of Habersham's recommendations, including the termini of the East Coast post road and the list of cities it would pass through.

On May 19, Madison brought the committee's bill to the House floor. The House adopted two amendments, "adding the city of Washington to the other towns mentioned, and inserting Portland instead of Wiscasset, and filling up the blank appropriating a sum of money for the purpose, with five thousand dollars." The House then approved the bill on May 20 and sent it to the Senate for consideration.

The Senate considered but rejected the bill on May 24. The Annals of the session did not report any discussion that may have taken place. The survey, in short, would not be conducted.

President Jefferson understood that internal improvements such as the Cumberland Road were essential to bind the country together in commercial interest. But as he had said in his letter to Representative Madison, he was concerned about the constitutional question and potential corruption if Congress began funding internal improvements. However, his constitutional objection aside, he favored public works. For example, in his second Inaugural Address on March 4, 1805, he suggested that once all governmental needs are met, Congress should “repartition” the surplus among the States and, pending approval of “a corresponding amendment of the Constitution,” apply the revenue “in time of peace to rivers, canals, roads, arts, manufactures, education, and other great objects within each State.”

In the case of the Cumberland Road, President Jefferson found a way around his constitutional objections. He had overcome them to sign the 1802 Enabling Act for Ohio that provided for the road to Ohio and a funding source for its construction. As explained by Professor Maurice G. Baxter:

He had relaxed his strict constructionism somewhat . . . in connection with the congressional law of 1802 on statehood for Ohio. Since that measure preceded actual admission of Ohio and therefore concerned a territory, over which there was a larger scope of national power than over a state, and since the Ohio legislature had entered a kind of compact, Jefferson felt comfortable about this legislation . . . . Later, the policy would be extended to Indiana and Illinois. Still, this undertaking seemed to be a special case, not a precedent for other improvements. They would require an amendment to the Constitution, and Jefferson had recommended such a course. [Baxter, Maurice G., *Henry Clay and the American System*, The University of Kentucky Press, 2004]

He signed the Cumberland Road legislation on March 29, 1806.

Although President Jefferson had some reservations about the authority of the general government to build roads, he wrote about the importance of the project in a letter to Secretary Gallatin on July 14, 1806:

The road from Cumberland to Ohio will be an important link in the line to St. Louis. there will still be wanting a supplement from Ohio (suppose Marietta) by Chillicothe to Cincinnati. or do such roads exist already? this line being compleated, we must have a horse post which will effect it in 6. days, say from Washington to St. Louis. they are distant not quite 13°. of longitude of 46. 2/3 miles each, say 600. miles; and a mail ought to go every day as much over 100. miles as the necessary deviations from a straight line amount to.

### **President Jefferson’s Southern Road**

After completing the Louisiana Purchase in 1803, President Jefferson knew that access between the States and the new territory was critical to create the common interests that would pull them into the union.

The land was little known or settled, mostly occupied by Native Americans. The purchase included the land drained by the Mississippi and Missouri Rivers, including land that would eventually stretch from Louisiana to future States such as Minnesota, as far north and west as North Dakota and Montana, and parts of Texas, New Mexico, and Colorado. President Jefferson would commission the Corps of Discovery, led by Captain Meriwether Lewis and Lieutenant William Clark, to explore the new territory of the United States (1803-1806) and determine if a water route existed through them to the Pacific Ocean.

Although much of the territory was a blank on U.S. maps, the key was New Orleans, founded in 1718. At the time of the Louisiana Purchase, the main overland route from Washington to the city was circuitous and arduous. A report by the House Committee on Post Offices and Post Roads on December 14, 1803, described the existing post road as:

That at present the mail is conveyed on a circuitous route from this place to Knoxville and Nashville in Tennessee, and from thence through the wilderness by Natchez to New Orleans, a distance of more than 1500 miles.

The route involved crossing the Appalachian Mountains to the Natchez Trace – a 460-mile trail from Nashville, Tennessee, through forest wilderness and Indian territory to Natchez. In the pre-steamboat era, traders floated goods down the Mississippi River on flatboats, then walked north on the trail to their homes.

President Jefferson wanted an alternative route between Washington and New Orleans. However, to avoid the mountain barrier, such a route would have to pass through Creek Nation land in the southeast. Negotiations for rights to a road were underway, with Creek chiefs slated to arrive in Washington in November 1805 for talks on a treaty. Henry DeLeon Southerland, Jr., and Jerry Elijah Brown, in their book on the road, discussed its origins in 1804:

In July of that year Isaac Briggs, an assistant surveyor general of the United States, offered to return to his station in Natchez through Georgia and the Creek Nation and to take observations of latitude and longitude at important points along the route. This offer was accepted by President Jefferson, and Briggs proceeded, but not without difficulties. He was furnished with an accurate sextant to permit proper delineation of these points on a map. By September 2, 1804, Briggs reported from General David Meriwether's place in Georgia that he had found this trip "both to body and mind, the most fatiguing journey that he had ever undertaken."

Briggs, accompanied by Thomas Robertson, had traveled about 1,000 miles over 4 months before arriving in New Orleans in late November. The trip included about 3 weeks recuperating from a fever on the west side of the Tombigbee River, about 2 miles above the confluence with the Alabama River. "Here, while down with a fever, Briggs learned that the yellow fever raged in New Orleans."

Despite the hardships, Briggs identified a route through the Creek Nation that cut 500 miles off the old route. He described the route in a letter to “My Dear Friend,” President Jefferson on December 22, 1804. Briggs began:

Although still in a state of convalescence, and but just able to attend to business a few minutes at a time, I am fortunate enough to have finished a map of my route from the city of Washington, to this place. Having written to thee (on the 26th of last month) immediately on my arrival here, promising to send my report and map by the next ensuing mail, I applied myself with assiduity to the work. But early in the progress of it, I experienced an attack of sickness perhaps the most severe in the course of my life – I was brought to the very verge of death. My anxiety, however, to finish my report in season, induced me to apply to it at intervals during my sickness; which was probably prolonged and rendered worse by that exertion.

The length of time employed in my journey, (almost four months) so very far beyond what I contemplated, will, I fear, naturally excite surprise that I have ascertained the geographical position of so few places as I have done. This idea, added to the deep anxiety which has ever filled my mind, not only to do my duty faithfully, but to give satisfaction, makes me extremely solicitous that the embarrassments which retarded my progress should be understood, and, I am apprehensive, renders me prolix. Many causes of delay have had their full effect, notwithstanding my most honest endeavors to prevent it – probably to the injury of my constitution. Some of them have been already detailed in former communications to thee: permit me now to exhibit some of another kind.

His travels took him initially on well known roads through Fredericksburg, Cartersville and Danville in Virginia to Salisbury, North Carolina. On this familiar ground, “it will not be necessary for me to say much, as I presume it is well known by several gentlemen in Congress”:

I shall, therefore, only refer to portions of it, by way of comparison, to explain my idea of those parts of the route which may be less known.

If I may judge by the ground over which I traveled from Columbia, at the Point of Fork, to Cumberland Court House, I think it will not do to cross James river higher than Cartersville – by doing so, a greater distance, in my opinion, must be encountered in meandering to avoid hills, than in the small and regular deflexion from the general course, occasioned by crossing at Cartersville. This deflexion will make the distance somewhat greater than I have given it from Fredericksburg to Salisbury; but by passing through Athens, instead of by Franklin Court House, the distance from Salisbury to Point Comfort will be somewhat less; so as to make the whole distance nearly as stated.

Between Salisbury and Athens, Georgia, Briggs thought that a straight road would, “from the best information I could obtain, pass over better ground than from Salisbury to Franklin Court House, which is somewhat hilly”:

By Athens, the road will be not much inferior to that from Fredericksburg to Salisbury, and far superior to that from Washington to Fredericksburg, which is much the worst part of the whole route.

From Athens to Point Comfort the road will pass nearly on the track on which General Meriwether travelled from Tuckaubatchee to his own habitation. To him, therefore, I refer for information respecting this part of the route.

From Point Comfort to Mobile river is (excepting a few swamps of no very great extent, which must be causewayed) a fine, high, level, sandy ridge. From Mobile river to New Orleans is nearly a perfect level; the soil is, almost without exception, a sandy loam, which received, when moderately moist, by treading or beating, a degree of firmness nearly equal to brick.

Perhaps thirty or forty miles of this part of the route must be thrown into a ridge several feet higher than the common surface; and after this ridge is made, a constant attention to all parts of it will be necessary, for several years, to maintain its regular convexity against accidental indentures; and then it would, in my opinion, acquire a firmness which would render it impenetrable by the heaviest rains: for they would instantly roll off. The necessity of this expense is not peculiar to the proposed road: for it is impossible to arrive at New Orleans by a good road: in any direction: without an equal expense. [sic]

Briggs calculated that the proposed route, "in air measure," was 980 miles long. "Considering the uncommon evenness of surface, I think five per cent. will be an ample allowance for the actual road, which will make it one thousand and twenty-nine miles."

He concluded:

I can vouch for the accuracy of the accompanying map in the vicinity only of the path which I travelled; it is a dotted line, and painted yellow. The black line is the proposed road. The direct air line from Washington New Orleans is also dotted, and made the basis of the projection. The county of Washington, in the Mississippi Territory, is laid down from actual survey. All other parts are laid down from the best maps and comments I could procure.

I am distressed that I have not been able to write to the Secretary of the Treasury before now. As soon as I am able to ride, I will leave this place for the Mississippi Territory, when I will immediately write to him, if want of health should not render it impossible. In the mean time, I see no way in which the survey of the United States' land can be done by an honest man, who values his own reputation and the good of his country, unless Congress will consent to allow a compensation to deputies, which may, in certain cases, be extended to at least eight dollars per mile.

I will, hereafter, send an account of my expenses; at present it must give place to matters of more importance. With the utmost economy, it amounts to more than

three hundred dollars for myself and companion.

The House of Representatives had adopted a resolution on December 31, 1804, about a post road to New Orleans:

1. *Resolved*, That a post road ought to be established from the City of Washington, on the most convenient and direct route, to pass through or near the Tuckabachee settlement to the Tombigbee settlement, in the Mississippi Territory, and from thence to the city of New Orleans.
2. *Resolved*, That the President of the United States be requested to cause to be laid before this House any documents, and give such other information as he may think proper, relative to opening a post road from the City of Washington to the City of New Orleans.

In response to the resolution, President Jefferson transmitted the Briggs correspondence to the House of Representatives on February 1, 1805. He explained:

Isaac Briggs, one of the surveyors general of the United States, being about to return in July last to his station at Natchez, and apprised of the anxiety existing to have a practicable road explored for forwarding the mail to New Orleans, without crossing the mountains, offered his services voluntarily to return by the route contemplated, taking, as he should go, such observations of longitude and latitude as should enable him to delineate it exactly, and, by protraction, to show of what shortenings it would admit. The offer was accepted, and he was furnished with an accurate sextant for his observations. The route proposed was from Washington, by Fredericksburg, Cartersville, Lower Sauratown, Salisbury, Franklin Court House, in Georgia, Tuckaubatchee, Fort Stoddert, and the mouth of Pearl river, to New Orleans. It is believed he followed this route generally, deviating at times only for special purposes, and returning again into it. His letters, herewith communicated, will show his opinion to have been, after completing his journey, that the practicable distance between Washington and New Orleans will be a little over one thousand miles. He expected to forward his map and special report, within one week from the date of his last letter; but a letter of December 10, from another person, informs me he had been unwell, but would forward them within a week from that time. So soon as they shall be received, they shall be communicated to the House of Representatives.

The Briggs report, dated December 22, 1804, and map finally arrived a few weeks later. On February 23, President Jefferson sent them to the House.

On March 3, 1805, President Jefferson signed "An Act further to alter and establish certain post roads; and for other purposes." On the routes established was "from Washington City, by Athens in Georgia, to New Orleans."

Talks with the Creek in Washington resulted in a treaty signed November 14, 1805. Article 2 stated:

It is hereby stipulated and agreed, on the part of the Creek nation that the government of the United States shall forever hereafter have a right to a horse path, through the Creek country, from the Ocmulgee to the Mobile, in such direction as shall, by the President of the United States, be considered most convenient, and to clear out the same, and lay logs over the creeks: And the citizens of said States, shall at all times have a right to pass peaceably on said path, under regulation and such restrictions, as the government of the United States shall from time to time direct; and the Creek chiefs will have boats kept at the several rivers for the conveyance of men and horses, and houses of entertainment established at suitable places on said path for the accommodation of travelers; and the respective ferriages and prices of entertainment for men and horses, shall be regulated by the present agent, Col. Hawkins, or by his successor in office, or as is usual among white people.

On March 21, 1806, Postmaster General Gideon Granger responded to a House resolution regarding obstructions to the transmission of mail from Athens to New Orleans. After discussing the route, he offered a plan:

First. From the High Shoals to Coweta.

For clearing the road of brush, four feet wide, and cutting away the trees which have fallen across the path, allowing four laborers, one man to supply provisions and direct the laborers, and one horse; the men at one dollar and a quarter a day, and the horse at three-quarters of a dollar, equal seven dollars a day. It is supposed that such a party may, on the average, clear four miles in a day. The expense for one hundred and thirty miles would amount to, say – \$230.

For laying logs across twenty one creeks, supposed to take the same hands ten days – \$70.

For surveying and marking out the road – \$200.

He provided similar estimates for Coweta to Fort Stoddert and for Fort Stoddert to Pearl River, for a total estimated cost of \$6,400. [ASP, Post Office Department, Doc. No. 19]

On April 21, 1806, President Jefferson signed “An Act to regulate and fix the compensation of clerks, and to authorize the laying out certain public roads; and for other purposes.” It included:

*Sec. 7. And be it further enacted*, That the President of the United States be, and he is hereby authorized to cause to be opened a road from the frontier of Georgia on the route from Athens to New Orleans, till the same intersects the thirty-first degree of north latitude: *Provided*, he shall not expend more than six thousand four hundred dollars in opening the same.

Postmaster Granger would be responsible for constructing the road.

Section 7 also appropriated \$6,000 to open a road or roads from the Mississippi River to the Ohio River through former Indian territory in accordance with the Treaty of Greenville, and \$6,000 for a road from Nashville to Natchez.

Because these roads were through territories, not States, the congressional action did not raise constitutional issues. Section 3 of Article IV of the Constitution provided:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

The authors summarized the immediate future of the path:

Congress came through with the exact appropriation of \$6,400 on April 21, 1806; the formal declaration authorized the president to open a road from the Indian frontier near Athens – not far from the Ocmulgee River, then the western boundary of Georgia – to New Orleans; as far as the thirty-first degree of north latitude, north of Mobile and just below the junction of the Tombigbee and Alabama rivers. Brush was to be cleared to a width of four feet; trees which had fallen across the paths were to be cut away; causeways across the swampy bogs were to be made of logs five feet long; and logs were to be laid across the creeks. According to these projections, the distance from Washington to New Orleans would be 1,152 miles, or 320 miles less than the route over the Natchez Trace. In the push for faster communication, Jefferson would gain ten days with the new route – if the riders moved at the same rate of speed.

The summarized future activities on the “feat of frontier engineering”:

In 1806, a path for the horses of post riders was opened from Middle Georgia to lower Alabama, through Indian country in the section of the United States once called the Old Southwest. Five years later the mail path was widened and rerouted over much of its length to create a military lane for the movement of troops, supply wagons, and ordnance. Instantly, use transcended intention: the road built for soldiers, who would confront the Creeks before engaging the British, became a major pioneer highway, an artery for all travel . . . .

Now we can see that one road as more important than it ever appeared in its own time, when it was merely a track, muddy or sandy, through forests and swamps; when, as the official highway, it afforded pioneers the strength of numbers and the refuge of forts and inns. [Southerland, Jr., Henry DeLeon, and Brown, Jerry Elijah, *The Federal Road through Georgia, the Creek Nation, and Alabama 1806-1836*, The University of Alabama Press, 1989]

For Briggs, one matter remained to be resolved. Because Congress had not authorized the survey, it refused to reimburse Briggs. President Jefferson submitted two letters in support of his claims, including the following recollection on February 16, 1807:

In July, 1804, Mr. Briggs being here, and about to set out for Natchez, as surveyor general, I happened to say, in conversation, how anxious I was to get a direct road from Washington to New Orleans, which should not cross the mountains at all, to express a hope that the Legislature would authorize the opening such a road, and consulted with Mr. Briggs as to the best mode of making the preparatory survey for fixing the leading points through which it should pass. We both agreed that the method by celestial observations was preferable, for this purpose, to the chain and compass; and, after some reflection, he observed, that, being about to go to Natchez, he did not foresee that it would cost him much more time or expense to go along the route I had in contemplation than through Tennessee, except as it would lead him by New Orleans; but that he would undertake it for the public good if I could get him a portable sextant. Glad to obtain our guide-line on so easy a condition, I procured the sextant. He set out in August, and what followed, that is known to me only from his report, survey, and other communications to me. By these it appeared that he was four months on the way, not arriving at New Orleans till late in December; that he found the enterprise expensive, laborious, and tedious, infinitely beyond expectation. The way being then quite unknown, he had to pursue his course through the woods, to go through marshes, swim rivers, cut open his path sometimes, and to encounter all obstacles as they presented themselves, sleeping out without cover, and distressed for food. On his arrival at New Orleans he was taken with a fever, which I understood to have been long and dangerous, and little doubt of its having been brought on by the season and circumstances of his journey. He had necessarily through the whole an assistant hired and maintained at his own expense. From New Orleans he sent me the report and map, which I communicated to Congress, and which remain among their papers. This map has been the foundation of all our proceedings in the prosecution of this road, has saved us the expense of making the preparatory general survey with the chain and compass, and has, in fact, been completely profited of as public property. These are the material facts as far as they occur to me, and which I certify as being partly within my own knowledge, and partly with my belief on the evidence before stated. ["Claims for Exploring a Route for a Post Road from the city of Washington to New Orleans," Claims, American State Papers (ASP), 10th Congress, 1st Session, Doc. No. 192]

On May 25, 1807, President Jefferson wrote to Briggs, saying, "I am really mortified that you should have been left to suffer in an undertaking wherein I was an agent":

My own opinion has always been, that, where a person undertakes to do a thing for the public, unauthorized by law, he does it justly on his own risk, and that the public are perfectly free to approve or reject. In this case Congress have fully approved by building on the foundation you laid. We are now establishing our road on your survey, availing ourselves of it solely, as having saved us the necessity of making any other. Gentlemen who say they will never sanction an expenditure made without a previous law, will leave their country exposed to incalculable injury in those unforeseen occurrences where the voluntary sacrifices

of virtuous citizens might save the public interest if the prospect of indemnification were not shut out. I salute you with friendship.

Jefferson, always fighting his own indebtedness, nevertheless found that he could reimburse Briggs personally \$400, in two increments of \$200.

Congress eventually approved “An act for the relief of Isaac Briggs,” signed by President Monroe on April 18, 1818. It authorized the Treasury Department to settle accounts with Briggs:

That when the said accounts shall have been so closed and balanced, the Secretary of the Treasury is hereby authorized to direct any suit or suits commenced on the recovery of any balance or balances which may appear to be now due, by the said Isaac Briggs, to the United States, to cease and be discontinued. [Barnard, Ella Kent, “Isaac Briggs, A.M., F.A.P.S.,” *Maryland Historical Magazine*, Vol. 7, December 1912]

Despite the illness Briggs encountered on his trip to New Orleans, he lived to 1825, dying at the age of 62. He had become ill while working on the James River and Kanawha Canal in Virginia.

### **Planning the Cumberland Road**

President Jefferson appointed Elie Williams and Thomas Moore of Maryland and Joseph Kerr of Ohio as the Board of Commissioners. Williams, who headed the commission, was from Hagerstown. He had been a colonel in the Revolutionary War and, starting in 1797, had been on the planning committee for the Baltimore Turnpike. Moore would later serve as second chief engineer of the Virginia Board of Public Works and be involved in planning the Chesapeake and Ohio Canal. Kerr was deputy surveyor of the Virginia Military District and would later represent Ohio in the United States Senate (1813-1814). Kerr left the survey after 1807 to tend to private concerns and did not return.

The President submitted his first progress report to Congress on January 31, 1807, along with the commissioners’ report on their activities “during the last season.” He added:

I took measures to obtain consent for making the road of the States of Pennsylvania, Maryland and Virginia, through which the commissioners propose to lay it out. I have received acts of the Legislatures of Maryland and Virginia, giving the consent desired; that of Pennsylvania has the subject still under consideration, as is supposed. Until I receive full consent to a free choice of route through the whole distance, I have thought it safest neither to accept nor reject, finally, the partial report of the commissioners.

The commissioners’ report, dated December 30, 1806, began:

The commissioners, acting by appointment under the law of Congress . . . beg leave to report to the President of the United States, and to premise that the duties

imposed by the law became a work of greater magnitude, and a task much more arduous, than was conceived before entering upon it; from which circumstance the commissioners did not allow themselves sufficient time for the performance of it before the severity of the weather obliged them to retire from it, which was the first week of the present month (December).

One of the key problems was the lack of satisfactory mapping:

. . . at a very early period it was conceived that the maps of the country were not sufficiently accurate to afford a minute knowledge of the true courses between the extreme points on the rivers, by which the researches of the commissioners were to be governed; a survey for that purpose became indispensable, and the considerations of public economy suggested the propriety of making this survey precede the personal attendance of the commissioners.

They had not been able to complete all their duties but were able to complete “the most material and principal part.”

To make up for the deficiency in existing maps, they hired “a surveyor of professional merit,” Josias Thompson; two chain carriers and a marker, as well as one vaneman and a packhorse man and horse, on public account. In case any question might arise regarding the expenses of these men, the commissioners explained that they were “indispensable and really beneficial in excelerating [sic] the work.” The commissioners had planned to meet in Cumberland with the men on September 1, 1806, but “neither of them, however, reached that place until the third of that month, on which day they all met.

They established certain goals:

- 1st. Shortness of distance between navigable points on the eastern and western waters.
- 2d. A point on the Monongahela best calculated to equalize the advantages of this portage in the country within reach of it.
- 3d. A point on the Ohio river most capable of combining certainty of navigation with road accommodation; embracing, in this estimate, remote points westwardly, as well as present and probable population on the north and south.
- 4th. Best mode of diffusing benefits with least distance of road.

In contemplating these objects, due attention was paid as well to the comparative merits of towns, establishments, and settlements already made, as to the capacity of the country with the present and probable population.

They described the route:

From a stone at the corner of lot No. 1, in Cumberland, near the confluence of Will’s creek and the north branch of the Potomac river; thence extending along the street westwardly, to cross the hill lying between Cumberland and Gwynn’s [Tavern], at the gap where Braddock’s road passes it; thence near Gwynn’s and Jesse Tomlinson’s, to cross the big Youghiogeny near mouth of Roger’s run,

between the crossings of Braddock's road and the confluence of the streams which form the Turkey foot; thence to cross Laurel Hill near the forks of Dunbar's run, to the west foot of that hill, at a point near where Braddock's old road reached it, near Gist's old place, now Colonel Isaac Mason's, thence through Brownsville and Bridgepoint. To cross the Monongahela river below Josias Crawford's ferry; and thence on as straight a course as the country will admit to the Ohio, at a point between the mouth of Wheelen creek and the lower point of Wheelen island.

The land to be traversed was "in many places broken by a succession of high mountains and deep hollows, too formidable to be reduced within five degrees of the horizon, but by crossing them obliquely, a mode which, although it imposes a heavy task of hill-side digging, obviates generally the necessity of reducing hills and filling hollows, which, on these grounds, would be an attempt truly Quixotic." The advantages were shown by the indirect course of the present land route which "exceed the limits of the law, preclude the possibility of occupying it in any extent without great sacrifice of distance, and forbid the use of it, in any one part, for more than half a mile, or more than two or three miles in the whole."

The commissioners estimated that the route would involve 24 miles in Maryland, 75.5 miles in Pennsylvania, and 12 miles in Virginia, "distances which will be in a small degree increased by meanders, which the bed of the road must necessarily make between the points mentioned in the location; and this route, it is believed, comprehends more important advantages than could be afforded in any other, inasmuch as it had a capacity at least equal to any other in extending advantages of a highway, and at the same time establishes the shortest portage between the points already navigated, and on the way accommodates other and nearer points to which navigation may be extended, and still shorten the portage."

The straight line to the Ohio River, as the commissioners understood, would inconvenience other communities, particularly Uniontown, not included in the route:

Not unmindful of the claims of towns and their capacity of reciprocating advantages on public roads, the commissioners were not insensible of the disadvantage which Uniontown must feel from the want of that accommodation which a more southwardly direction of the route would have afforded; but as that could not take place without a relinquishment of the shortest passage, considerations of public benefit could not yield to feelings of minor import. Uniontown being the seat of justice for Fayette county, Pennsylvania, is not without a share of public benefits, and may partake of the advantages of this portage upon equal terms with Connellsville, a growing town, with the advantages of water-works adjoining, in the manufactory of flour and iron.

As for the endpoint, the commissioners wanted a point of navigation on the Ohio River "at a point best calculated to diffuse the benefits of a great highway in the greatest possible latitude east of the Ohio." This meant a location that "would best secure a certainty of navigation on the Ohio at all seasons":

It was found that the obstructions in the Ohio, within the limits between Steubenville and Grave creek, lay principally above the town and mouth of Wheeling; a circumstance ascertained by the commissioners in their examination of the channel, as well as by common usage, which has long given a preference to Wheeling as a place of embarkation and port of departure in dry seasons. It was also seen that Wheeling lay in a line from Brownsville to the centre of the State of Ohio and Post Vincennes.

With these considerations in mind, the western terminus would be just below the mouth of Wheeling Creek:

In taking this point in preference to one higher up and in the town of Wheeling, the public benefit and convenience were consulted, inasmuch as the present crossing place over the Ohio from the town is so contrived and confined as to subject passengers to extraordinary ferriage and delay, by entering and clearing a ferry-boat on each side of Wheeling island, which lies before the town and precludes the opportunity of fording when the river is crossed in that way, above and below the island.

Wheeling had another advantage that the commissioners did not mention. It was the northern terminus of Zane's Trace. Colonel Ebenezer Zane, who had founded Wheeling, had secured approval in May 1796 to build a post road from Wheeling through Ohio, across the Ohio River, to Limestone, Kentucky (now Maysville). According to *America's Highways: 1776-1976: A History of the Federal-Aid Program*, the Bicentennial history published by the Federal Highway Administration in 1976:

Such a route, Zane said, would be 100 miles shorter than the windings of the Ohio River, on which 15 men with their boats then engaged in transporting the mails, would also be immune to interruptions by floods, floating ice or low water. The road would afford far faster mail service while saving at least three-quarters of the \$4,000 annual cost of operating the mail route. Furthermore, the proposed road would provide a shorter and safer route for travelers both to and from the West.

As his only compensation for building the road, Zane asked that he be allowed to locate United States military bounty land warrants totaling three square miles where his road crossed the Muskingum, Hockhocking, and Scioto Rivers.

Congress approved the plan in May 1796, but added the stipulation that Zane must establish ferries on the three rivers the post road crossed and operate them at rates to be established by any two judges of the Northwest Territory.

Author George R. Stewart, in his classic work on U.S. 40, described construction of the trace:

In the summer of 1796 Zane began work on the road with a party of six or eight men. They blazed trees [marked them with a symbol to indicate the path], cleared out the thick underbrush, and removed fallen tree-trunks. They had pack-horses

with a tent and provisions, but lived largely on game. Two men kept watch at night, for there was still some fear of Indians, in spite of their defeat at the Fallen Timbers in 1794.

The trail-makers followed the course of Wheeling Creek for about seven miles. After that they took the road up to the ridge, and kept on westward, generally avoiding marshy lands and keeping high, after the manner of Indian trails. In some places they may actually have followed the old Mingo Trail.

Zane's initial trace was little more than a pack trail, but the Federal Government began transporting mail over it as soon as it was finished. In 1804, Ohio appropriated \$15 a mile to recreate Zane's Trace as a wagon road. Stewart explained:

The road that was opened as the result of so limited an expenditure was naturally not outstanding. Probably the trail was widened, straightened where necessary, relocated in spots to ease the grades a little, and dug out on the steeper side-hills to keep the wagons from tipping over. There would have been no attempt at surfacing, most likely. Stumps were not grubbed out, but were left standing to a height of fifteen inches, which wagon axles would clear – if the ruts were not deep. A "mover" [the name applied to settlers moving west] has recorded that in 1806 he took two days to get his three wagons up from Wheeling Creek to the top of the hill at St. Clairsville, about four miles.

The initial Zane's Trace, about 225 miles long, was little more than a pack trail, but it was soon used as a mail route from Wheeling to the new town of Zanesville to Limestone and from there into Tennessee. [Stewart, George R., *U.S. 40: Cross Section of the United States of America*, The Riverside Press, Houghton Mifflin Company, 1953]

The commissioners considered following the existing roads between Cumberland and Wheeling, but decided not to follow them:

The indirect course of the road now traveled, and the frequent elevations and depressions which occur, that exceed the limits of the law, preclude the possibility of occupying it in any extent without great sacrifice of distance and forbid the use of it, in any one part, for more than half a mile, or more than two or three miles in the whole.

The cost of building the Cumberland Road along the recommended line may "amount to a larger sum than may have been supposed necessary, under an idea of embracing in it a considerable part of the old road; but it is believed that the contrary will be found most correct, and that a sum sufficient to open the new could not be expended on the same distance of the old road with equal benefit." The cost depended on the type of road that was built in the chosen alignment. Based on the experience of Maryland and Pennsylvania, the commissioners estimated that:

Upon this data and a comparison of the grounds and proximity of the materials for covering, there are reasons for belief that, on the route reported, a complete road may be made at an expense not exceeding six thousand dollars per mile, exclusive of bridges over the principal streams on the way. The average expense of the Lancaster [from Philadelphia to Lancaster], as well as Baltimore and Frederick turnpike, is considerably higher; but it is believed that the convenient supply of stone which the mountain affords will, on those grounds, reduce the expense to the rate here stated.

They did not presume to advise the President or Congress on whether the Cumberland-to-Wheeling road should be built, but they knew one thing:

. . . they cannot, however, withhold assurances of a firm belief that the purse of the nation cannot be more seasonably opened, or more happily applied, than in promoting the speedy and effectual establishment of a great and easy road on the way contemplated.

The commissioners, the report stated, were “actuated by an ardent desire to render the institution as useful and commodious as possible,” so they were disappointed that the weather prevented them from completing all the intended work. They contented themselves “with the reflection that it will not retard the progress of the work, as the opening of the road cannot commence before spring, and may then begin with marking the way.”

As they neared the conclusion of their report, the commissioners expressed the hope that the government would recognize the necessity and propriety of employing more men than provided for by law and that provision would be “made for the payment of that and similar expenses, when in future it may be indispensably incurred.” The commissioners had incurred expenses that exceeded their anticipated pay, but they “allow themselves to hope and expect that measures will be taken to provide such further compensation as may, under all circumstances, be thought neither profuse nor parsimonious.”

They concluded:

The painful anxiety manifested by the inhabitants of the district explored, and their general desire to know the route determined on, suggested the measure of promulgation which, after some deliberation, was agreed on by way of circular letter, which has been forwarded to those persons to whom precaution was useful, and afterward sent to one of the presses in that quarter for publication in the form of the document No 3, which accompanies this report.

[“Cumberland Road,” Miscellaneous, ASP, 9<sup>th</sup> Congress, 2d Session, Doc. No. 220; Reprinted in Searight, Thomas B., *The Old Pike: A History of The National Road*, self-published, 1894]

### **Location Dispute in Pennsylvania**

Pennsylvania had delayed its consent for construction of the road because officials believed the entire project was intended to benefit Baltimore, the commercial rival of

Philadelphia. Therefore, the State wanted to determine the location of the road, and the commissioners' choice was not satisfactory. As the commissioners had anticipated, the State wanted the route to pass through Uniontown in Fayette County and Washington in Washington County – a considerable deviation from the straightest route.

Pennsylvania finally gave its consent by legislation approved on April 9, 1807, for construction of the road by the general government consistent with the provisions of the Act of 1906. The statute also commented on the location:

Provided, nevertheless, That the route laid down and reported by the commissioners to the President of the United States, be so altered as to pass through Uniontown, in the county of Fayette, and Washington, in the county of Washington, if such alteration can, in the opinion of the President, be made, consistently with the provisions of an act of Congress passed March 29th, 1806, but if not, then over any ground within the limit of this State, which he may deem most advantageous.

On February 19, 1808, President Jefferson notified Congress that he had approved the route as far as Brownsville with the deviation to Uniontown:

From thence the course to the Ohio, and the point within the legal limits at which it shall strike that river is still to be decided.

In forming this decision I shall pay material regard to the interests and wishes of the populous parts of the State of Ohio, and to a future and convenient connection with the road which is to lead from the Indian boundary near Cincinnati, by Vincennes, to the Mississippi at St. Louis . . . . In this way we may accomplish a continuous and advantageous line of communication from the seat of the General Government to St. Louis, passing through several very interesting points of the Western Country.

He transmitted the commissioners' latest report, dated January 15, 1808, on their work. They explained that because of the delay in securing Pennsylvania's consent, "the commissioners could not proceed to the business of the road in the spring before vegetation had so far advanced as to render the work of exploring and surveying difficult and tedious, from which circumstance it was postponed till the last autumn, when the business was again resumed."

Based on instructions they had received by then, they indicated that the route previously selected beyond Brownsville "had been so changed as to pass through Uniontown, and that they have completed the location, gradation and marking of the route from Cumberland to Brownsville, Bridgeport, and the Monongahela river, agreeably to a plat of the courses, distances and grades in which is described the marks and monuments by which the route is designated." The new location reduced the length of the road between Cumberland and Brownsville by 4 miles.

They confirmed that the road presently in use between the Potomac and Ohio Rivers would not suffice for the new road, except for about a mile (an intersection on Wills

Mountain, another at Jesse Tomlinson's tavern at Little Meadows, and near Big Youghiogheny). The old road was "crooked and hilly" and, with the noted minor exceptions, could not be used "without unnecessary sacrifices of distances and expense."

Given the routing changes, the commissioners wanted to provide a new estimate. They could do so only with "great difficulty, as they cannot, with any degree of precision, estimate the expense of making it merely passable; nor can they allow themselves to suppose that a less breadth than that mentioned in the law was to be taken into the calculation." To meet the statutory specifications in the 1806 Act, they would have to approach hills obliquely because "a great proportion of the route occupies the sides of the hills, which cannot be safely passed on a road of common breadth, and where it will, in the opinion of the commissioners, be necessary, by digging, to give the proper form to thirty feet, at least in the breadth of the road, to afford suitable security in passing on a way to be frequently crowded with wagons moving in opposite directions, with transports of emigrant families, and droves of cattle, hogs, etc., on the way to market."

In their previous report, they "estimated the expense of a road on these grounds, when properly shaped, made and finished in the style of a stone-covered turnpike, at \$6,000 per mile, exclusive of bridges over the principal streams on the way; and that with all the information they have since been able to collect, they have no reason to make any alteration in that estimate."

From the Monongahela River to Wheeling, the commissioners had proceeded for about 20 miles "with their usual and necessary lines of experiment, in ascertaining the shortest and best connection of practical grounds, when the approach of winter and the shortness of the days afforded no expectation that they could complete the location without a needless expense in the most inclement season of the year." They believed, however, that waiting until the spring would "would produce no delay in the business of making the road."

They added a caution that in finding the best path, "it became indispensably necessary to run lines of experiment and reference in various directions, which exceed an average of four times the distance located for the routes, and that, through a country so irregularly broken and crowded with very thick underwood in many places, the work has been found so incalculably tedious that, without an adequate idea of the difficulty, it is not easy to reconcile the delay."

While the surveys were underway, Commissioner Moore had supervised contracts "relative to clearing the timber and brush from part of the breadth of the road." The commissioners had "no doubt of their being completely fulfilled by the first of March."

The report noted that on November 29, Kerr had been "compelled to return home," which was why only Williams and Moore signed it. ["Cumberland Road," Miscellaneous, ASP, 10<sup>th</sup> Congress, 1<sup>st</sup> Session, Doc. No. 243; reprinted in Searight]

According to an accounting by Secretary Gallatin in a letter to the House of Representatives on March 3, 1808, the 5 percent of the public lands sales in Ohio set

aside for road in, to, and through the State since July 1, 1802, totaled \$104,294.59. “And that the said 5 per cent will henceforth probably amount to \$30,000 a year.” To that point, the commissioners had expended \$10,000 to lay out the road between Cumberland and Brownsville. He estimated that completing the laying out of the road to the Ohio River would cost about \$5,000 more. He continued:

That contracts have been made for opening one-half of the breadth of said road, which, as verbally informed by one of the commissioners, will require about \$3,000, leaving, probably, about \$12,000 of the appropriation [of \$30,000] for the further improvement of the road.

He added:

That that road can be considered as a national object only if completed as a turnpike, whereby all the flour and other produce of the western adjacent countries may be brought to a market on the Atlantic shores; and the transportation of all the salt and other commodities and merchandise whatever, imported from the Atlantic ports for the western country generally, may be reduced probably one dollar per cwt [hundredweight]. [“Cumberland Road,” Miscellaneous, ASP, 10<sup>th</sup> Congress, 1<sup>st</sup> Session, Doc. No. 247]

In a letter on December 29, 1808, Secretary Gallatin reported that of the \$30,000 appropriated by the 1806 Act, the unexpended balance amounted to \$16,075.15, part of which would be needed to “complete the location and opening of the road. It is probable that about \$13,000 will remain applicable to making the road.”

The two-percent fund for the road had accumulated \$41,876, but subtracting the \$30,000 appropriation from the 1806 Act left an unappropriated balance of \$11,876. Secretary Gallatin estimated that the two-percent fund would receive about \$9,000 a year over the next 2 years. [“Cumberland Road,” Miscellaneous, ASP, 10<sup>th</sup> Congress, 2d Session, Doc. No. 263; reprinted in Searight]

### **Resolving the Location Problems**

The location issue in Pennsylvania was not, however, settled, and it was up to President Jefferson to decide where the road would be built. The link north of the Uniontown-Brownsville-Wheeling line through Washington County had been defeated, but the citizens of Washington County threatened to fight their exclusion from the road by force.

Secretary of the Treasury Albert Gallatin was familiar with the area. He had been born in Geneva (now Switzerland) in 1761, but moved to the United States in 1780. In 1786, he bought land in Fayette County, Pennsylvania, and built “Friendship Hill” in Springhill township near New Geneva, about 15 miles south of Uniontown. He had represented the district in Congress (1795-1801).

In a letter dated July 27, 1808, Secretary Gallatin reminded President Jefferson that near the end of the first session of the 10<sup>th</sup> Congress, which adjourned on April 25, 1808, they had discussed the routing of the road through Pennsylvania:

I had suggested that from respect to the State of Pennsylvania & considering the manner also in which the subject had been treated last winter in the legislature of that State, it would be expedient to instruct the Commissioners to survey & locate from Brownsville westwardly both to Wheeling, and through Washington to some other spot on the Ohio, reporting both surveys to you for your determination.

Gallatin had thought Jefferson agreed with the recommendation and would inform the commissioners, but “I find however that it has not been done, and I seriously fear the consequences at this time”:

Did I not believe the course which I have mentioned to be perfectly proper, I certainly would not recommend it merely on account of those consequences. Permit me however to state that the county of Washington, with which I am well acquainted, having represented it six years in Congress, gives a uniform majority of about 2000 votes, in our favor, & that if this be the case, by reason of this road, in a wrong scale, we will infallibly lose the State of Pennsylvania at the next election: for the imprudent steps taken there seem unavoidably to lead to three distinct *electoral* tickets. I have been reminded of this subject by the enclosed letter from an influential & steady republican of the County. And as it respects the road itself I will add 1st. that thorough examination seems due to the law of the State – 2dly. That the difference in point of distance will be even less than stated in the enclosed letter, if the Ohio be struck at Short Creek instead of Wheeling; say about ½ mile to any given point westwardly, Cincinnati or any other – 3dly. That the important part of this western road terminates at Brownsville on the Monongahela, & that its continuation, which is sufficient to agitate all the Country, will never require much expense, as it will be only a travelling & not a transportation road. Indeed the question, as it relates to the public interest, is in every respect so extremely insignificant that I am very desirous that it should not be permitted to do much positive evil.

He closed by urging President Jefferson to write to the commissioners “to make the examination of both routes for your decision.”

With the location dispute in Pennsylvania, President Jefferson saw his worst fears confirmed, as reflected in his reply to Secretary Gallatin on August 6, 1808:

On the subject of the Western road, our first error was the admitting a deviation to Brownsville, and thus suffering a first encroachment on it's [sic] principle. this is made a point d'appui to force a second, and I am told a third holds itself in reserve. so that a few towns in that quarter seem to consider all this expence as undertaken merely for their benefit. I should have listened to these sollicitations with more patience, had it not been for the unworthy motives presented to influence me by some of those interested. sometimes an opposition by force was held up, sometimes electioneering effects, as if I were to barter away, on such motives, a public trust committed to me for a different object. it seems however that our first error having made Brownsville, & no longer Cumberland, the point of departure, we must now go no further back in examining the claim of

Washington. I have therefore written to the Commissioners the letter of which I inclose you a copy. the time saved by sending it to them direct, may be important, as they may be near their return. I am doubtful whether they have money enough left for a thorough examination. if they have, their report will enable us to decide on this second deflection. but what will Wheeling say if we take the road from it, to give it to Washington? I do not know it's size or importance, nor whether some obstacles to navigation may not oppose our crossing at a higher place. I salute you with constant affection.

That same day he wrote to the three commissioners:

It has been represented to me on behalf of the inhabitants of the town of Washington in Pensylva, that by a survey made at their expence, it is found that the Western road, if carried through their town, to Wheeling, would be but a mile longer, would pass through better ground, & be made at less expence; and if carried to Short creek, instead of Wheeling, the difference of distance would still be less. the principal object of this road is a communication directly Westwardly. if however, inconsiderable deflections from this course will benefit particular places and better accomodate travellers, these are circumstances to be taken into consideration. I have therefore to desire that, having a regard to the funds which remain, you make as good an examination, as they will admit, of the best route through Washington to Wheeling, & also to Short creek or any other point on the river, offering a more advantageous route towards Chillicothe & Cincinnati, & that you report to me the material facts, with your opinions, for consideration. I salute you with respect.

This maneuvering prompted speculation that Secretary Gallatin was using his official position to have the road located near his property. David Acheson of Washington, Pennsylvania, a merchant and former State legislator, apparently wrote to Secretary Gallatin to bring these rumors to his attention. Gallatin replied on September 1, 1808:

On receipt of your letter respecting the Western Road, I immediately transmitted it to the President at Monticello. I was under the impression that he had previously directed the Commissioners to examine both routes and to report to him. It seems, however, that it had not then been yet done. But on the 6th ultimo he wrote to them to make an examination of the best route through Washington to Wheeling, and also to Short Creek, or any other point on the river offering a more advantageous route toward Chillicothe and Cincinnati, and to report to him the material facts with their opinion for consideration.

That it is the sincere wish of the President to obtain all the necessary information in order that the road should pursue the route which will be of the greatest public utility no doubt can exist. So far as relates to myself, after having, with much difficulty, obtained the creation of a fund for opening a great western road, and the act pointing out its general direction, it is sufficiently evident from the spot on the Monongahela which the road strikes, that if there were any subsequent interference on my part it was not of a selfish nature. But the fact is that in the

execution of the law I thought myself an improper person, from the situation of my property, to take the direction which would naturally have been placed in my hands, and requested the President to undertake the general superintendence himself. Accept the assurance of friendly remembrance, and of my sincere wishes for your welfare and happiness.

The commissioners conducted the survey, but rejected the circuitous routing to Washington, which would lengthen the route to Wheeling.

(Secretary Gallatin referred to taking direction of the project because, unlike at present, the Secretary of State was not only a diplomat overseeing the country's foreign relations, but the equivalent of the modern Secretary of the Interior, a post not created until 1849.)

The 1806 legislation related to the Cumberland Road specified that the Ohio River terminus would be somewhere between Wheeling, Virginia, and Steubenville, Ohio. The commissioners chose Wheeling, but officials of Steubenville, Ohio, continued to present their thriving community as an alternative to Wheeling. In Steubenville's favor was the fact that it was the site of one of the earliest land offices, opened in 1800, for purchase of public land in Ohio – an activity that the Cumberland Road would encourage.

Wheeling, however, remained the terminus of the Cumberland Road. It was a booming community that had the advantage of being located east of an island in the Ohio River that would make a crossing into Ohio easier.

### **Delaying Construction of the National Road**

President Jefferson's commissioners submitted their final report on August 30, 1808. They informed President Jefferson that "having in May last resumed the duties assigned them, they have extended the location of the route to the Ohio river, which, with the other parts heretofore reported, completed the location, grading, and marking the whole route from Cumberland to the river Ohio, agreeably to the plat, courses, and distances thereof, which accompany this report."

The focus was on the difficult stretch between the Monongahela and Ohio Rivers:

The first report of the commissioners on this subject states the reasons and necessity for adopting, as a crossing place on the Ohio river, a point opposite the lower end of Wheelen island. On approaching the Ohio with the location, it was found that this point could be reached on a route somewhat shorter than by passing through the town of Wheelen. It was, however, also ascertained that the portage between the Monongahela and the Ohio rivers would not be lengthened by passing through the town which lies on the east bank of the Ohio, and affords as eligible a port for embarcation as the lower point. In consideration whereof, and that many important advantages would be presented to emigrants, traders, and others, in a choice of supplies of boats, stores, and other accommodations along the shore through the town a mile in length, which could not be otherwise as conveniently obtained, and that as the grounds on the town route, being level

nearly the whole way, held a decided preference, the commissioners were of opinion that the town route was entitled to a preference, inasmuch as it was best calculated to secure public benefit and guard against private injuries.

In identifying the path from Brownsville to Wheeling, the commissioners acknowledged that the recommended path “occupies but little of the old road; that it passes through a country formed wholly of hills and hollows, more irregular in their bearings, and, consequently, rendering the location more difficult and tedious than that heretofore reported, and confining the route, in many places, to the sides of hill which, from necessity, were crossed obliquely.”

The balance of the funds available to them for work on the road would not allow for the path to be more than “barely passable, and much less to make it conveniently so; neither is it believed that a road on these sideling grounds, barely of sufficient width to pass a wagon, would remain passable half a year without the precaution of well-secured conduits, which an uncovered road of common width will not admit.” The old road was kept in passable order because “of their direction being principally adapted to the crossing of the hills nearly at right angles, or along their tops over the centre of all the knobs, to save the necessity of digging.” Those same factors, however, accounted “for the steepness of the hills on these roads, and the great difficulty and sufferings experienced in passing them.”

That was why they believed their remaining funds should be used to improve a few difficult places, rather than trying to make the entire route passable:

Among those places which, in the opinion of the commissioners, have the highest claim to immediate attention, are the crossing of the mouth of Dunlap’s creek, between Brownsville and Bridgeport, and the crossing of Wheelen creek, between the town and the lower point of the island. At both these creeks bridges are much wanted. The next object is what is called the Dug hill, near the town of Wheelen, where considerable difficulty and hazard is encountered for want of a safe pass across the hill . . . . It is suggested for consideration, whether the most eligible application of any surplus fund would be in making and perfecting as much road, by way of sample, as it is competent to, near Cumberland, or where the Virginia line intersects the western route at Gwynn’s tavern.

The commissioners well knew that the Act of March 29, 1806, had specified the type of road to be built, but nevertheless pointed out that the goal is “to afford safety and facility in the intercourse upon it.” Therefore, “the commissioners trust it will not be deemed presumptuous in them to suggest their ideas of the mode of making the road best calculated to accomplish this important object, and which the peculiarity of the grounds seem to require”:

The law directs the whole width of the road to be sixty-six feet. Although it is essential to a great highway to have sufficient space for the admission of sun and air, it is not supposed to be intended that the whole breadth should be reduced to a

form passable with wagons or other carriages, or even single horse. It is thought that forty feet, and not less, will be amply sufficient for this great thoroughfare; twenty feet of which to be covered one foot deep at least, with broken stone so reduced as to pass through a gauge ring of three inches diameter; the covered part to be in the centre of the forty feet, with cross conduits at suitable distances, well paved and arched; ten feet on each side of the covered part to be level crosswise of the road, except only such inclination as may be necessary to prevent water from lying on the uncovered part. Stone arches are deemed the most eligible mode of bridging all the streams on the way, except the two creeks already mentioned, and the Big and Little Youghahana [sic], where wooden bridges are for the present thought most advisable; and except also the Monongahela river, the size of which, and the high floods which frequently fill and partially overflow its banks, render the bridging of that stream a work of too much magnitude to encourage the attempt at this time, but present no unusual impediments in the way of ferries.

The commissioners had received President Jefferson's August 6 letter regarding the possible inclusion of Washington in the route, but it arrived after they had finished their survey and left the field. They added, however, that shortly before the commissioners completed their work, several inhabitants of the town of Washington informed them:

. . .that a route had been carefully run, graded, &c., at private expense, from Brownsville, through that town nearly to Wheelen, which would be found but little, if any, longer than the route laid off by the commissioners; and was stated to be capable of very great improvement under the superior skill of the commissioners; that it commanded a variety of advantages, which it was believed, would give it a preference; all which was so confidently asserted, that although the commissioners were convinced, from the knowledge they then possessed of the geographical situation of the town of Washington, that some mistake must have taken place in the representation of the distance of that route, yet, in order to gratify the solicitude of those interested, and to ascertain to them the merits of their claims, as far as a view and comparison of measurement and local advantages could effect it, the commissioners were induced to make that view and measurement on their return from Wheelen; which being done, that route appeared upwards of four miles longer than the route located by the commissioners; and after deducting one mile for improvement, being the utmost it appeared capable of, there remained a difference of upwards of three miles against the Washington route.

The commissioners remained convinced that the route they identified was superior.

They also addressed President Jefferson's direction to consider terminating the route at Short Creek, which would incorporate Washington and enhance access to other cities in Ohio:

It was well known to the commissioners, that the distance from Brownsville to Short creek was less than to Wheelen, and that to Charlestown was still less than to Short creek; but knowing also that Wheelen lay one degree north of west from Brownsville, and north of a straight line from the latter place to Chilicothe, Vincennes, and St. Lewis, or even to the centre of the State of Ohio, they could not prefer points still more north, which would consequently increase the angle at the Ohio, and necessarily the distance in passing west from Brownsville; and if Wheelen, Short creek, and Charlestown, had been on an equality in all other respects, the circumstance of Wheelen being a point of more useful navigation for the boats of traders or emigrants at low water, could not have escaped the attention of the commissioners in deciding on the point best entitled, in all respects, to a preference.

The commissioners concluded by observing that Joseph Kerr “whose domestic concerns would not dispense with his personal attention, had been unable to participate in this final stage.” The report was by Elie Williams and Thomas Moore. [“Cumberland Road,” Miscellaneous, ASP, 10<sup>th</sup> Congress, 2d Session, Doc. No. 258]

President Jefferson transmitted the report to Congress on December 13, 1808, “in order,” as he wrote, “that Congress may be enabled to adopt such further measures as may be proper under existing circumstances.”

Historian Billy Joe Peyton summarized the commissioners’ work:

The route as selected took in some of the most rugged and beautiful country in the eastern United States. In the east it connected with the Baltimore Pike at Cumberland, from where it snaked its way in a more or less northwesterly direction over Big and Little Savage, Little Meadow, and Negro Mountains. In Pennsylvania it climbed over Chestnut Ridge and Laurel Hill on the general alignment of Braddock’s Road to the point where the former veered toward Pittsburgh (at the summit of Laurel Hill) just east of Uniontown. Continuing west, the Road passed over less rugged terrain between Brownsville and Washington before reaching its western terminus at Wheeling. From Wheeling the road connected with Zane’s Trace, an important existing post road running from the west of the Ohio River through Zanesville, Ohio, to Limestone (Maysville), Kentucky.

The commissioners wasted no time getting started; contracts let under the superintendence of Thomas Moore for partial clearing of timber and brush were already underway and scheduled for completion by March of 1808 . . . .

In the final analysis, Elie Williams, Thomas Moore, Joseph Kerr, Josias Thompson, Arthur Rider, and the other expedition members whose identities will never be known should be remembered for their collective contributions to this country’s history and development. They carried out their respective duties with vigor, a high degree of professionalism, and meticulous attention to detail, no

small accomplishment considering their meager compensation and rather imprecise orders. Between 1806 and 1808 the group ran an exhaustive survey over 131 miles of mountain wilderness, carried out extensive field explorations, met with local residents and community leaders, spent countless hours in careful deliberations, and submitted to the president three carefully studied and insightful reports. With the exception of the proposed route in Pennsylvania, which did not originally include Washington or Uniontown, they generally received few complaints or criticisms from the president, Congress, or the American people. Indeed, their dedication to purpose formed the very foundation upon which our first interstate highway, the “Road from Cumberland, in the State of Maryland, to the State of Ohio,” was built. [Peyton, Billy Joe, “Surveying and Building the Road,” in Raitz, Karl, editor, *The National Road*, The Johns Hopkins University Press, 1996]

Congress would periodically appropriate funds for construction of the Cumberland Road from Cumberland to Brownsville, leaving the remaining section for later legislation.

The routing issue remained static until March 3, 1811, when President Jefferson’s successor, President James Madison, signed “An Act in addition to the act to regulate the laying out and making a road from Cumberland, in the state of Maryland, to the state of Ohio.” The Act appropriated \$50,000 for the work. The funds were “to be paid out of any money in the Treasury not otherwise appropriated, and to be expended under the direction of the President of the United States . . . which sum of fifty thousand dollars shall be replaced out of the fund reserved for laying out and making roads to the State of Ohio, by virtue of the seventh section” of the 1802 Enabling Act.

As control cities, it mentioned Cumberland and the city of Brownsville, Pennsylvania, but authorized and empowered the President “to permit such deviations from the courses run and established by the commissioners under the authority of the” Act of 1806 if such changes “in his opinion shall be deemed expedient.” The one exception was that “no deviation shall be made from the principal points established on said road between Cumberland and Brownsville.”

Based on this legislative change, the Cumberland Road would be routed through Washington, thus satisfying the State Legislature’s original condition for consent. The first legislation to mention Washington was signed by President James Monroe on May 11, 1820. “An Act making appropriations for the support of government, for the year one thousand eight hundred and twenty” included \$141,000 for “completing the contracts for constructing the road from Washington, Pennsylvania, to Wheeling, made during the year one thousand eight hundred and seventeen.”

### **To Build the Road**

The Department of the Treasury was charged with construction of the road. The U.S. Army Corps of Engineers was prohibited from civil works until enactment of the General Survey Act on April 30, 1824, which authorized a survey of road and canal routes “of national importance, in a commercial or military point of view” (to be discussed later).

As a result, the road from Cumberland to Wheeling would be built by private contractors selected by a superintendent appointed by the Secretary of the Treasury (Gallatin until February 1814). Peyton summarized the superintendent's duties as "letting contracts, supervising construction, and insuring contractual obligations were successfully carried out."

In 1811, Secretary Gallatin's choice for superintendent was David L. Shriver, Jr. Born in 1769, Shriver joined with his brother Andrew in 1797 to build a mill and family homestead, known as Union Mills, about 7 miles north of Westminster in Garrett County, Maryland – a home that is still standing at 3311 Littlestown Pike. David had served in the Maryland House of Delegates representing Frederick County. He left the General Assembly when he became superintendent in charge of the Reisterstown Turnpike, a toll road from the city of Baltimore to Reisterstown in Baltimore County. The State had authorized this turnpike and others in 1804; the Baltimore-to-Reisterstown Turnpike was completed in January 1810 at a cost of \$638,000 or nearly \$11,000 a mile.)

With that work behind him, Shriver became superintendent of the Cumberland Road with a salary of \$1,800 a year; he held the post until 1816, after which he was hired for other assignments on the road. David or his nephews – James, Thomas, and Joseph Shriver, all civil engineers – would be involved not only with the Cumberland Road, but the Chesapeake and Ohio Canal, the Lake Erie Canal, the Wabash Canal in Indiana, and the Baltimore and Ohio Railroad. ["A Register of the Shriver Family Papers," Manuscripts Department, Maryland Historical Society Library.]

The problem was that construction had not begun soon after enactment of the 1806 legislation, as Philip D. Jordan described in his history of the road:

Talk was plentiful and cheap, but not a mile of road was completed. When Ohio said "yes" to the Enabling Act that provided for funds from the sale of lands, it confidently believed that the road would begin soon and go forward rapidly. About four years later Uncle Sam's great Western highway was still a dream and Ohio was as far away from the East as ever.

"When's that road comin' through?" Ohioans buttonholed [Senator Thomas] Worthington whenever he returned from Washington, D.C. His only answer was that progress was being made. He himself had seen axmen hacking a trail west of Cumberland in 1807. He explained patiently that a young engineer had been appointed superintendent of the road and had set up forest headquarters near Cumberland. For five years settlers along Ohio's streams and in the shady woods plagued their senators with queries. They wanted to know what David Shriver, Jr., was doing. Why could not a superintendent begin building? Even Worthington, champion of the road for so long, despaired. [Jordan, Philip D., *The National Road*, The American Trails Series, The Bobbs-Merrill Company, 1948]

One problem was that the general government had slipped into an economic panic after President Jefferson signed the Embargo Act on December 22, 1807. Against the advice

of Secretary Gallatin, President Jefferson had secured congressional approval and signed the Embargo Act in an attempt to stop England and France, then at war, from seizing American ships. The British added to the harassment by declaring sailors on the seized ships to be British citizens and forcing them to work on its ships. The new law prohibited American ships from traveling to other countries. Foreign ships were still able to bring foreign goods into the country.

Economic historian John Steele Gordon explained:

In hopes of forcing France and Britain to respect neutral rights, President Jefferson rammed through Congress the Embargo Act, which he signed on December 22, 1807. It was one of the most remarkable acts of statecraft in American history. Indeed it is nearly without precedent in the history of any country. The Embargo Act forbade American ships from dealing in foreign commerce, and the American navy was deployed to enforce it. In effect, to put pressure on Britain and France, the United States went to war with itself and blockaded its own shipping.

The act “devastated” New England, which was heavily dependent on maritime commerce, and prompted “an epidemic of smuggling along the Canadian border” that President Jefferson thought was little short of an insurrection. In view of the reaction in the seaboard cities, President Jefferson signed the Non-Intercourse Act of 1809 on March 1, just 3 days before leaving office. The new law restored trade with countries other than England and France, formerly the country’s largest trading partners, resulting in continued economic stress. [Gordon, John Steele, *An Empire of Wealth: The Epic History of American Economic Power*, HarperCollins Publishers, 2004]

Professor Thomas K. McCraw, in his book about economic developments during the period, summarized the effects of the two laws during an era when import duties or tariffs accounted for 90 percent of the general government’s revenue:

Whatever the cause of Jefferson’s behavior, the consequences were severe. American exports declined from \$108 million in 1807 to \$22 million in 1808, a drop of 80 percent; imports fell by a little less but still by more than half, from \$139 million to \$56 million. From 1808 to 1809, federal revenues plummeted from \$17 million to \$7.8 million.

With the general government committed to a balanced budget each year, the trade laws cut into revenue and resulted in reduced outlays prior to the War of 1912. [McCraw, Thomas K., *The Founders and Finance: How Hamilton, Gallatin, and Other Immigrants Forged a New Economy*, The Belknap Press of Harvard University Press, 2012]

### **The Gallatin Report on Roads and Canals**

Another victim of the trade war was Secretary Gallatin’s ambitious national transportation plan. He had secured a request from the Senate, introduced by Senator Worthington, on March 2, 1807, for a plan for linking the country through transportation:

*Resolved*, That the Secretary of the Treasury be directed to report to the Senate, at their next session, the best information he can acquire as to the practicability, and probable expense of forming a turnpike road throughout the Atlantic States, commencing at the City of Washington, and running each way, towards the Northeastern and Southwestern extremities of the Union; together with his opinion as to the most suitable route for the same, and a plan or plans for the application of such means as may be most convenient to the Government, and within the power of Congress, to aid in carrying the same into execution.

Secretary Gallatin's *Report of the Secretary of the Treasury on Roads and Canals*, sent to the Senate on April 4, 1808, was the first attempt to establish a national transportation policy. It began by stating, "The general utility of artificial roads and canals is at this time so universally admitted, as hardly to require any additional proofs." Artificial roads and canals were typically provided by private enterprise, but did not always repay their investors because "the tolls may not have been fixed at a rate sufficient to pay to the undertakers the interest on the capital laid out." The investors lost, "but the community is nevertheless benefited by the undertaking."

In a country "possessed of large capital" or where population resides in a small area, "those improvements may often, in ordinary cases, be left to individual exertion, without any direct aid from Government." In the United States, the size and diversity of the country "render the facility of communications . . . an object of primary importance" but "check the application of private capital and enterprise to improvements on a large scale."

Financial, commercial, and geographic challenges prevented private investment from providing the artificial roads and canals the Nation needed:

The General Government can alone remove these obstacles.

With resources amply sufficient for the completion of every practicable improvement, it will always supply the capital wanted for any work which it may undertake, as fast as the work itself can progress; avoiding thereby the ruinous loss of interest on a dormant capital, and reducing the real expense to its lowest rate.

With these resources, and embracing the whole Union, it will complete on any given line all the improvement, however distant, which may be necessary to render the whole productive, and eminently beneficial.

The early and efficient aid of the Federal Government is recommended by still more important considerations. The inconveniences, complaints, and perhaps dangers, which may result from a vast extent of territory, can not otherwise be radically removed or prevented than by opening speedy and easy communications through all its parts. Good roads and canals will shorten distances, facilitate commercial and personal intercourse, and unite, by a still more intimate community of interests, the most remote quarters of the United States. No other single operation, within the power of Government, can more effectually tend to

strengthen and perpetuate that Union which secures external independence, domestic peace, and internal liberty.

As Albert C. Rose, the longtime unofficial historian of the U.S. Bureau of Public Roads, explained, Gallatin's proposal for a network of roads and canals was based on three basic concepts. First, given "the legitimacy of Government aid to finance transportation projects transcending local needs," the report demonstrated that "the through routes of national importance could be financed only by the General Government because the central authority alone possessed 'resources amply sufficient for the completion of every practicable improvement.'" Second, the general government should undertake only improvements that would yield reasonable returns on the original investment. Third, a nationwide system of transportation would be essential to the national defense. [*Historic American Roads: From Frontier Trails to Superhighways*, Crown Publishers, 1976]

The Federal Highway Administration summarized the plan in its Bicentennial history, *America's Highways 1776-1976*:

The works proposed by Gallatin were, first, a series of great canals along the Atlantic coast connecting the natural bays and estuaries into one continuous waterway for the carriage of heavy freight. Supplementing this waterway, there would be a light-duty turnpike from Maine to Georgia for passengers, mail and light goods hauling. The second part of the plan was to form communications between the four great Atlantic rivers and the Western rivers by river improvements, short canals and four heavy-duty freight turnpikes across the mountains. These would be supplemented by internal roads to Detroit, St. Louis and New Orleans. The third part was to open inland navigation between the Hudson River and the Great Lakes and the St. Lawrence River, plus a canal around the Niagara rapids to open the Great Lakes to sloop navigation as far as the extremities of Lake Michigan.

Secretary Gallatin estimated that the plan could be completed in 10 years at a cost of \$2 million a year for a total of \$20 million. In proposing appropriations, he added:

It is evident that the United States cannot under the constitution open any road or canal, without the consent of the state through which such road or canal must pass. In order therefore to remove every impediment to a national plan of internal improvements, an amendment to the constitution was suggested by the executive when the subject was recommended to the consideration of Congress. Until this be obtained, the assent of the states being necessary for each improvement, the modifications under which that assent may be given, will necessarily control the manner of applying the money. It may be however observed that in relation to the specific improvements which have been suggested, there is hardly any which is not either already authorised by the states respectively, or so immediately beneficial to them, as to render it highly probable that no material difficulty will be experienced in that respect.

The report said of the Cumberland Road:

At present the only work undertaken by the United States at their sole expense, and to which the assent of the states has been obtained, is the road from Cumberland to Brownsville. An appropriation may for that purpose be made at any time. In relation to all other works, the U. States have nothing at this time in their power but to assist those already authorised; either by loans or by becoming stockholders; and the last mode appears the most eligible.

The key, as Professor Larson pointed out in his history of 19<sup>th</sup> century internal improvements, was convincing Congress to embrace the plan – and that was the problem:

Neither private nor local public capital was competent to proceed on these major projects: the sums were too large, the fruits of investment depended on the coordination of simultaneous and distant operations, and the greatest benefits often fell outside the jurisdiction where the work was to be done. In many cases general improvements would cause immediate injury to local merchants, ferry-men, and tavern keepers – whose protests state and county government scarcely could ignore. Only the “general government,” Gallatin believed, could remove such “obstacles” to progress by defining a national plan “best calculated to suppress every bias of partiality.” An amendment would be needed to empower the government for these specific purposes because Gallatin thought it was essential to override local interests with a grand design: “The national legislature alone, embracing every local interest, and superior to every local consideration, is competent to the selection of such national objects.”

Gallatin’s appeal here was for congressmen to rise above parochial interests and demonstrate the kind of statesmanship the framers had imagined when the Congress was designed. But theories of disinterestedness in office never accurately described reality, and Republican attacks on Federalist pretensions (led by Jefferson and Madison and often carried into execution by Gallatin himself) had done more than a little to advance the style of politics that made this image sadly obsolete.

Secretary Gallatin, anticipating a surplus of \$2-5 million, advised the President in a letter dated November 16, 1806, that it would take “at least the two intervening years to obtain an amendment, pass the laws designating improvements, and make the arrangements preparatory to any large expense.” The President insisted that the amendment of the Constitution would be approved promptly, as Professor Larson explained:

Without constitutional limits, Jefferson believed, those would “get the most who are meanest.” Proportional spending in each state according to the “federal ratio” he thought might minimize the danger of logrolling. Gallatin suppressed this idea as unworkable: “neither improvements nor education can ever in practice be exactly partitioned in this manner.” Consequently, Jefferson fixed his hopes on an amendment expressly covering roads, canals, and universities, so that *this* enlargement of federal power would be no precedent for other “elastic” experimentation.

Despite the popularity of internal improvements, Congress would not go along with President Jefferson's request for an amendment at this time or in later years. Members of Congress who supported internal improvements were not eager for that solution. They believed that Congress already had the authority to fund road and other internal improvement projects under the "establish" and "general welfare" clauses and the responsibility for national defense. Supporting a constitutional amendment that failed in Congress or in ratification by the States would undercut their claim that they already had the authority to advance internal improvements.

Moreover, they did not want to reward the President for his contrary views. Others were more interested in securing their own projects through legislative maneuvers, such as the logrolling for pet projects, that President Jefferson despised.

At the same time, members who favored State rights feared the growing power of the general government, sometimes referred to as consolidation. A constitutional amendment that clearly authorized funding for internal improvements would make it harder for future Presidents who shared the States' right point of view to veto bills authorizing such projects.

Another reason for the lack of congressional cohesion was that the President's power was in decline. According to Professor Larson, "Jefferson failed to notice that by 1806 he had lost control of the Republican Party," with its members "estranged either by Gallatin's abrasive personality or Jefferson's peremptory handling of patronage and the details of administration." As a result:

With no whip to crack over Congress as he tried to steer an aggressive new course of national purpose, the president could only watch his amendment, his university, and his program of roads and canals languish unattended while conditions around him disintegrated.

President Jefferson thought the novelty of his proposals accounted for what he called "a snail-paced gait for the advance of new ideas on the general mind," but novelty was not the problem:

Divergent, competitive ambitions invaded congressional debates and fostered bare-knuckles interest-group contests where informed deliberation was supposed to prevail. The immediate result of Jefferson's effort to launch his own program of internal improvements was an explosion of special pleading that appalled even friends of the administration's design.

A more specific problem, namely the decline in revenue from President Jefferson's efforts to curtail British impoundment of American ships, also was undermining the Gallatin plan. With anger rising, especially in New England, Gallatin's proposal made no progress in the 10<sup>th</sup> Congress.

President Jefferson, in his eighth and final annual message to Congress on November 8, 1808, discussed the choices ahead for the Congress. With the economy still disturbed,

and the general government addressing debt issues, he nevertheless was looking to the future:

The probable accumulation of the surpluses of revenue beyond what can be applied to the payment of the public debt, whenever the freedom and safety of our commerce shall be restored, merits the consideration of Congress. Shall it lie unproductive in the public vaults? Shall the revenue be reduced? Or shall it not rather be appropriated to the improvements of roads, canals, rivers, education, and other great foundations of prosperity and union, under the powers which Congress may already possess, or such amendment to the Constitution as may be approved by the States? While uncertain of the course of things, the time may be advantageously employed in obtaining the power necessary for a system of improvement, should that be thought best.

He remained open to internal improvements, but only if Congress changed course to promote a constitutional amendment. It did not do so.

### **Construction Begins**

During the 1810s, Congress began appropriating funds for construction of the Cumberland Road. Judging from the congressional debates in Congress recorded in the *Annals*, the issue does not appear to have stirred controversy.

A bill introduced in 1809 did generate some controversy. On June 27, 1809, the Senate passed a bill appropriating \$60,000 “to regulate the laying out and making a road” between Cumberland and Ohio. The *Annals* reported no discussion of the bill.

The following day, the House resolved into a Committee of the Whole to consider the bill. Representative John G. Jackson of Virginia offered an amendment:

Mr. J. G. Jackson observed that it would be impossible to complete the turnpike road originally, and now contemplated by the act to which this is a supplement, under an expense of a million of dollars, which would never accrue probably from the funds set aside for this object. He therefore moved the following section as an amendment:

“*And be it further enacted*, That the President be authorized to apply the moneys to the improvement of the road as may be most expedient, without contemplating a turnpike road.”

The *Annals* summarized the debate on the issue:

In favor of the motion it was contended that the money applicable to this object would never be competent to the making a turnpike road, which must cost from six to ten thousand dollars per mile; that turnpikes made for less were no better than common country roads, and would not bear a heavy team; that the sum proposed by the bill would not suffice for turnpiking more than eight or ten miles,

whilst it would open a passable road of the common description the whole distance; that the turnpike roads which were made at a less expense than five thousand a mile were good for nothing, and broken up by each successive Winter; that the House would pledge themselves by the passage of the present bill to complete the turnpike, whatever might be the expense; that it was to be hoped they would not act like the celebrated projector who undertook to build a bridge across a river, and, his funds failing, built it only half way across, and when asked how the passengers were to get over the remainder of the distance, replied that they might swim it.

To this was replied by the opponents of the amendment that Congress were already pledged by their law, to the State of Ohio, to make a turnpike road; that it would be improper in this incidental way to repeal a solemn law; that sixty thousand dollars would complete a turnpike across the mountains, and the people of Ohio were ready and willing to complete the remainder by companies or otherwise; that turnpike had been made in Pennsylvania and New York for one thousand dollars a mile, and could certainly be made as cheap in this direction, where materials were cheaper and in plenty; that Congress were bound to make a turnpike road, and such a one as should be passable in Winter as well as Summer, which would not be the case if the amendment was adopted.

The House voted against the amendment. After the committee dissolved and the House returned that evening, Representative Jackson called for consideration of the bill but his request was “negatived.”

The bill was revived in the next Congress, without controversy, to be signed by President Madison on February 14, 1810. The legislation appropriated \$60,000 “in addition to the unexpended balance of the sum heretofore appropriated for the laying out and making a road” from Cumberland to the Ohio River to be used “in making said road between Cumberland in the state of Maryland, and Brownsville in the state of Pennsylvania, commencing at Cumberland.” The new law specified that the appropriated funding was to “be paid out of the fund reserved for laying out and making roads to the state of Ohio” in the Enabling Act of 1802.

Through the rest of the decade, Congress considered bills appropriating funds for the Cumberland Road without controversy. Bills appropriating funds included:

Act of March 3, 1811 -	\$ 50,000
Act of May 6, 1812 -	\$ 30,000
Act of March 3, 1813 -	\$140,000
Act of February 14, 1815 -	\$100,000
Act of April 16, 1816 -	\$300,000
Act of March 3, 1819 -	\$535,000

Finally, in 1811, 5 years after President Jefferson signed the Act of March 29, 1806, Shriver was ready to move. After advertising for bids on the first section, Shriver submitted the contracts to Secretary Gallatin for approval:

Henry McKinley agreed to build the first two miles at \$21.25 a perch, or 24  $\frac{3}{4}$  cubic feet. The second section of two miles was let to C. Randel and W. S. Gather at \$14.50 a percent. To James Cochran, on April 16, 1811, went the third, fourth, fifth, and sixth sections at prices ranging from \$12.00 to \$22.50 a perch.

The Secretary replied on April 23, 1811:

Mr. Cochran has signed his contract and bonds for the third and fourth sections of the road at the price agreed on, that is to say, at the rate of twenty-two dollars and fifty cents per rod for the third section, and of sixteen dollars and fifty cents per rod for the fourth section.

I now enclose the contracts and bonds for the first and second sections; that for the first in the name of Henry McKinley, and at the rate of twenty-one dollars and twenty-five cents per rod. The proposal of Mr. Reade was at the rate of thirteen dollars for a road covered with a stratum of stones twelve inches thick, all the stones to pass through a three-inch ring. He did not stay here or return here to complete the business and was not present when the road was altered to a stratum of stones fifteen inches thick. The same additional price, viz: one dollar and a half per rod, is allowed him for that alteration which was by agreement given to all the other contractors, making fourteen dollars and a half as set down in the contract, instead of thirteen. The contracts and bonds are in every respect (the names of sections and difference of price only excepted) verbatim the same as both those signed by Mr. Cochran, and they were as you will perceive all executed by me and signed by the President. After they shall have been signed by the contractors respectively, they will each keep a copy of their own contracts, and you will return the other copy, together with the bond (both being signed by the contractors respectively) to this office.

If either of the contractors should for any reason whatever refuse to sign the contract, you will return the same to this office, notify the person thus refusing that he is not considered as a contractor, forbid his doing any work, and immediately advertise in Cumberland that you will receive proposals for making the section of the road thus not contracted for. You will afterward transmit the proposals which may accordingly be made.

I also enclose a copy of the contracts for your own use in order that you may in every case be able to secure the additions agreed on.

Secretary Gallatin added a note that, "The dates were the only blanks left in the contracts and bonds and must be filled at the time of signing, by the contractors."

Shriver informed Secretary Gallatin on April 22, 1811, of a planned alteration in the first section of the road. The Secretary replied on April 30:

Your letter of the 22d inst. has been received. The President has confirmed the alteration in the first section of the road. It will be proper to have a short endorsement to that effect entered on the contract with Mr. McKinley, and signed by him and yourself.

You are authorized to contract for the bridges and mason work on the terms mentioned in your letter, with the exception of the bridges across Clinton's Fork of Braddock Run, which may perhaps be avoided by the alteration which you contemplate, and which, if necessary, we may, perhaps, considering other expenses, be obliged to contract of cheaper materials. It is left to your discretion to contract for the other mason work as above stated, either with Mr. Kinkead or with the road contractors.

If you shall find it necessary to employ a temporary assistant, you are authorized to do it, provided he shall be employed and paid only when actually necessary. I should think that one dollar and twenty-five, or at most fifty cents, a day, would in that part of the country be ample compensation.

Respecting side walls no decisive opinion can be given until you shall have matured your ideas on the subject, and formed some estimate of the extent to which they must be adopted and of the expense. [As reprinted in Searight]

On May 8, 1811, Shriver let three contracts covering the first 10 miles of the road from Cumberland.

On January 14, 1812, Shriver wrote to the Secretary with a summary of the work completed thus far:

The leveling and shaping the bed of the road is complete (with a few exceptions) for about five miles, the stone for the pavement laid on a greater part thereof, and about four miles broken so as to be nearly complete. Such being the present state of the work, the probability is, that the ten miles will be completed within the time limited by contract, (the first of August next.)

The expense of mason work, bridging, lime, &c. cannot, at present, be exactly ascertained, but is expected, when added to the contracts, will make the entire cost of these ten miles, about \$75,000.

Should it be finally determined to roll the road, and gravel or sand it, the cost will be in addition to the above amount; rolling about \$30 per mile; gravelling or sanding (where either of those articles can be conveniently had) will be about one dollar per perch, in length of the road.

The whole of my attention being absolutely required on the work in hand, I have not been enabled to acquire sufficient information of the next ten miles, so as to speak with precision, but have viewed the location, and made such an estimate as circumstances would admit, by which it appears that the expense will be nearly the same.

No alteration or addition to the law has suggested itself as absolutely necessary, except some provision for keeping the road in repair, after it shall be received from the contractors. For, on turnpikes which pass over a more level surface, that have time to settle and become firm, and on which constant repairs are made, it has, notwithstanding, been found difficult, at certain seasons of the year, to keep them in good order. The present road passing over ground so broken, subject to the wash of large quantities of water, discharged from steep valleys adjoining, as well as the operations of the seasons upon it in its green and unsettled state, and the great use (which from its local situation) will immediately be made of it, will, when taken into view together, present to the mind the state in which it will very soon be, if left to the free and unrestrained use of all without attention and without report.

I would respectfully suggest the propriety of demanding such a toll as will be sufficient to keep it in good and perfect order. [Here and below, correspondence quoted in Searight or ASP, Miscellaneous, Doc. No. 311]

Shriver's call for travelers to pay a toll for maintenance would not be possible at the time.

Jordan summarized what the contractors faced as they began work:

Contract terms were based on the provisions of the Act of 1806. First, a strip 66 feet wide was cleared of all trees and underbrush. That meant weeks of work in heavily timbered sections. Laborers, paid by the day, did not hurry. Roots were grubbed and grunted out. Oxen and horses strained at chains fastened to huge stumps. After grubbing, the roadbed was leveled 30 feet in width. This was a pick-and-shovel job and took the energies of as many unskilled workers as a contractor could afford. But even then the job was not completed. Hills were cut down, and all surplus earth, rock and stones hauled away. Once again oxen strained and heaved. Hollows and valleys and abutments of bridges and culvert were filled.

Side slopes could not exceed 30 degrees. Surveyors quarreled with contractors over angles and degrees. Most of the contractors were not engineers and could not understand what difference a degree or two would mean to a horse pulling a load over the finished road. Many slopes were readjusted several times until surveyors were satisfied. That took days and cost money. A ditch was dug on either side of the highway to carry off surplus water.

By this time months had passed and still not a single section was completed. Twenty feet of the road's surface was covered with stones ranging from 12 inches in depth to 18 inches.

The stones were arranged for a rise of 18 inches deep in the middle and 12 feet at the sides to encourage drainage of rain water into the ditches. The top 6 inches were to consist of stones broken not to exceed 3 inches in diameter. Stones in the lower portion of the surface were not to exceed 7 inches.

Over all was strewed stone broken small enough to pass through a three-inch ring. Base stone was broken to go through a seven-inch ring. Gangs of men sat patiently, their legs spread out and their hands bandaged, hammering rock to proper size. They damned the specifications while banging their hands.

Broken stone road surfaces were common, with considerable progress made in Europe on technique. The pavements in this case did not employ the system conceived by John Loudon McAdams, whose method would become the most successful broken-stone system for roads in the 19<sup>th</sup> century. His influential book, *Remarks on the Present System of Road-Making* would not be published until 1816. (The United States did not have what became known as a macadam pavement until 1822-23 when a recently chartered turnpike between Hagerstown and Boonsboro, Maryland, used the technique. The second use of McAdams' principles occurred in 1825-30 with the paving of 73 miles of the Cumberland/National Road between Wheeling and Zanesville, Ohio. [*Historic American Roads: From Frontier Trails to Superhighways*])

Jordan continued:

As gangs of road workers cut and grubbed and ditched and surfaced, others hauled rock for bridges. Carpenters worked on superstructures, and masons fitted rock into foundations. Approaches were graded and heavy logs wedged in to prevent slipping.

In a report to President Madison on January 25, 1812, Secretary Gallatin explained:

In those contracts, the bridges are not included, and all the smaller ones have been contracted for at the rate of \$1.50 to \$2 per perch of mason's work.

With the additional work "not embraced in the contracts" and Shriver's salary, Gallatin estimated that the 10 miles would cost between \$75,000 and \$80,000.

He added:

Another observation of the superintendent, which deserves particular attention, relates to the necessity of levying tolls sufficient to keep the road in repair: but this can be done only under the authority of the State of Maryland.

From the nature of the contracts, and from the manner in which the work has been executed, it will, it is believed, satisfactorily appear that the chain of mountains, which divides the Atlantic from the West States, offers no real impediment to an easy communication, and that roads may generally be made as perfect, as convenient, and on the same terms, across those mountains, as in any other part of the Union. [ASP, Doc. No. 311]

President Madison sent the report to the Senate and House of Representatives on February 1, 1812.

Shriver provided his annual report to Secretary Gallatin on December 21, 1812. By then, the contracts for the first 10 miles had been completed “with but few exceptions, those of little importance, and such as are common on work of this kind.” He added:

The contractors are paid, except a small sum reserved from each, sufficient to ensure the final completion next spring. The road is open, and used daily by travelers.

He had let a second group of contracts covering nearly 11 miles. The contractors “have made considerable progress, and are now at work, each with a considerable number of hands, and there is every probability the contracts will be completed within the time provided,” namely November 1813. His previous estimate that the first 21 miles would cost \$150,000 would prove valid “embracing every expense, probably a small surplus of from three to five thousand dollars.”

As for the next 10 miles, Shriver advised Secretary Gallatin that the cost would be about the same as on the previous mileage, except that “a small sum in addition may be required, on account of several large bridges which will be wanting.” He continued:

If it be desirable that the work should progress with more expedition, ten miles or more might be let the ensuing spring; it would be well, at all events, to contract for four or five miles more on account of building a bridge across the Little Youghiogany river, as it must be a considerable building, and, to lessen expense, it would be necessary to take advantage of low-water, and the spring season, for procuring sawed timber, as there is but one sawmill convenient, and that during three-fourths of the year unemployed for want of water.

(Throughout the reports and debates, the spelling of the Youghiogheny River varied, and is presented here as in the original.)

Regarding maintenance of the road, he added:

It is expected the Legislature of this State will pass a law, authorizing the President to receive toll, for the purpose of repairing the road, and likewise against abuses which are common on all roads of the kind, to prevent which laws have been found necessary. [ASP, Doc. No. 339]

Because work on the road was still confined to Maryland, he was referring to the Maryland General Assembly.

Secretary Gallatin wrote to Shriver on April 17, 1813, about locating the next segments of the road:

The principal object in finally fixing the course of the road is its permanency and durability without the necessity of perpetual and expensive repairs. To select, therefore, the best ground which that mountainous country will afford, avoiding, as far as practicable, cutting along the side of steep and long hills, always exposed to be washed away, appears to be one of first importance. The other considerations, subordinate to the selection of the best ground, but to be also attended to, are, the expense of making the road, the shortness of the distance and the accommodation (by intersecting lateral roads) of important settlements not on the line of the road.

As an erroneous location would be an irreparable evil, it is better that the contracts for the ensuing twenty miles should be delayed, than to make them before you have had time to take a complete view of the ground. Examine it well before you decide and make your first report. This is more important because it is probable that I will be absent when that report is made, and that it will be decisive, as the acting secretary, to whom the subject will be new and the localities unknown, cannot have time to investigate it critically, and will probably adopt it on your responsibility. If a decisive advantage should arise from an alteration in the last sections already contracted for, and the contractors assent to it, you may, in your report, propose such an alteration. You are authorized for the purpose of facilitating your review of the road, without neglecting the duties of general superintendence to employ John S. Shriver, or some other able assistant, with a reasonable compensation. You have not stated what this should be, but it is presumed that you will not, in that respect, exceed what is necessary for obtaining the services of a well qualified person. You are authorized to draw for a further sum of twenty thousand dollars; whenever this is nearly exhausted you will apply for a new credit.

With respect to details, they are left at your discretion. You are sensible of the great confidence placed in your abilities and integrity, and I am sure you will not disappoint our expectations. [Reprinted in Searight]

Secretary Gallatin wrote to Shriver again just a few days later. The letter dated April 20, 2013, informed Shriver:

You are authorized to employ a surveyor to view the most proper road from Brownsville to Washington in Pennsylvania, and thence to examine the routes to Charlestown, Steubenville, mouth of Short Creek and Wheeling, and report a correct statement of distance and ground on each. If the county road as now established from Brownsville to Washington is not objectionable, it would be

eligible to prefer it to any other which might be substituted. The surveyor thus employed will meet with every facility by applying to the gentlemen at Washington who this alteration in the western road much at heart. [Reprinted in Searight]

A year later, on December 31, 1813, Shriver's annual report began:

The ten miles of the western road is finally completed. The banks and sideways are dressed, and the whole of the accounts settled and paid.

His expectations for the second contract letting had not been achieved:

The second letting, eleven miles, has not been finished, as was expected and provided for by contract the 1st of November last; four miles thereof are not used by travelers, and require but little dressing to the sideways to be complete, four more are nearly so, and it is confidently expected the whole will be finished next summer.

He had let contracts for the next 18 miles, which would bring the road within 21 miles of Uniontown. The contracts were to be completed by November 1, 1814, but little work had been accomplished thus far:

Judging from the little progress made, it will not be finished within that time; but as the contractors are making great exertions to procure laborers, and a number of persons, from the evident utility of the work, have become anxious for its speedy progress, and are giving their aid to procure hands, and the contractors having in view to employ slaves, it is quite possible this letting may be completed within time.

Part of the problem was the country had gone to war, again, with Great Britain in June of 1812. As Professor McCraw summarized, "Gallatin's dream for internal improvements depended on money that he thought would be ready at hand but instead went toward national defense, particularly the War of 1812."

Shriver reported, as in the past, on the maintenance problem:

Provisions for keeping the road in repair, and for the prevention of abuses to the work, similar to that of other turnpikes, are every day becoming more necessary. [ASP, Doc. No. 356]

On January 24, 1814, Senator Samuel Smith of Maryland reported on behalf of the Senate committee that had received a report from the Secretary of the Treasury containing a statement on the Cumberland Road. Senator Smith stated that Congress had "appropriated in advance of the fund of two per cent., at different times, on the net proceeds of the sales of land within the State of Ohio, the sum of \$287,320.25, and have paid, in part, the sum of \$194,631.80." At the time, the two-percent fund had raised

\$107,004.48. “So that the amount of the advance, actually made by the Treasury is only \$87,627.32.”

As reflected in Shriver’s latest report, “the making of the road is progressing as fast as could reasonably be expected; that the whole of the work contracted for is thirty-nine miles, of which twenty-eight miles may be considered as nearly finished; that a stone bridge of eighty feet span over the Little Youghiogany river is nearly completed”:

It also appears that the thirty-nine miles contracted for bring the road to the Big Youghiogany; from thence to where it will intersect the old road is eleven miles, which your committee think ought to be completed.

The committee also reported on the status of the road that Maryland was building to connect Baltimore with Cumberland:

The committee find that a turnpike road from Baltimore, extending sixty miles in a direct line towards Cumberland, has been completed, and that the banks of Maryland have, for valuable considerations, agreed to construct a turnpike road from Conecogee creek to Cumberland; so that there is a well founded expectation that a turnpike road from Baltimore to Cumberland will be completed before the road from thence to the Ohio can be finished.

(Maryland’s banks agreed to buy stock in the Cumberland Turnpike Company in exchange for extension of their charters to 1835.)

The Senate report concluded:

From this view of the subject the committee are of opinion that the fund appropriated for the making the said road [sic] is fully adequate to the object.

The effect of an appropriation, during the present session of Congress, for any portion of this work, will be only to authorize the Treasury to make contracts during the present year for carrying it on. Very little, if any money will be drawn from the Treasury, except for completing contracts already made, until the year 1816.

The committee are of opinion that an appropriation ought to be made to enable the Treasury to make contracts to carry the new road to where it will intersect the road now traveled on, and sufficient for the constructing of a stone bridge over the Big Youghiogany, for which purpose they submit a bill. [ASP, Doc. No. 357]

Congress did not appropriate funds for the Cumberland Road in 1814.

On December 19, 1814, Shriver reported on his work to Secretary of the Treasury Alexander J. Dallas. (Gallatin left office in February 1814 to participate in negotiations to end the war.) Shriver reported that the four sections covered by the second letting of

11 miles were “now generally used by the traveller. The pavement is complete, except from a half to three-fourths of a mile, and the side roads are much in the same state of forwardness.” The contracts would have been “completed early this fall but for the very uncommon rainy and wet summer we have had, which has impeded the progress of the work very considerably.”

The third letting, comprising about 18 miles, was divided into several contracts:

On the two first, ninth, and tenth, containing about four and three quarter miles, little progress is made. On the 11th, about one and three quarter miles, nearly the whole of the levelling is done, and the greater part stoned. The twelfth, thirteenth, and fourteenth sections, containing about five and three quarters miles, are in a state of great forwardness, nearly the whole of the levelling done, and at least two-thirds of the paving is completed. On the remaining three sections, containing about six miles, but little is done.

With the country still in wartime conditions, he summarized:

Adding the whole of the work done together, it may be considered about twenty-eight miles, and eleven yet to be made, which will complete the whole of the work contracted for. The eleven miles are unequally divided between three contractors; one of them, it is expected, will complete his work early next spring; another, early in the fall, and the third may not complete his before late next season. With a view to show that some of the contractors will be thrown idle, if more work is not let early next season, I have been induced to be thus particular in stating the situation of the work at present, and the probable state it will be in early next summer.

The slowness of the contractors had caused another problem:

I had nearly completed a location from the end of the work contracted for, to Uniontown, about twenty-one miles, and should have reported the work; but as the contractors did not proceed with that speed I expected, I thought it prudent to defer this report, and take time to re-examine the ground. As much time, pains, and care is necessary in fixing on the best ground, and shortest distance through this mountainous country, I will have the notes ready early next spring, when more work can be let, if thought advisable; we shall cross the present traveled road about eleven miles from the end of the present work. This distance would give us another year's work, or we might contract to the west foot of Laurel Hill, about eighteen miles; the old road, and the location, will not be more than thirty to forty perches apart at this point, and the ground quite level and firm between them.

The work thus far put the road on the east bank of the Big Youghiogony river, “which must be bridged, and ought to be commenced as early next season as the weather and the water will permit.” Shriver had delayed work on the bridge until he could “ascertain with

what success we should succeed in building the bridge of eighty feet span across the little Youghiogeny river, which we have now so completed, that no doubt exists as to our ability to build bridges of any size that may be thought necessary on this road.”

Peyton described the bridge across the little Youghiogeny River:

The first of the monumental stone bridges on the National Road was constructed between 1814 and 1817. Built by the firm of Abraham Kerns and John Byson under the supervision of Superintendent Shriver, it is known as the Little Crossing Bridge spanning the Casselman (or Little Youghiogeny) River in Maryland. Its arch cleared 80 feet and was the nation’s largest ever constructed up to that time; the entire bridge measures over 300 feet long and 50 feet high. It still stands just east of Grantsville.

Shriver estimated that the bridge across the Big Youghiogeny River would cost about \$40,000. A wood bridge, he indicated, would cost half that, “but, as it is probable all the bridges to the Monongahela will be of stone, and permanently built, I would advise building this bridge likewise of stone, unless it should be found that the necessary materials cannot be had.”

With future appropriations in mind, Shriver suggested “calculating the road at about \$7,500 per mile for that done, and that yet to be made. This sum, it is expected, will include every expense on an average, when nothing but common bridging is required.”

He added his customary closing:

No difficulty, as yet, presented itself requiring legislative aid, except for keeping the road in repair, and to prevent abuses to the work by mischievous persons, and for which immediate provision ought to be made. [ASP, Doc. No. 379]

Senator Smith, on behalf of his committee, reported to the Senate on January 24, 1815, that expenditures to date totaled \$306,500. Expenditures covered \$292,500 for 39 miles of road at \$7,500 per mile, plus \$40,000 for the 80-foot span across the Little Youghiogeny River.

Thus far, Congress had “appropriated in advance of the fund of two per cent” a total of \$287,320.25, and had paid in part the sum of \$194,631.80.” The two-percent fund had thus far yielded \$107,000.48. Thus, the Treasury Department had advanced \$87,627.32 to be reimbursed as two-percent funds came in from the Land Office.

To build the road 11 miles beyond the Big Youghiogeny, where it would intersect the road now traveled to the Ohio River, would cost \$82,500, or \$7,500 per mile. The report indicated this goal “will be probably another year’s work.”

The report summarized the status of construction:

It appears that commissioners were appointed, and that the road has been laid out by them agreeably to their instructions; and it also appears by a letter of Mr. David Shriver, (the superintendent of the road) contained in the report of the Secretary of the Treasury, that the making of the said road is progressing as fast as could reasonably be expected; that the whole of the work contracted for is thirty-nine miles, of which twenty-eight may be considered as nearly finished; that a stone bridge of eighty feet span over the Little Youghiogeny river is nearly completed

Senator Smith concluded the report:

From this view of the subject the committee are of opinion that the fund appropriated for the making the said road is fully adequate to the object.

The effect of an appropriation during the present session of Congress, for any portion of this work, will be only to authorize the Treasury to make contracts during the present year for carrying it on. Very little, if any, money will be drawn from the Treasury, except for completing the contracts already made, until the year 1816.

The committee are of opinion that an appropriation ought to be made to enable the Treasury to make contracts to carry the new road to where it will intersect the road now travelled on, and sufficient for the constructing of a stone bridge over the Big Youghiogeny; for which purpose they submit a bill. [ASP, Doc. 381]

On February 2, 1815 Secretary Dallas communicated a similar accounting, dated January 26, 1815, to Representative John G. Jackson of Virginia, chairman of the Committee on the Cumberland Road.

At the end of 1814, the balance of unexpended appropriations totaled \$92,688.45. Contracts awarded, to carry the road 39 miles from Cumberland to the Big Youghiogeny River, would require all of the unexpended funds plus \$20,000:

This deficiency of appropriation for the contracts already made, arises from the sum of \$22,679.75 having been carried to the surplus fund at the end of the year 1813, the expenditures prior to that time not having been as rapid as was expected, and this sum having then remained appropriated and unexpended more than two years. As the contracts now in a state of execution will, perhaps, be completed in the course of the present year, an appropriation of the sum of twenty thousand dollars will be necessary to enable the Treasury to make the payments already stipulated.

Beyond that amount for existing contracts, whether new contracts may be approved in 2015 would depend on additional appropriations:

[It] will rest with Congress to decide, by making a further appropriation or not, whether the work shall be prosecuted or abandoned. If it shall be decided that the work is to go on, the extent to which it is the intention of Congress to authorize it now to be undertaken, or contracted for, will be determined by the amount of the appropriation which shall be made.

Secretary Dallas estimated that the bridge across the Big Youghiogeny River would cost \$20,000 if built of wood, but to ensure durability, a stone bridge costing \$40,000 would be preferable. To extend the road 11 miles beyond the river to “a convenient resting place” would require a further appropriation of \$82,500. Carrying the road 7 miles further, to the western foot of Laurel Hill, would require \$52,500. A further appropriation of \$22,500 would provide for extension of the road 3 miles beyond Laurel Hill to Uniontown.

The Secretary concluded his report by addressing one of Shriver’s regular concerns:

The “provisions necessary for keeping the road in repair, and to prevent abuses to the work by mischievous persons,” are such as it is believed Congress are not authorized to make. They can only proceed from the Legislatures of the States through which the road passes; and consist of an authority for the erection of toll-gates, and the collection of a toll sufficient to defray the expenses of repairs, and the infliction of penalties upon persons who shall cut, break up, or otherwise destroy or injure the road. That part of the road already completed is within the State of Maryland. The attempts hitherto made to obtain the requisite provisions upon these points from the Legislature of that State, have not succeeded; but they will be repeated, with the hope of ultimately proving successful. [ASP, Doc. No. 384]

On February 14, 1815, President Madison signed “An Act in addition to the act to regulate the laying out and making a road from Cumberland, in the state of Maryland, to the state of Ohio.” It appropriated \$100,000 from the general Treasury for construction of the road to Brownsville. The funds were to be repaid from the two-percent fund on public land sales.

On December 30, 1816, Shriver reported to Secretary Dallas on construction progress as well as the problems he had encountered. Contracts for 23 miles had been finished. Another 8 miles of the road were “so near completion as to have admitted travellers upon it for some time past.” About 4 and a half miles were “in a state of considerable forwardness,” while work was “progressing” on another 3 and half miles. Mason work on the road had been completed to the Big Youghiogeny River, with “the accounts adjusted and paid.” Based on progress thus far, “I confidently believe the whole of the turnpike east of the Big Youghiogeny river will be finished, if it be not sooner” within the contracted time.

Work on the big bridge had begun:

[The contractors] have obtained a rock foundation for the west abutment, about fifteen to eighteen feet below the surface of low water, and have raised the abutment to the ordinary height of the water, in the river. This is the chief part of what has been done, except providing materials for recommencing the ensuing season.

As Shriver knew, completing a road does not mean work on the road is done:

The *repairs* made the past summer upon the first six sections (comprising about sixteen miles) have cost \$1,200. These repairs have rendered the road nearly as perfect as when first made. Early next summer a considerable extent of road will be received from the contractors, when the expenses of repairs will be much increased, and when it appears to me essential that some regular plan be adopted, as well with a view of keeping the road in perfect order, as to diminish the probable expenditures by the timely application of a remedy.

He was seeking a legislative solution that would address a concern that later highway officials would acknowledge from that day to the present, namely that the longer repairs are delayed, the more they cost when finally made.

Early on, officials had decided to use the contract method of construction. Shriver used his annual report to respond to criticism of the work:

If this great national undertaking does not progress with a rapidity equal to the wishes of Government or the anxiety of individuals, the cause may be easily traced to their primitive sources, without involving the crimination of any one. The two most prominent of these I shall proceed to name – the inefficiency of the existing mode of letting out contracts, and the very inadequate supply of hands. To the last of these causes is mainly chargeable the tardy completion of that which is now finished, and the incomplete state of some of those sections which are of the old letting. A road thus made by contract may and must frequently get into the hands of men without adequate means, but with every disposition to fulfil their engagements; they are desirous of doing the work, underbid others, and perhaps contract for what will be an eventual loss to them. The consequences are, the retarding the work by the failure of the contractor; the hands lose their wages, and are thus deterred from labor, and in a manner driven from the road. Then, again, contractors, in order to obtain the work, are obliged to do it so low that they cannot offer any advance of price to the laborers, be the demand for them ever so pressing. Thus, men who prefer lighter labor, also prefer the labor of the farm; consequently, the work drags on heavily, and the contractors fail to perform their engagements in the specified time.

I am sensibly alive to the importance of a speedy completion of the road, but have no hope of accomplishing this object under the present system of contracting. If rapidity be desired by Government, a plan more likely to produce that effect, in my estimation, would be to abandon the mode of *separate contracts* altogether,

and substitute *day labor*. In this way, rapidity of execution would be combined with faithfulness in performance. All inducements to fraud or deception would be done away; and, from my experience in very extensive *repairs* on other work, more speed, and with considerable saving of time, and perhaps of money. The effect of the organization of the whole number of laborers under one efficient head, aided and assisted by the subalterns, may readily be conceived, by making the comparison with a properly organized military force. By this organization, the vigorous and salutary hand of public authority is immediately felt in the security for the prompt payment of hands, and the certain and speedy means of supplying any want of labor by increasing the *per diem*. An increase of twenty-five cents per day, or at most fifty cents, I suppose would produce as many men as we could employ. This price, and the security of the Government for its payment, would give us a choice of all the spare labor of the adjacent country. These are mere suggestions of my own, submitted for your consideration, if the idea is properly embraced by my expression, and you approve of the alteration.

Shriver estimated that the next letting, likely in early spring 1816, covering about 13 miles would take the road to Uniontown. He estimated \$90,000 would be sufficient to complete the additional mileage.

He closed with the usual complaint and a look to the future:

Frequent abuses take place upon the road, such as throwing down the walls, digging down the banks, felling trees, dragging – along it, locking of wagon wheels, placing fences within the sixty-six feet, and many other improper acts are done; to prevent which some means ought to be speedily provided.

Should it be deemed advisable to make the location near the Ohio, the wish of Congress ought to be expressed. If the road is to be extended before the river Ohio, the ground on the other side ought to be viewed, and the bearing known, before the location on this side is made.

President Madison transmitted Secretary Dallas's report, including Shriver's report, to Congress on March 12, 1816. Secretary Dallas's letter, dated March 1, 1816, stated:

The Secretary stated that he had "submitted to the President propositions for accelerating the completion of this great national work," but did not indicate what the ideas were. He indicated that through the Act of February 14, 1815, Congress had appropriated a cumulative total of \$410,000 for the work. Expenditures through February 27, 1816, totaled \$285,786.60, leaving an unexpended balance of appropriated funds of \$101,533.65. He estimated the cost of completing the road to Wheeling to be \$300,000. [ASP, Doc. No. 403]

## **The Limits of Constitutional Authority**

Representative Jackson communicated a report to the House of Representatives on March 23, 1816, following up on Secretary Dallas's letter and Shriver's report.

After summarizing Shriver's expectations of cost, Representative Jackson continued:

It also appears, by the letter of the superintendent of the road to the Secretary of the Treasury, that frequent abuses are committed on the road, such as throwing down the walls, digging away the banks, &c.; and he suggests that measures ought to be promptly adopted to prevent and to punish these outrages.

In short, freight wagons ripped up the shoulders by descending the steep hills with wheels locked while local inhabitants fenced parts of the right-of-way adjacent to their property, dug into the banks, disturbed the surface by dragging logs over the road, and stole broken stone from the roadbed for their own use.

His committee considered two points of inquiry, namely, "the necessity of protecting the work already completed against lawless violence; and, secondly, the propriety of making an ample appropriation for advancing its progress to completion, in order the benefits it promises may soon be realized."

He did not have to point out that the recent war made the necessity of easy connection with the western territories and States even more important. England had never lived up to its peace treaty commitment after the Revolutionary War to cease agitation in the western communities. Although the War of 1812 resulted mainly from England's capture of American ships and impressment of its sailors, a successful conclusion of the war provided the impetus for building stronger links with the western communities that were pulled to trade with Canada in the north, and Spain in the south. Those ties would have to be strengthened by more and better links between the Atlantic and Western States.

Secretary Dallas, in his 1816 letter, had questioned whether Congress had the authority under the Constitution to pass laws to punish offenders. Representative Jackson's report stated, "the committee do not perceive any defect of jurisdiction":

Without controverting the opinion that the constitution does not, in virtue of any grant of power conferred by that instrument, authorize Congress to open roads and canals in any State, it seems to be admitted by all that, if a compact be made with a State, for which the nation receives an equivalent, as in this case, whereby it is agreed that a road shall be opened by the Government of the Union, and the States through which the road passes grant the right to make it, the performance of such compact is not in contravention of that construction, as it is believed that the exercise of such power has, in no instance, been doubted, notwithstanding the repeated acts of legislation for a period of thirteen years. The permission of the States having been given, it follows, as a necessary consequence, that all the powers obviously necessary and proper to carry the grant into complete effect,

and preserve it inviolable, have been conferred also. A different construction would render the consent a nullity, and exempt from punishment as well the individuals who resisted the execution of the work, as those that afterwards destroyed it.

The “necessary and proper” phrase, cited by Representative Jackson, was part of the final section of Article I, Section 8, outlining the enumerated powers:

To make all laws which shall be necessary and proper for carrying into execution the enumerated powers, and all powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

This “necessary and proper” phrase had troubled some participants in the State ratification conventions who thought it could be a license for congressional overreach. In Federalist Paper No. 33, Alexander Hamilton acknowledged the concerns about the phrase and another, indicating that the laws and treaties made under the authority of the Constitution “shall be the supreme law of the land”:

These two clauses have been the source of much virulent invective and petulant declamation against the proposed Constitution. They have been held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, not sacred not profane; and yet, strange as it may appear, after all this clamor, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same if these clauses were entirely obliterated as if they were repeated in every article.

The phrase, he continued, qualified legislative power, which was “but a power of making laws.” The legislature, therefore, was given the power to “pass all laws *necessary and proper* to carry it into effect.” It was, perhaps, a “tautology or redundancy” that was included “for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a disposition to curtail and evade the legitimate authorities of the Union.” He added that “the wisdom of the precaution is evident from the cry which had been raised against it.”

Given the phrase, Representative Jackson concluded, the general government had a right to punish offenders “without the passage of any law, by indictment or information in the courts of the United States, or by enacting statutory provisions fixing the penalties.” While asserting the authority, he acknowledged that the distances involved and the absence of Federal courts in the vicinity argued against passage of any law on the subject.

As for cost, Representative Jackson reported that the two-percent fund intended to pay for the road “is growing more productive every year, and will be eventually adequate to defray the expenses of completing the road.”

The committee did not feel a need to elaborate on “the moral, political, and physical advantages of this road to the nation,” which Congress had in mind when it authorized its construction, but reported:

If Congress persevere with becoming spirit in this great public work, we shall soon see one of the best roads in the world over the chains of mountains which separate the western from the Atlantic waters, and which, but a few years since, were supposed to present insurmountable obstacles to a safe and easy intercourse.

The committee had been pleased to learn that Maryland was making good progress on its road from Baltimore west to Cumberland, and “in all probability it will be completed before the national road from that point to the Ohio is.”

As for the Cumberland Road, “it is alike a source of surprise and regret to the committee that the work has been suffered, with the ample means possessed by the Government, to linger for a period of more than nine years”:

A vigorous prosecution of it now can alone, in any degree, repair the past neglect; and, in the estimation of the committee, no subject is more deserving the favor of Congress. They are aware of the opinion entertained by some that the western country already holds out sufficient lures to the inhabitants of the Atlantic States to migrate thither, and that it is impolitic to contribute to their increase, which will be the effect, as is supposed, of giving facilities to such removal. The error of this reasoning is proved by the infallible test of experience applied to the past and present population of the States and Territories west of the mountains. The emigrant removes with intention to reside for life in his new habitation; and, when he determines upon such removal, he bestows but little attention upon the inquiry whether the road on which he has to travel is a very good one, or in the condition of the principal State roads now used. This policy, therefore, although it cannot prevent him from going to the West, may, and, if persisted in, soon will, materially affect his future connexions with the Eastern country in all the ramifications of a mutually profitable trade and intercourse. The natural advantages of a water over a land communication for the purposes of transporting all articles of merchandise will not be denied by any; and trade will always seek that channel which affords it the fairest prospects of realizing its legitimate profits.

A “fair competition” between land and water communications could “prevent the monopoly of either.” The use of steamboats on the Mississippi and Ohio Rivers was “now in its infancy; its success is no longer doubtful, and it is increasing with a rapidity correspondent to that success.” The report cited an example:

During the last years the sugar and cotton of Louisiana were brought up by the water to Pittsburg, and, in consequence of the extraordinary demand, were transported thence in wagons to the Atlantic cities, and sold at prices affording a profit to the owner.

As steamship traffic grew, the western States and territories will no longer look to imported goods from the Atlantic coast's commercial centers, such as Baltimore, New York, and Philadelphia but to New Orleans "unless the roads across the mountains be much improved." The Atlantic coast cities will be diminished unless "the portage between them can be diminished to an inconsiderable distance, and roads passing over the entire route will present an option to the merchants as to the mode of transportation."

He emphasized the need for this link:

Their connexions have been formed for a considerable period. These have begotten confidence and a mutuality of interests which bind the parties to a future intercourse, and which will not be changed unless for a positive and unequivocal benefit.

But the advantages of an intimate commercial connexion, though addressed to the interest of the parties, are not the most important. Good roads have an influence over physical impossibilities. By diminishing the natural impediments, they bring places and their inhabitants nearer to each other. They increase the value of lands and the fruits of the earth in remote situations, and, by enlarging the sphere of supply, prevent those sudden fluctuations of price alike prejudicial to the grower and consumer. They promote a free intercourse among the citizens of remote places, by which unfounded prejudices and animosities are dissipated, local and sectional feelings are destroyed, and a nationality of character, so desirable to be encouraged, is universally inculcated.

The road which is the subject of the particular inquiry of the committee has additional recommendations. It leads as far as Washington, Pennsylvania, in a direct line from the seat of Government to the important frontier of the United States on the Upper Lakes; and if, as the committee suppose, it be the true policy of the nation to have a direct military communication for the entire distance, a road can be extended from Washington, and, passing as it will through a large extent of public lands, inducements will be held out to the Western settlers to purchase them, and by a rapid increase of the population, the necessity of keeping up a considerable military force in that quarter will be diminished, if not entirely superseded.

The committee concluded by recommending that Congress appropriate \$300,000, the amount Secretary Dallas had indicated would allow for completion of the road. [ASP, Doc. 406]

On April 1, with the House considering appropriations for government operation, Representative Jackson moved to insert the clause appropriating \$300,000 for the Cumberland Road:

For making the road from Cumberland, in the state of Maryland, to the state of Ohio, three hundred thousand dollars, to be repaid out of the fund reserved for laying out and making roads to the state of Ohio . . . .

As the *Annals* explained, Representative William Gaston of North Carolina objected to the clause because “it was improper to introduce into an ordinary bill an appropriation for an object which had not been authorized by a previous act.” In short, the Committee of Ways and Means required a separate law authorizing funds before the funds could be appropriated. Representative Gaston cited the committee’s recent action on appropriations to protect the lighthouse at Little Gull Island off Long Island Sound at New London, Connecticut, from the encroachments of the sea. Despite knowing the importance of the lighthouse, the committee had insisted on an authorization initiated by the Committee of Commerce and Manufactures. “Mr. G. said the checks upon the disbursement of the Government were already few enough, and they ought not to be further diminished by this House.”

Representatives Jackson, Speaker of the House Henry Clay (Kentucky), John Randolph (Virginia), Samuel Smith (Maryland), Robert Wright (Maryland), and Richard H. Goldsborough (Maryland) supported the motion to add the funds. “The three gentlemen first named being particularly zealous in its support.” They argued that the appropriation was of interest to the western States “and more important to the people of every section of the country than any other item in the bill, if the Union of the States was to be, as all expected it to be, the means of public happiness, prosperity, and safety”:

That the appropriation was required from a fund already set apart for the work by solemn compact; that if this House could be called on to appropriate money to carry into effect a convention with a foreign Government, it could surely make an appropriation to execute a contract with the States, a double compact, too, it being between the General Government, and the States of Ohio, Pennsylvania, and Virginia, as they were all parties to it; that the appropriation was, furthermore, sanctioned by former laws directing the work to be prosecuted, and that nothing was wanting to fulfil the law but the present appropriation of money, for which there were several precedents; that the single State of Maryland had undertaken to complete, in five years, a road from Baltimore to the point at which the Cumberland road commenced, and that it would be derogatory to the character of the General Government to be outdone by a small State in a work of so much public utility and political consequence; a work authorized by repeated laws, and wanting an appropriation only from the fund already solemnly pledged to it, to carry it on rapidly, &c.

Those whose personal knowledge enabled them “to speak on the point” reported that the road thus far completed from Cumberland to Ohio “was the most excellent road which had ever been made in America.” Speaker Clay, who had used the road many times on his trips between Kentucky and Washington, added “that he had seen many turnpikes, as well in Europe as in this country, but had never travelled on so fine a road as the thirty miles of the Cumberland turnpike which were finished.”

These arguments worked as the Jackson motion “was finally agreed to, and the appropriation inserted.” On April 16, 1816, President Madison signed “An Act making appropriations for the support of government for the year one thousand eight hundred and sixteen.”

(A separate act, signed on April 27, appropriated \$30,000 to protect Little Gull Island.)

### **Reports on Roads and Canals**

President Madison’s eighth annual message on December 3, 1816, cited several “objects worthy of the American nation” for consideration by Congress, some of which he had recommended in earlier messages. One of them was:

And I particularly invite again their attention to the expediency of exercising their existing powers, and, where necessary, of resorting to the prescribed mode of enlarging them, in order to effectuate a comprehensive system of roads and canals, such as will have the effect of drawing more closely together every part of our country by promoting intercourse and improvements and by increasing the share of every part in the common stock of national prosperity.

By “the prescribed mode” of expanding congressional power, President Madison was referring to a constitutional amendment.

As usual, topics included in President Madison’s annual message to Congress were distributed to special committees for consideration.

On February 8, 1817, Representative Thomas Wilson of Pennsylvania reported to his colleagues regarding the President’s reference to roads and canals. Based on past congressional dialogue and action, “the facility of commercial and personal intercourse throughout the whole extent of the United States and its Territories is viewed by the committee . . . as an essential ingredient in the general economy of the nation, as well in relation to the pursuits of peace as to those of war, and also the perpetuation and integrity of the Republican Union.” The interior waters of the United States “furnish the ample and the only effectual means of such facility.” Although these waters were “essentially requisite and extensively useful in their original state, their usefulness would be indefinitely increased by improving and uniting their channels.”

Representative Wilson said that former Secretary Gallatin’s 1808 report on roads and canals confirmed the value of the country’s 10,000 miles of inland navigation, but added that the report “embraced all the outlines, together with much detail, of a general system of national improvement”:

The sum of \$20,000,000 was deemed sufficient to effect the works necessary to confer on the people of every section of the United States all the advantages of good roads and canals of which the country is susceptible. The annual application of \$2,000,000 would effect this great object in ten years, and which (it was added)

could be conveniently supplied from the existing revenues of the United States, leaving a sufficient surplus, in addition to the sum required for the permanent peace establishment and national debt, in the same period of ten years, to arm every man in the United States, to erect as many fortifications and batteries as could be manned, and, if thought eligible, to build a navy.

Representative Wilson pointed out that the Gallatin report attracted much attention at the time and probably would have been executed “long before this time had not extraordinary difficulties in our foreign relations, and consequent war with Great Britain, intervened.” Since the war, the focus of government had necessarily shifted to other objects, including an economic downturn. “But these causes of suspension having now ceased, it may reasonably be expected again to attract a due share of the public attention.”

He cited several canal projects, including plans for the Erie Canal, as examples of how the States appreciated the value of internal improvements:

There are equal or still stronger reasons to believe that individual and local enterprise would, with alacrity, share equally at least with the United States in improving the navigation of such correspondent Atlantic and western rivers as are best adapted for a connexion by portage roads across the mountains, in the construction of such roads, and of such other great leading road or roads as shall be established or approved by the National Government. The great progress already made without the aid of this Government in the construction and extension of permanent roads, as well as in Virginia and Maryland as in Pennsylvania, New Jersey, New York, and all the more eastern States, is conclusive evidence of a disposition in most or all of the States to promote these objects.

He cited several examples:

In the State of New York, a great turnpike road has been for some time completed almost to Lake Erie, and, in Pennsylvania, the Herculean task of extending a turnpike road of the best construction the whole way from Philadelphia to Pittsburg has been boldly undertaken, and is in a rapid progress of execution. In both these States a great variety of other turnpikes have been long in great perfection, and new ones are annually added. The latter State has, moreover, a great number of bridges, probably among the largest in the world, and founded in solid masonry; and it has also made provision by law for the liberal encouragement of a great work in its neighboring States of Maryland and Delaware.

Professor Joseph Austin Durrenberger described the New York project:

The greatest extent of road in a continuous route, already finished, was from the Massachusetts line, near Lebanon Springs, through Albany, Schenectady and Utica to Canandaigua, a distance of 234 miles. From the last named place the road was being continued by the Ontario and Genesee Company to Black Rock,

near Buffalo, on Lake Erie. When this section of the road was completed, soon after the War of 1812, the state was intersected from east to west by a line of turnpike roads 324 miles in length. [Durrenberger, J. A., *Turnpikes: A Study of the Toll Road Movement in the Middle Atlantic States and Maryland*, Published by the Author, 1931]

With these examples in mind, he observed how quickly times were changing:

Some twenty years ago there was not a turnpike road in the United States. The one between Philadelphia and Lancaster was then called a theory: there are now in the United States some thousand miles of such road; they have become familiar, and we experience little surprise that individuals, in a single State, undertake fearlessly to extend them over the greatest mountains on the continent . . . .

Is it not remarkable that, in our present advanced state of civilization and science, man is still little inclined to profit by his reason and intelligence, but disposed always to await the mandate of necessity? Why should an improved inland navigation be any more a theory than a turnpike road, or the building of a house? Merely because we are more familiar with the latter than with the former.

In Europe, canals were as common as ships, a house, or a turnpike. “They will soon become familiar to us, as turnpike roads have become, if we can only be prevailed upon to attempt them in earnest.”

Representative Wilson listed some of the needs, including canals within States and to link the Atlantic to the western and southern rivers. Where canals were not practical, turnpike roads were needed to link the waters as well as a “great turnpike or permanent road from north to south, in the general direction of the seacoast and main post routes.” Projects of lesser scale also were needed to link military and naval posts and stations in New York and the northern frontiers of Pennsylvania, Ohio, and Michigan Territory, as well as from Detroit to St. Louis, and from there to New Orleans.

What was needed to accomplish these projects was a “permanent provision for ascertaining with accuracy the particular route, points, and situations for the best location of the proposed improvements” and funds for their construction. In the committee’s view, “When any object is purely national, and an expenditure upon it required by the public interest, this would constitute a fit subject for the direction and exclusive application of moneys from the national funds.” Such objects were “very rare; so interwoven are the common with the local interests, that the former can hardly be consulted anywhere in relation to internal intercourse without affecting the latter in degrees varying according to circumstances.”

The best way to fund the national projects was to set aside a fund “to be invested for accumulation until actually required for its object” as well as “the subscription on account of the United States for portions of the stock of companies incorporated, or

which may be incorporated, under State authorities, for constructing such roads and canals, of for effecting such improvements in navigable waters, as shall, upon inspection under the authority of the United States, be approved by the Congress, to be paid out of such fund.”

Among other advantages, investment in State-chartered companies would remove constitutional doubts because “it would narrow the whole constitutional question to the single one on which no doubts are known to exist, simply whether the National Government may invest the public money in permanent stocks; and it removes all intricacy and difficulty on the subject or repairs, toll-gates, the collection of tolls, and punishing depredations on the works.”

Based on the committee’s deliberations, he submitted a resolution for consideration:

*Resolved*, That the President of the United State be requested to take measures for ascertaining as far as practicable, and report to this House at the next and every subsequent session of Congress, such roads, canals, and improvements in watercourses as are required in a general system of inland navigation and intercourse throughout the extent of the United States and the Territories thereof, best adapted to facilitate the intercourse necessary for personal, commercial, and military purposes. [ASP, Doc. 427]

On February 14, 1817, the Senate considered the committee’s report. Senator Abner Lacock of Pennsylvania, a member of the special committee, reported that “little remains to be added” to the information demonstrating “the general utility and national importance of roads and canals”:

The committee, however, would observe, in addition, that the present period appears to them peculiarly propitious, and strongly invites to the commencement and prosecution of such a system of public improvement.

With peace at hand and with people willing to make sacrifices for the public good, especially when their contributions “promote their own interest,” the lessons of the late war should not be forgotten:

Much of the money expended in the necessary defence of the seaboard, as well as the lives of many valuable citizens, would have been saved to the nation, had a good inland water communication been made on our Atlantic frontier. The transportation of our armies, with all the munitions of war, to the most vulnerable points, would have been facilitated, and the advantages of the enemy, arising from the celerity of his movements by water, greatly diminished.

The people were spread out over “an extensive territory” and, in some cases, have “discordant views” on national sovereignty. Under these circumstances there “arises the imperious necessity in a Government thus constituted of tying together the whole community by the strongest ligatures”:

This your committee believe can be best effected by the construction of roads and canals; by these means, commercial and social intercourse will be made easy; industry in all its branches encouraged, by the increased rewards bestowed on every exertion; the love of country will be awakened, and a laudable spirit of national pride substituted in place of sectional jealousies; a community of interest and feeling will produce mutual confidence and affection; thus, being one people, the national can have but one object in view – the continuance and preservation of a Government founded in equity and justice, administered for the advantage of all, and calculated, in the calm of peace, to call forth talents and industry for the acquisition of property, and in war the surest guarantee for its security and protection.

With that background, the committee described “a general outline of such public works”:

On the subject of national roads, the first that presents itself, and of primary importance, is a turnpike from Maine to Louisiana, passing through the Seat of the National Government and the principal cities and towns on this route; secondly, roads to connect the highest navigable points on the Atlantic rivers with such points on the corresponding streams that fall into the northern and western lakes, and the Mississippi river and its branches; and, lastly, such military or other roads as may serve to connect the scattered settlements in our States or Territories with the most compact population of the interior, and thereby secure the frontier settlements, in a great measure, from hostile annoyance, and embrace the value of the public lands, by inducing a more dense population.

The report also described four needed canal and river improvement projects to accomplish the unifying effect of internal improvements:

1. An inland or shore navigation from the harbor of Boston to the river St. Mary’s, in Georgia. To connect these points, it is ascertained that not more than one hundred miles will need the aid of canals, and, from an estimate made by Mr. Gallatin, when Secretary of the Treasury, will incur an expense little exceeding \$3,000,000 – less, it is believed, than \$200 per mile, taking the whole distance of this water communication.
2. A canal from the Hudson or North river to Lake Erie, and from that lake to some of the many navigable waters of the Ohio river which approach within a few miles of its margin, or intermix with its navigable waters.
3. The improvement of the navigation of the Ohio river, more particularly the falls at Louisville.
4. The improvement of the several Atlantic rivers, and the corresponding streams that empty into the Mississippi and Ohio rivers. [ASP, Doc. 429]

### **Part 3: The National Bank and Internal Improvements**

#### **The First National Bank**

The meaning of the words of the Constitution was a subject of debate and interpretation from the earliest days, even during the State ratification conventions in 1787 and 1788. Those who favored a strong general government and those who favored States' rights sought to impose their viewpoint in those words.

As discussed earlier, this divide was illustrated during President George Washington's first term in 1789 by the bitterly opposing views of Secretary of the Treasury Alexander Hamilton – an advocate for a strong general government who had participated in the 1787 Constitutional Convention – and Secretary of State Thomas Jefferson – an advocate for States' rights who had been out of the country as Minister to France during the convention. Although many founders hoped that under the Constitution, political parties could be avoided, the stark differences between Hamilton and Jefferson constituted the foundation of political parties that would soon form – and remain in place, under different names and origins, through the country's history.

This longstanding split in interpreting the Constitution took on renewed importance with establishment of the Second National Bank of the United States. The idea of a national bank challenged the tenuous balance of constitutional jurisdiction between the general government and the States.

Secretary of the Treasury Hamilton had proposed the First National Bank as a repository of the government's revenue and a moderating influence on the fluctuating economy. John Steele Gordon, in his economic history, explained:

Hamilton expected a central bank to carry out three functions. First, it would act as a depository for government funds and facilitate the transfer of them from one part of the country to another. This was a major consideration in the primitive conditions of the young United States. Second, it would be a source of loans to the federal government and to other banks. And third, it would regulate the money supply by disciplining state-chartered banks . . . .

The bill passed Congress with little trouble, both houses splitting along section lines. Only one congressman from states north of Maryland voted against it, and only three congressmen from states south of Maryland voted for it.

James Madison, who served in the U.S. House of Representatives at the time, was convinced that the National Bank was not only a bad idea, but unconstitutional. He explained his reasoning in a House speech on February 2, 1791. Weighing the pluses and minuses, Madison thought the bank “did not make so good a bargain for the public as was due its interests.”

Much of his speech involved constitutional issues. He informed his colleagues that during the Constitutional Convention, “a power to grant charters of incorporation had been proposed in the General Convention and rejected.” After demonstrating that none of the enumerated powers expressly allowed Congress to approve such a corporation, he turned to the “necessary and proper” phrase:

Whatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress. Its meaning must, according to the natural and obvious force of the terms and the context, be limited to means necessary to the end, and incident to the nature of the specified powers.

The clause is in fact merely declaratory of what would have resulted by unavoidable implication, as the appropriate, and, as it were, technical means of executing those powers. In this sense it has been explained by the friends of the Constitution, and ratified by the State Conventions.

(As Professor Allen D. Boyer observed in 1986, “At the time of the Constitutional Convention, corporations represented a small but expanding fraction of the nation’s economy. The quasi-public nature of the great majority of these corporations – bridge, road, canal, navigation, banking, insurance, and utility companies – was readily apparent.” They were seen as “quasi-governmental, quasi-sovereign entities” that carried sovereign charters, such as the Bank of England and the Hudson’s Bay Company.” The delegates appeared to fear concentrations of economic power that could lead to government-sponsored monopolies. The delegates, thinking of such entities, feared “reducing the States to mere corporations.” [Boyer, Allen D., “Federalism and Corporation Law: Drawing the Line in State Takeover Regulation,” *Ohio State Law Journal*, Vol. 47, No. 4, 1986])

Representative Madison cited the power the Constitution granted to make treaties as an example. If the power had not been expressly stated, “the defect could only have been lamented, or supplied by an amendment of the Constitution.” It would not have met the necessary and proper test. In the same way, the proposed bank was not necessary to the general government; “at most it could be but convenient.” Similarly, the Constitutional Convention had not included a bill of rights because it was presumed that rights not assigned to Congress were retained by the States or the people:

The explanations in the State Conventions all turned on the same fundamental principle, and on the principle that the terms necessary and proper gave no additional powers to those enumerated.

He concluded that “the power exercised by the bill was condemned by the silence of the Constitution” as well as the rules of interpretation. He hoped that the power “would receive its final condemnation by the vote of this House.

Author Ron Chernow, in his biography of Hamilton, put these views in the context of Madison's longstanding political disputes with Secretary Hamilton over the meaning of the Constitution:

While writing *The Federalist*, Madison had subscribed to an elastic interpretation of the charter. Now, speaking on the House floor, he made a dramatic turnabout, denying that the Constitution granted the federal government powers not specifically enumerated there: "Reviewing the Constitution . . . it was not possible to discover in it the power to incorporate a bank." Hamilton turned to article 1, section 8, the catchall clause giving Congress the right to pass any legislation deemed "necessary and proper" to exercise its listed powers. Madison accused him of exploiting that power and "levelling all the barriers which limit the powers of the general government and protect those of the state governments." Afraid that the agile Hamilton would dream up limitless activities and then rationalize them as "necessary and proper," Madison re-created himself as a strict constructionist of the Constitution.

For Madison, Hamilton was becoming the official voice of monied aristocrats who were grabbing the reins of federal power. He felt betrayed by his old friend. But it was Madison who had deviated from their former reading of the Constitution. To embarrass Madison, Elias Boudinot [of New Jersey] read aloud in Congress some passages about the "necessary and proper" clause from *Federalist* number 44, notably the following: "No axiom is more clearly established in law or in reason than wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power for doing it is included." Hamilton probably tipped off his old friend that Madison had written these incriminating words.

Despite Madison's arguments, the House passed the bill, 39 to 20, "giving Hamilton a particularly sweet triumph":

For a fleeting moment, his mastery of the government seemed complete, but the victory raised troublesome questions. Almost all congressmen from north of the Potomac had stood four-square behind him, while their southern counterparts had almost all opposed him. As philosophical views increasingly dovetailed with geographic interests, one could begin to glimpse the contours of two parties taking shape. Individual issues were coalescing into clusters, with the same people lining up each time on opposite sides. In his *Life of Washington*, Chief Justice John Marshall traced the genesis of American political parties to the rancorous dispute over the Bank of the United States. That debate, he said, led "to the complete organization of those distinct and visible parties which in their long and dubious conflict for power have . . . shaken the United States to their center."

Earlier, on January 20, 1791, the bill had "virtually breezed through the Senate."  
[Chernow, Ron, *Alexander Hamilton*, The Penguin Press, 2004]

Now, with the bill awaiting presidential action, President Washington was concerned that his friend and close advisor, Madison, opposed the measure that Treasury Secretary Hamilton had originated. Author Fergus M. Bordewich, in his history of the first Congress, discussed the pressure on the President:

The pressure on Washington was immense. He was well aware of the deep suspicion of consolidated federal power that had been voiced both inside and outside Congress. But his personal views were more in tune with those of Hamilton and the northern Federalists than they were with his fellow Virginians . . . . However, he shared Madison's worry that the bank would hobble, if not prevent, the removal of the national capital [from Philadelphia] to the Potomac. Vetoing the bill might save the Potomac. But if his veto was overridden by Congress, would it permanently weaken the executive authority of the presidency? Did he even have the right to nullify a bill that had been passed by both house of Congress with large majorities? But if it was indeed unconstitutional, wasn't it his duty to do so. He had little time to ponder such questions. If he did not exercise his veto within ten days, the bank bill would automatically become law.

As Bordewich observed, the site Washington had selected for the national capital was a consideration in calculating the results of a veto. He had selected a site on the Potomac River further south than Congress had anticipated when it passed the Residence Act of 1790. In a letter to Congress on January 24, 1791, he said he would need legislation allowing the site to encompass the city of Alexandria, Virginia (and land that he and his family owned). He also needed Congress to appropriate funds for building the new city. With some Members of Congress already upset with the President about his choice, he was concerned about further antagonizing them in a way that might jeopardize the necessary additional legislation.

Bordewich pointed out that the Supreme Court might be relied on in later years to judge the constitutionality of congressional actions, but the court had not yet assumed that role when Congress passed the bill.

Washington had other concerns about his decision on the legislation:

Tensions grew over the prospect of a legislative attempt to override the anticipated presidential veto. Rumors spread that if the bank was vetoed, Hamilton would resign, and the price of national securities would collapse. [Bordewich, Fergus M., *The First Congress: How James Madison, George Washington, and a Group of Extraordinary Men Invented the Government*, Simon and Schuster, 2016]

The President asked Attorney General Edmund Randolph for his views. Randolph replied on February 12, 1791, that the bill fell outside the powers of Congress. Congress may not, he wrote, exercise any authority not in the text. Beyond the text, Congress

cannot base its authority on the needs of the Nation or reasoning about the nature of the government:

While, on the one hand, it ought not to be denied that the federal government superintends the general welfare of the states, it ought not to be forgotten, on the other, that it superintends it according to the dictates of the Constitution.

While some interpretation was inevitable (“the details must be fixed by reasoning”), Randolph thought the bank was too remote from the enumerated powers to be justifiable. If the interpretation applied by the bank’s supporters were adopted, the text of Article I would no longer limit the power of the general government in any way. “A similar construction on every specified federal power, will stretch . . . into the whole circle of state legislation.”

Having dismissed the enumerated powers as the basis for authorizing a bank, Randolph addressed “whether it be sanctified by the power to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution.” He defined “necessary” as being “incidental, or in other words, may be denominated the natural means of executing a power”:

The phrase, “and proper,” if it has any meaning, does not enlarge the powers of Congress, but rather restricts them. For no power is to be assumed under the general clause, but such as is not only necessary but proper, or perhaps expedient also. But as the friends to the bill ought not to claim any advantage from this clause, so ought not the enemies to it, to quote the clause as having a restrictive effect: both ought to consider it as among the surplusage which as often proceeds from inattention as caution.

However, let it be propounded as an eternal question to those who build new power on this clause, whether the latitude of construction which they arrogate will not terminate in an unlimited power in Congress.

In sum, based on review of every aspect for considering the legislation, Attorney General Randolph was “bound to declare his opinion to be against its constitutionality.” [Dellinger, Walter and Powell, H. Jefferson, “The Constitutionality of the Bank Bill: The Attorney General’s First Constitutional Law Opinion,” *Duke Law Review*, vol. 44, no. 1, October 1994]

In a letter on February 15, 1791, Secretary of State Jefferson also warned President Washington that the bill was unconstitutional. In enumerating the authority of Congress, the Constitution clearly did not state that Congress has the authority to incorporate a bank. He briefly went through the enumerated powers that bank supporters cited, but dismissed them. “To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.” For him, the foundation of the Constitution was to be found in the 10<sup>th</sup> Amendment, reserving as it did all power “not delegated to the

United States, by the Constitution, nor prohibited by it, was left to the States or to the people.

The issue came down to the general phrases. He dismissed the phrase “to lay taxes for the purpose of providing for the general welfare.” The power, here, was to “lay taxes,” with “for the general welfare” being a limitation that taxes must be for that purpose. General welfare was not itself a power to be exercised broadly outside the tax purpose. Congress was “not to do anything they please to provide for the general welfare, but only to lay taxes for the purpose.” Allowing “general welfare” to be a distinct power “would render all the preceding and subsequent enumerations of power completely useless”:

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

Clearly, the framers did not intend the phrase to convey “universal powers.” Instead, “it was intended to lace them up straitly [sic] within the enumerated powers, and those without which, as means, these powers could not be carried into effect”:

It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was, that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

Secretary Jefferson addressed the other general phrase supporters cited, namely the “necessary and proper” clause giving Congress the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.” A national bank might be convenient, but it was not “necessary” to exercise the powers. Because all the enumerated powers can be carried out without a bank, a bank was not necessary, “and consequently not authorized by this phrase.”

He explored the meaning of “convenience.” A single bank capable of issuing bills that would “have a currency all over the States” would be more convenient than a currency limited to a single State. In fact, a bank whose currency was acceptable all over the world might be even more convenient. “But it does not follow from this superior conveniency, that there exists anywhere a power to establish such a bank; or that the world may not go on very well without it”:

Can it be thought that the Constitution intended that for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States . . . .

He concluded:

The negative [veto] of the President is the shield provided by the constitution to protect against the invasions of the legislature . . . . The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection.

He added that if the pro and con of the issue were balanced in the President's judgment, if he was not certain, one way or the other, "a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President."

On February 16, 1791, the President wrote to ask Secretary Hamilton to address the issue:

As a means of investigation I have called upon the Attorney General of the United States in whose line it seemed more particularly to be for his official examination and opinion. His report is, that the Constitution does not warrant the Act. I then applied to the Secretary of State for sentiments on this subject. These coincide with the Attorney General's . . . . I now require, in like manner, yours on the validity & propriety of the above recited Act.

The President included the opinions of Randolph and Jefferson with his letter so that Hamilton would know the basis for their conclusions. Washington also asked for return of their opinions "and further, that no copies of them be taken, as it is for my own satisfaction that they have been called for."

Hamilton focused his time on the reply, even barely attending the celebration of the President's birthday on February 22, before replying on February 23. Bordewich wrote:

The treasury secretary must have made no more than a perfunctory appearance at the president's birthday gala. He worked through the rest of that night and into the next morning, with his wife, Elizabeth, copying out his words. By noon on the twenty-third, just twenty-four hours before the President's deadline, Hamilton handed his rebuttal to Washington. At forty pages and fifteen thousand words, it dwarfed his opponents' submission.

Hamilton yielded no ground to the bank's enemies.

The Constitution granted express powers that did not, as Randolph and Jefferson pointed out, include creating a corporation. He argued, however, "that principles of construction like those espoused by the Secretary of State and the Attorney General would be fatal to the just & indispensable authority of the United States."

True, the general and State governments had different powers, with some reserved to one

but not the other. However, each was sovereign within its limited powers:

For it is unquestionably incident to *sovereign power* to erect corporations, and consequently to *that* of the United States, in *relation to the objects* intrusted to the management of the government. The difference is this – where the authority of the government is general, it can create corporations in *all cases*; where it is confined to certain branches of legislation, it can create corporations only in those cases.

He agreed that the 10<sup>th</sup> Amendment provided the foundation of the Constitution, but added:

It is not denied, that there are *implied*, as well as *express* powers, and that the former are as effectually delegated as the latter. And for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated *resulting* powers.

Thus, erecting a corporation might just as well be an implied power as any other object. The only question is whether a corporation “has a natural relation to any of the acknowledged objects or lawful ends of the government.” Congress could not, by its implied power, pass a law for superintending the police of Philadelphia, “but one may be erected in relation to the collection of the taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian Tribes, because it is the province of the federal government to regulate those objects & because it is incident to a general *sovereign or legislative power to regulate* a thing, to employ all the means which relate to its regulation to the best & greatest advantage.

“A strange fallacy,” he wrote, seemed to have “crept into the manner of thinking & reasoning upon the subject. Imagination appears to have been unusually busy concerning it.” A corporation was not an end, but “a *quality, capacity, or mean* to an end.” The end was what counted in achieving the enumerated powers.

Secretary Jefferson rejected the idea of using all means; only those necessary and proper were to be employed. He even “maintains that no means are to be considered as necessary, but those without which the grant of the power would be nugatory,” that is, of no value or importance. The circumstance behind the action may not be casual or temporary. “The *expediency* of exercising a particular power, at a particular time, must indeed depend on *circumstances*; but the constitutional right of exercising it must be uniform & invariable – the same to day, as to morrow.”

Thus, in Jefferson’s view, the accidental happenstance that State-chartered banks exist negates the power of the general government to authorize a bank. Hamilton rejected this thinking as “fallacious,” because those State banks may exist today but disappear tomorrow. That was not the general government’s concern. “It is essential to the being of the National government, that so erroneous a conception of the meaning of the word *necessary*, should be exploded.”

The phrase “necessary and proper” was not meant in the popular sense of needful, requisite, incidental, useful, or conducive. As used in the Constitution, it was the framers’ intent “by that clause to give a liberal latitude to the exercise of the specified powers”:

The expressions have peculiar comprehensiveness. They are – “to make *all laws*, necessary & proper for *carrying into execution* the foregoing powers & all *other powers* vested by the constitution in the *government* of the United States, or in any *department or officer* thereof.”

Secretary Jefferson wanted the words to be restrictive, “an idea never before entertained. It would be to give it the same force as if the word *absolutely* or *indispensibly* had been prefixed to it.” Few measures of any government “would stand so severe a test.” By this test, it might be shown that States lack the power to incorporate banks because all the State’s public business could be conducted without a bank or, for that matter, without incorporation of towns.

For example, how could the general government erect lighthouses, beacons, bouys, and public piers? They were a means to the end of regulating trade. “But it cannot be affirmed, that the exercise of that power, in this instance, was strictly necessary; or that the power itself would be *nugatory* without that of regulating establishments of this nature.” The degree of necessity cannot be the test, for that judgment was a matter of opinion:

The *relation* between the *measure* and the *end*, between the *nature of the mean* employed towards the execution of a power and the object of that power, must be the criterion of constitutionality not the more or less of *necessity* or *utility*.

Contrary to the Attorney General’s reasoning, “necessary and proper” does not convey new or independent powers. The phrase “gives an explicit sanction to the doctrine of *implied* powers, and is equivalent to an admission of the proposition, that the government, *as to its specified powers and objects*, has plenary & sovereign authority, in some cases paramount to that of the States, in others coordinate with it. For such is the plain import of the declaration, that it may pass *all laws* necessary & proper to carry into execution those powers.”

The criterion, therefore, is “the *end* to which the measure relates as a *mean*.” If the relationship is clearly comprehended within any enumerated power, has an obvious relation to that end, and is not forbidden by a provision of the Constitution, “it may safely be deemed to come within the compass of the national authority.” The additional question to ask is whether the measure abridges a preexisting right of a State or individual. “If it does not, there is a strong presumption in favour of its constitutionality; & slighter relations to any declared object of the constitution may be permitted to turn the scale.”

Secretary Jefferson, who was in France during the Constitutional Convention, had stated that the framers rejected the idea that Congress should have the power to make corporations. Secretary Hamilton, who did attend the convention, wrote that the precise nature of the framers' action "is not ascertained by any authentic document, or even by accurate recollection." (Recall that Madison's notes detailing the convention's debates had not been published.) But as best as could be recalled, the issue was raised only in the context of incorporation for the purpose of authorizing canals. Different accounts of the matter, Hamilton wrote, had been given for the proposal and for its rejection:

Some affirm that it was confined to the opening of canals and obstructions in rivers; others, that it embraced banks; and others, that it extended to the power of incorporating generally. Some again alledge [sic], that it was disagreed to, because it was thought improper to vest in Congress a power of erecting corporations – others, because it was thought unnecessary to specify the power, and inexpedient to furnish an additional topic of objection to the constitution. In this state of the matter, no inference whatever can be drawn from it.

Regardless of what the framers meant during their discussions, their "intention is to be sought for in the instrument itself, according to the usual & established rules of construction." The words of the Constitution were the only things that mattered. If the power to erect a corporation was "deducible by fair inference from the whole or any part of the numerous provisions of the constitution of the United States, argument drawn from extrinsic circumstances, regarding the intention of the convention, must be rejected."

Secretary Hamilton agreed that the Constitution did not expressly give Congress the power to erect corporations, but that did not mean the Constitution did not grant "express powers, which necessarily include it." For example, Congress has express authority over the District of Columbia and other places purchased with the consent of the States for military purposes. The Constitution did not give Congress the express power to erect forts, arsenals, dock yards, or other buildings in the locations, but Congress has the implied power to do so in the national defense. It may provide for other needed facilities as well.

Similarly, Congress does not have the express power to place a duty on a gallon of rum, but this authority is implied by its power to lay and collect taxes, duties, imposts, and excises:

As far then as there is an express power to do any *particular act of legislation*, there is an express one to erect corporations in the cases above described. But accurately speaking, no *particular power* is more than *implied* in a *general one*. Thus the power to lay a duty on a *gallon of rum*, is only a *particular implied* in the general power to lay and collect taxes, duties, imposts, and excises. This serves to explain in what sense it may be said, that congress have not an express power to make corporations.

The Secretary of State and Attorney General had gone through the enumerated powers and declared them lacking in authority to erect corporations. Secretary Hamilton claimed that “there is a power to erect one of the kind proposed by the bill.” As the initiator of the proposal in Congress, Hamilton stated that the implied power “has a relation more or less direct to the express power of collecting taxes; to that of borrowing money; to that of regulating trade between the states; and to those of raising, supporting & maintaining fleets & armies.” He explained how the links between these express powers and the authorities implied the means for congressional action. For example, he argued:

To establish such a right, it remains to show the relation of such an institution to one or more of the specified powers of the government.

Accordingly, it is affirmed, that it has a relation more or less direct to the power of collecting taxes; to that of borrowing money; to that of regulating trade between the states; and to those of raising, supporting & maintaining fleets & armies. To the two former, the relation may be said to be *immediate*.

And, in the last place, it will be argued, that it is, *clearly*, within the provision which authorises the making of all *needful* rules & *regulations* concerning the *property* of the United States, as the same has been practiced upon by the Government.

A Bank relates to the collection of taxes in two ways: *indirectly*, by increasing the quantity of circulating medium & quickening circulation, which facilitates the means of paying – *directly*, by creating a convenient species of medium in which they are to be paid . . . .

The appointment, then, of the *money* or *thing*, in which the taxes are to be paid, is an incident to the power of collection. And among the expedients which may be adopted, is that of bills issued under the authority of the United States.

In short, the national bank fell within the authority of Congress to pass laws that are necessary and proper to achieve the implied and resulting powers.

Having received the views of his close advisors, President Washington, who had presided over the Constitutional Convention, also called on his friend and confidential advisor, Representative Madison, for his views. As Madison would recall of Washington in what became known as the Detached Memorandum written after 1817:

The constitutionality of the national Bank, was a question on which his mind was greatly perplexed. His belief in the utility of the establishment & his disposition to favor a liberal construction of the national powers, formed a bias on one side. On the other, he *had witnessed* what passed in the Convention which framed the Constitution, and he knew the tenor of the reasonings & explanations under which it had been ratified by the State Conventions. His perplexity was increased by the opposite arguments and opinions of his official advisors *Mr Jefferson & Mr*

*Hamilton.* He held several free conversations with me on the Subject, in which he listened favorably as I thought to my views of it, but certainly without committing himself in any manner whatsoever. Not long before the expiration of the ten days allowed for his decision, he desired me to reduce into form, the objections to the Bill, that he might be prepared, in case he should return it without his signature.

Thinking that the President would veto the bill, Madison prepared notes on February 21, 1791, for the veto message. The message basically summarized the February 2 speech Madison had delivered on the House floor. "I object to the Bill because it is an essential principle of the Government that powers not delegated by the Constitution cannot be rightfully exercised; because the power proposed by the Bill to be received is not expressly delegated; and because I cannot satisfy myself that it results from any express power by fair and safe rules of implication."

In Madison's draft of a veto message, the President also would object to the bill because "it appears to be unequal between the public and the Institution in favor of the institution; imposing no conditions on the latter equivalent to the stipulations assumed by the former." The government should always "dispense its benefits to individuals with as impartial a hand as the public interest will permit":

. . . and the Bill is in this respect unequal to individuals holding different denominations of public Stock and willing to become subscribers. This objection lies with particular force against the early day appointed for opening subscriptions, which if these should be filled as quickly as may happen, amounts to an exclusion of those remote from the Government, in favor of those near enough to take advantage of the opportunity.

Now, after considering advice from some of the greatest contemporary thinkers of the new country, President Washington decided to sign the legislation creating the bank with a 20-year charter. He did so on March 4, 1791.

Madison, in his Detached Memorandum, stated:

As it was, he delayed until the last moment, the message communicating his signature. The delay had begotten strong suspicions in the zealous friends of the Bill, that it would be rejected. One of its ablest Champions, under this impression, told me he had been making an exact computation of the time elapsed, and that the Bill would be a law, in spite of its return with objections, in consequence of the failure to make the return within the limited term of ten days. I did not doubt that if such had been the case advantage would have been taken of it, and that the disappointed party would have commenced an open opposition to the President; so great was their confidence in the wealth and strength they possessed, and such the devotion of the successful speculators in the funds, and of the anti-republican partizans, to the plans & principles of the Secretary of the Treasury. The conversation had scarcely ended, when the message arrived with notice that the Bill had been approved and signed.

In the end, as Bordewich put it:

In mid-February, in the midst of this rancorous debate [about the bank], the powerful Potomac landowner [Senator] Charles Carroll introduced a bill [on February 17] to extend the Federal District southward to accommodate the President's desire to include Alexandria. For more than a week the outcome remained unclear. Finally . . . the opposing forces reached a compromise: Hamilton got his bank, and Washington got Alexandria. [Bordewich, Fergus M., *Washington: The Making of the American Capital*, Amistad: An Imprint of HarperCollins Publishers, 2008]

President Washington signed the amendment of the Residence Act on March 3, 1791. It achieved his goal of incorporating Alexandria into the permanent seat of the national government, but concluded, "That nothing herein contained, shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac," as provided for in the original Resident Act. (President James Polk signed legislation on July 9, 1846, that retroceded the portion of the national capital on the Virginia side of the Potomac River to the State.)

Chernow explained the significance of the debate over the Bank of the United States:

Hamilton's plea for the bank had a continuing life in American history, partly from the influence it exerted upon Chief Justice John Marshall . . . Hamilton was not the master builder of the Constitution: the laurels surely go to James Madison. He was, however, its foremost interpreter, starting with *The Federalist* and continuing with his Treasury tenure. He lived, in theory and practice, every syllable of the Constitution. For that reason, historian Clinton Rossiter insisted that Hamilton's "works and words have been more consequential than those of any other American in shaping the Constitution under which we live."

### **Extension of the Bank of the United States**

On January 24, 1811, the administration of President James Madison submitted legislation to renew the charter of the National Bank for 20 years. As Gordon explained, Madison had opposed creation of the bank, but "recognized the bank's utility both as agent for the federal government and as a provider of a uniform national currency." Treasury Secretary Gallatin "also pushed hard to have the bank's charter renewed.

Senator William H. Crawford of Georgia introduced a bill on February 5 to extend the charter. The first section continued the 1791 Act until March 4, 1831, subject to conditions spelled out in the bill's remaining 13 sections.

Senator John I. Anderson of Tennessee, a member of the committee that reported the bill, had doubts about the bill. He introduced a motion to remove section 1, a motion that if approved would effectively kill the Bank of the United States; the subsequent conditions

for its operation would be meaningless. As summarized in the *Annals*, he explained on February 11 the basis for his motion:

Mr. Anderson said that he had deemed it strictly proper and parliamentary to make the motion which he had offered to the House. He deemed it incumbent on those who meant to support this bill to assign the reason why the section should not be struck out. To his mind, Mr. A. said, this system was infinitely more injurious than beneficial; it created a kind of fictitious wealth in the community; destroyed in a degree the firm principles of our political institutions; and, if we went on with it twenty years more, we should be at least fifty years older, he would not say in corruption, but in the want of the strict political virtue which, if the bank had never have existed, we might have maintained. This opinion was a sufficient objection, without saying anything of the unconstitutionality of the thing, which to him had always been a paramount objection.

The proposal sparked a lengthy debate in Congress about the need for the bank and the authority under the Constitution for Congress to charter a national bank.

Finally, however, on February 20, the Senate voted 17 to 17 on Anderson's motion, with Senator Henry Clay of Kentucky among those voting yea to kill the extension bill by removing the first section.

Vice President George Clinton was called on to exercise his authority as president of the Senate to break the tie. Clinton, who had served in the French and Indian War and the Revolutionary War, opposed ratification of the Constitution, and served as Governor of New York twice (1777-1795, 1801-1804). He left the post to serve as Vice President during President Jefferson's second term (1804-1809) and sought the presidency in 1808 but lost the nomination to James Madison. Clinton won reelection as Vice President even though he and Madison disagreed fundamentally on the role of the general government.

Now, with the opportunity to break the tie in favor of President Madison's position, Clinton instead voted in support of the motion to drop the first section. He thereby killed extension of the bank's charter, 18-17. Knowing that the measure had "excited great sensibility," he wanted to "briefly state the reasons which influence my judgment." The question for him was not whether Congress had the authority to create a bank, but whether Congress had the authority to establish a national bank:

In other words, can they create a body politic and corporation, not constituting a part of the Government, nor otherwise responsible to it but by forfeiture of charter, and bestow on its members privileges, immunities, and exemptions not recognized by the laws of the States, nor enjoyed by the citizens generally.

Congress clearly had authority under the Constitution to pass all necessary and proper laws to carry out its enumerated powers, "but, in doing so, the means must be suited and subordinate to the end." The Constitution did not explicitly grant Congress the power to

create corporations, but he did not consider creation of the national bank a derivative as necessary and proper:

In the course of a long life I have found that Government is not to be strengthened by an assumption of doubtful powers, but by a wise and energetic execution of those which are incontestable; the former never fails to produce suspicion and distrust, while the latter inspires respect and confidence.

If the powers under the Constitution were not sufficient for a desired purpose, “the Constitution happily furnishes the means for remedying the evil by amendment.” He was certain that if an amendment were needed, “an appeal to the patriotism and good sense of the community will be wisely applied.”

Because of Vice President Clinton’s defiance of President Madison’s wishes, the Bank of the United States was dead. “It was,” as John Steele Gordon put it, “the most significant independent political act – nearly the only one – in the history of the vice presidency, and it would have disastrous consequences.”

### **The Second National Bank of the United States**

The War of 1812 changed attitudes about the idea of a national bank, as Professor H. W. Brands described in his book about Henry Clay and other members of the second generation of American thought leaders:

The war created strains the treasury had never experienced, and those strains were transmitted to the state banks that held the treasury’s accounts. In many cases the state banks buckled, throwing the system of revenues and expenditures into disarray. By war’s end even Clay, who had staunchly opposed renewal of the national bank’s charter, concluded that a new national bank was necessary . . . .

In 1811, America had been at peace; the modest resources and powers of state banks had sufficed for the nation’s fiscal needs. Within a year the country had gone to war, and suddenly the government found itself having to make unprecedented transfers from one region to another – from the East Coast, for example, where taxes were collected, to the Western frontier, where the army was deployed. Without a national bank, the funds had to be transferred from one state bank to another and another, with the chain of institutions being no stronger than its weakest link. As the weak links gave way, evil ripples racked the system as a whole. The war effort suffered badly. Soldiers weren’t paid; suppliers were shortchanged; lenders ran away from the government . . . .

The nation had survived the war, but it might not survive another without reform of its finances, Clay said. [Brands, H. W., *Heirs of the Founders: The Epic Rivalry of Henry Clay, John Calhoun, Daniel Webster, The Second Generation of American Giants*, Doubleday, 2018]

In the wake of the economic disruption that followed the end of the war in 1814, President Madison agreed that a new national bank was needed, in part to reestablish specie – paper money and coins that could be exchanged for gold or silver. In his annual message to Congress on December 5, 1815, he wrote:

It is, however, essential to every modification of the finances that the benefits of an uniform national currency should be restored to the community. The absence of the precious metals will, it is believed, be a temporary evil, but until they can again be rendered the general medium of exchange it devolves on the wisdom of Congress to provide a substitute which shall equally engage the confidence and accommodate the wants of the citizens throughout the Union. If the operation of the State banks can not produce this result, the probable operation of a national bank will merit consideration; and if neither of these expedients be deemed effectual it may become necessary to ascertain the terms upon which the notes of the Government (no longer required as an instrument of credit) shall be issued upon motives of general policy as a common medium of circulation.

Clay, the Speaker of the House, reluctantly agreed that a national bank was needed. He felt compelled to explain to his colleagues why he had voted in 1811 against extension of the charter for the first Bank of the United States but would vote to create the second bank. He did so on March 9, but the *Annals* noted that, “The speech delivered on this occasion, by Mr. Clay, appears not to have been reported.” Therefore, it could not be inserted in summary as uttered in the House. However, when he returned to Lexington, Kentucky, on June 3, “he made an address to his constituents, in which he gave the substance of it.” The *Annals* reported on the Lexington speech in its usual summary fashion rather than direct quote.

“Mr. Clay felt particularly anxious to explain the grounds on which he had acted.” He owed it to his constituents. “It would have been unnecessary if his observations, addressed to the House of Representatives pending the measure, had been published; but they were not published, and why they were not published he was unadvised.”

Three “general considerations” influenced his change of position on the subject of a national bank. First, the Kentucky legislature, which appointed Senators, had instructed him in 1811 to oppose renewal of the old bank’s charter. He was not sure why the legislature had reached its conclusion as stated in its resolution of disapproval:

He had understood from members of that body, at the time it was given, that a clause, declaring that Congress had no power to grant the charter, was stricken out; from which it might be inferred, either that the Legislature did not believe a bank to be unconstitutional, or that it had formed no opinion on that point.

This viewpoint was suggested by the fact that his predecessors in the United States Senate had voted for the first national bank. Moreover, the legislature had not expressed

its views on the new bank to the State’s two current Senators:

From this silence, on the part of a body which has ever fixed a watchful eye upon the proceedings of the General Government, he had a right to believe that the Legislature of Kentucky saw, without dissatisfaction, the proposal to establish a National Bank; and that its opposition to the former one was upon grounds of expediency, applicable to that corporation alone, or no longer existing.

The legislature had appointed Clay to represent the State in the Senate in 1810 to serve the remaining term of Senator Buckner Thruston, who had become a Federal judge. However, Clay, who earlier had served in the Senate from December 1806 to March 1807, did not like the rules of the Senate. In 1810, therefore, he decided to seek election to the House. He was unopposed and on returning to Washington for the 11<sup>th</sup> Congress, was elected Speaker of the House:

But when, at the last session, the question came up as to the establishment of a National Bank, being a member of the House of Representatives, the point of inquiry with him was, not so much what was the opinion of the Legislature, although, undoubtedly, the opinion of a body so respectable would have great weight with him under any circumstances, as what were the sentiments of his immediate constituents. These he believed to be in favor of such an institution.

He had talked extensively with his constituents “and all, without a single exception, as far as he recollected, agreed that it was a desirable, if not the only efficient remedy for the alarming evils in the currency of the country.”

The second factor that prompted him to oppose extension of the charter in 1811 was “that he believed the corporation had, during a portion of the period of its existence, abused its powers, and had sought to subserve the views of a political party.” During the Senate debate on extension of the charter, supporters of the bank denied the claims, but “they were, in his judgment, satisfactorily made out.” Indeed, the case was made during the House debate on the measure:

It may be said, what security is there that the new bank will not imitate this example of oppression? He answered, the fate of the old bank – warning all similar institutions to shun politics, with which they ought not to have any concern; the existence of abundant competition, arising from the great multiplication of banks, and the precautions which are to be found in the details of the present bill.

His third objection to extension of the charter in 1811 was constitutional. He explained that “as the power to create a corporation, such as was proposed to be continued, was not specifically granted in the Constitution, and did not then appear to him to be necessary to carry into effect any of the powers which were granted, Congress was not authorized to continue the bank.” Beyond the enumerated powers in Article I of the Constitution, Congress could approve all necessary and proper activities needed to implement those powers. Because those necessary and proper activities were not defined in the

Constitution, “there is no other than a sound and honest judgment exercised under the checks and control which belong to the Constitution and the people.”

Circumstances, however, changed, even if the words of the Constitution were unchanging. Therefore, “the lights of experience may evolve to the fallible persons charged with its administration, the fitness and necessity of a particular exercise of construction power to-day, which they did not see at a former period.” In 1811, renewal of the charter “did not appear to him to be so necessary to the fulfilment of many of the objects specifically enumerated in the Constitution, as to justify Congress in assuming, by construction, a power to establish it.”

In 1816, a “total change of circumstances was present – events of the utmost magnitude had intervened.” In the absence of a national bank, States had chartered hundreds of banks, many of them with limited capital. The banks were subject to specie payment requirements they could not meet. “A general suspension of specie payments had taken place, and this had led to a train of consequences of the most alarming nature.” The amount of specie payments varied from State to State and region to region. As a result, tax payments were no longer uniform for all citizens as required by the Constitution.

He did not think the general government could depend on local institutions, “multiplied and multiplying daily; coming into existence by the breath of eighteen State sovereignties, some of which, by a single act of volition, had created twenty or thirty at a time.” Any “thinking man” would view the situation with “the most serious alarm; that it threatened general distress, if it did not ultimately lead to convulsion and subversion of the Government.”

Therefore, in Speaker Clay’s opinion, Congress had a duty “to apply a remedy, if a remedy could be devised.” A new national bank was that remedy:

A bank appeared to him not only necessary, but indispensably necessary, in connexion with another measure, to remedy the evils of which all were but too sensible. He preferred, to the suggestions of the pride of consistency, the evident interests of the community, and determined to throw himself upon their candor and justice. That which appeared to him, in 1811, under the state of things then existing, not to be necessary to the general government, seemed now to be necessary, under the present state of things. Had he then foreseen what now exists, and no objection had laid against the renewal of the charter, other than that derived from the Constitution, he should have voted for the renewal.

Further, other provisions of the Constitution, though “little noticed, if noticed at all, on the discussions in Congress in 1811, would seem to urge that body to exert its powers to restore to a sound state the money of the country.” He was referring to the power to coin money and regulate the value of foreign coins, while States were prohibited to coin money, emit bills of credit, or “to make anything but gold and silver coin a tender in payment of debts.” The logical conclusion was “that the subject of the general currency was intended to be submitted exclusively to the General Government.” Whether

Congress could pass legislation to regulate State-chartered banks or such a remedy would be effective, “an indirect remedy, of a milder character, seemed to be furnished by a National bank.” The national bank would remedy the problem of specie payments, while the State-chartered banks would have to “follow the example which the National Bank would set them, of redeeming their notes by the payment of specie, or their notes will be discredited and put down.”

Finally, the location of the national bank in Philadelphia was important:

In the event of any convulsion, in which the distribution of banking institutions might be important, it may be urged that the mischief would not be alleviated by the creation of a National Bank, since its location must be within one of the States. But, in this respect, the location of the bank is extremely favorable, being in one of the middle States, not likely, from its position, as well as its loyalty, to concur in any scheme for subverting the Government; and a sufficient security against such contingency is found in the distribution of branches in different States, acting and reacting upon the parent institution, and upon each other.

The bill passed the House, 80 to 71, on March 14. The Senate approved a modified version, 22 to 12, on April 3, and sent it back to the House. Opponents generated considerable debate, but on April 4, the House rejected the final motion, which was for postponement of consideration, 67 to 91, then approved the bill that included the Senate amendments without a recorded vote.

On April 10, 1816, President Madison signed the legislation establishing the Second National Bank.

### **The Bonus Bill**

With the chartering of the Second National Bank of the United States, the Department of the Treasury would receive \$1.5 million each year plus annual dividends on the stock it held in the bank.

As President Madison neared the end of his second term in office, he reiterated his support for internal improvements in his annual message to Congress on December 3, 1816:

And I particularly invite again their attention to the expediency of exercising their existing powers, and, where necessary, of resorting to the prescribed mode of enlarging them, in order to effectuate a comprehensive system of roads and canals, such as will have the effect of drawing more closely together every part of our country.

It was an endorsement of internal improvements, but with the usual caveat that the “prescribed mode of enlarging” the powers of Congress would be necessary in the form of a constitutional amendment.

Supporters of internal improvements saw an opportunity. On December 17, 1816, Representative John C. Calhoun of South Carolina introduced a motion to establish a committee “to inquire into the expediency of setting apart the bonus, and the net annual proceeds of the National Bank, as a permanent fund for internal improvement.” Now that the bank law had been enacted, “the subscription had been filled under auspicious circumstances, and the bank was about to go into operation,” he thought the time was right “to consider whether the course of internal improvement was a proper direction for the United States to give to their share of the profits of that institution.”

He did not feel a need at this moment to explain the importance of such projects. His colleagues were well aware of the growing number of road and canal projects the States were promoting, usually with limited investment in the stock issued by the companies chartered to build, operate, and maintain the projects:

It was sufficient to say, that it was of such importance as to have been annually recommended to the attention of Congress by the Executive. That it has not been heretofore acted on, was not to be attributed to any impression derogating from the importance of the subject. It arose from the want of funds; from the embarrassed state of our finances, and from the critical state of our foreign relations, which demanded all our attention. We had now abundance of revenue, and were in a state of peace, giving leisure to Congress to examine subjects connected with domestic affairs – of all which, internal improvement was not exceeded in importance by any. He hoped, therefore, the resolution would pass, and the inquiry be made as proposed.

The House agreed to the motion, with a five-member committee established to consider the idea, including Representative Calhoun as chairman.

On February 4, 1817, the House of Representatives took up the committee’s Bonus Bill to use revenue from the Second National Bank for roads and canals. Representative Calhoun, with the support of Speaker Clay, explained the bill to his colleagues. He began by reflecting on “how favorable was the present moment, and how confessedly important a good system of roads and canals was to our country.” With the war over, and revenues available, good roads and canals would increase the “wealth, the strength, and the political prosperity” of the country. He praised the States and individuals pursuing such projects, but added, “Let it not be said that internal improvements may be wholly left to the enterprise of the States and individuals.”

Internal improvements would provide commercial advantage, but they also would strengthen the republic. “In fact, if we look into the nature of wealth, we will find that nothing can be more favorable to its growth than good roads and canals”:

Let it not be said that internal improvements may be wholly left to the enterprise of the States and of individuals. He knew, he said, that much might justly be expected to be done by them; but in a country so new and so extensive as ours, there is room enough for all the General and State governments and individuals, in which to exert their resources. But many of the improvements contemplated

are on too great a scale for the resources of the States or individuals; and many of such a nature that the rival jealousy of the States, if left alone, might prevent . . . .

Another important concern was the ability to raise tax revenue from internal sources in time of war when tariff revenue is down. Taxes cannot be collected in the form of farm goods; it must be in the form of money:

Unless it can return through the operation of trade, the parts from which the constant drain takes place must ultimately be impoverished. Commercial intercourse is the true remedy to this weakness; and the means by which that is to be effected, are roads, canals, and the coasting trade. Of these, combined with domestic manufactures, does the moneyed capacity of this country, in war, depend. Without them, not only will we be unable to raise the necessary supplies, but the currency of the country must necessarily fall into the greatest disorder – such as we lately experienced.

Nothing could be more important to national power than “a perfect unity in every part, in feelings, and sentiments.” Encouragement of unity was especially important in the United States. “No country enjoying freedom, ever occupied anything like as great an extent of country as this Republic,” he said. To counter the tendency toward disunion by rival parts, he recommended taking advantage of the country’s lakes and oceans, bays and rivers to bring the different parts together. If the country did not do so, “We will divide, and in its consequences will follow misery and despotism”:

Let us then, said Mr. C., bind the Republic together with a perfect system of roads and canals. Let us conquer space. It is thus the most distant parts of the Republic will be brought within a few days travel of the centre; it is thus a citizen of the West will read the news of Boston still moist from the press. The mail and the press are the nerves of the body politic. By them the slightest impression made on the most remote parts is communicated to the whole system; and the more perfect the means of transportation, the more rapid and true the vibration.

He dismissed constitutional objections on several grounds. The Bonus Bill did not specify which projects would be built:

The bill simply appropriates money to the general purpose of improving the means of communication. When a bill is introduced to apply the money to a particular object in any State, then, and not till then, will the question be fairly before us . . . . In fact, he scarcely thought it worth the discussion, since the good sense of the States might be relied on. They will in all cases readily yield their assent. The fear is in a different direction; in a too great solicitude to obtain an undue share to be expended within their respective limits.

That was not the real objection. “It was mainly urged that the Congress can only apply the public money in execution of the enumerated powers.” Representative Calhoun admitted he was “no advocate for refined arguments on the Constitution”:

The instrument was not intended as a thesis for the logician to exercise his ingenuity. It ought to be construed with plain good sense.

The first power in Section 8 of Article I is:

To lay and collect taxes, duties, imposts, and excises: to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform through the United States.

If the framers had intended to limit the funds to those purposes, they would have said so; “nothing could be more easy than to have expressed it plainly.” If limit was the intent, “nothing can be conceived more bungling and awkward than the manner in which the framers have communicated their intention.” The power to “provide for the common defence and general welfare” was, he thought “to be understood as distinct and independent powers in the subsequent part of the Constitution.”

He turned to the debate about the meaning of “establish” in the context of post offices and post roads:

He knew the interpretation which was usually given to these words confined our power to that of designating only the post roads; but it seemed to him that the word “establish,” comprehended something more. But suppose the Constitution to be silent, why should we be confined in the application of money to the enumerated powers? There is nothing in the reason of the thing, that he could perceive, why it should be so restricted; and the habitual and uniform practice of the Government coincided with his opinion. Our laws are full of instances of money appropriated without any reference to enumerated powers.

He cited examples such as \$50,000 appropriated “to the distressed inhabitants of Caraccas, and a very large sum, at two different times, to the Saint Domingo refugees.” Similarly, how could the Louisiana Purchase in 1803 that expanded the country far into the west drained by the Missouri River be justified in the enumerated powers:

To pass over many other instances, the identical power which is now the subject of discussion, has, in several instances been exercised. To look no further back, at the last session, a considerable sum was granted to complete the Cumberland road.

He understood the argument that the Constitution was founded on principles and should not be interpreted on the basis of precedents. He mentioned the precedents “to prove the uniform sense of Congress, and the country, (for they had not been objected to,) as to our powers; and surely, they furnish better evidence of the true interpretation of the Constitution than the most refined and subtle arguments.”

He explained that he had not included specific projects in the bill, because that would assure its failure. He was not, however, averse to presenting his views on the subject. He essentially called for a system of roads and canals similar to those proposed by Treasury Secretary Gallatin’s report on roads and canals, sent to the Senate on April 4, 1808.

Representative Calhoun concluded his statement with praise for the 14<sup>th</sup> Congress:

No body of men, in his opinion, ever better merited the confidence of the country than this Congress. For wisdom, firmness, and industry, it had never been excelled. To its acts he appealed for the truth of his assertions. The country already began to experience the benefit of its foresight and firmness. The diseased state of the currency, which many thought incurable, and most thought could not be healed in so short a time, begins to exhibit symptoms of speedy health. Uninfluenced by any other considerations than love of country and duty, let us add this to the many useful measures already adopted. The money cannot be appropriated to a more exalted use. Every portion of the community, the farmer, mechanic, and merchant, will feel its good effects; and, what is of the greatest importance, the strength of the community will be augmented, and its political prosperity rendered more secure.

Representative Robert Wright of Maryland introduced a motion to delete the first section of the bill, “for the purpose of destroying the bill.” If the section of the bill that set the bonus funds aside for internal improvements were deleted, the remaining provisions would be meaningless.

Representative Timothy Pickering of Massachusetts disagreed with Calhoun’s interpretation of Article I. It granted Congress the power of taxation “to pay the debts and provide for the common defence and general welfare of the United States”:

Hence, the gentleman inferred, that as public roads and canals would promote the general welfare, therefore Congress has power to make roads and canals. If this interpretation of the Constitution be correct, then the subsequent enumeration of powers to be exercised by Congress was superfluous; for the term “to provide for the general welfare,” would embrace the following enumerated powers, and every other imaginable power, the exercise of which would promote the “general welfare.”

Those words, “general welfare,” reflected the explicit purpose of the Constitution, but were “intended to mark the line within which the powers expressed or fairly implied should be expressed: they must all have for their object the ‘general welfare’”:

From the specific powers granted to congress “to establish post offices and post roads,” the gentleman from South Carolina had inferred, that Congress had power to make roads, on which the post riders might travel. This construction Mr. P. believed to be altogether erroneous.

He pointed out that the idea that Congress would have the power to make roads in any State “was offered as a serious objection to the adoption of the Constitution in the Convention of Pennsylvania,” which Representative Pickering recalled because he lived in Pennsylvania at the time and was a member of the ratification convention:

And this recollection was probably the more perfect, because he answered the objections, observing that the power “to establish post offices and post roads,”

could intend no more than the power to direct where post offices should be kept, and on what roads the mails should be carried; and this answer appeared then to be entirely satisfactory.

Perhaps, he speculated, the power Representative Calhoun sought was based on the power “to regulate commerce with foreign nations and among the several States, and with the Indian tribes.” This provision allowed Congress to fund lighthouses, beacons, piers in rivers, and coastal surveys for the coastal trade. But since commerce also took place on land, why did Congress not also have the authority “to facilitate, secure and render less expensive, by means of roads and canals, the commerce *by land*?” He suggested consideration of that idea.

Representative Erastus Root of New York introduced a motion to strike out the words “roads and” from the proposal, thus limiting the Bonus funds to support of canals. He argued that the general government’s funds should “be applied to objects the least interfering with State policy, with State rights and sovereignty, and the best calculated to promote the general welfare and to aid in the regulation of commerce.” Even the greatest roads, he said, were used mainly by people living near them. That was not the case with canals because they connected and united distant States. Lacking direct access to the canal, the residents of the territory it passed through gained little benefit from or use of it:

Canals are therefore more properly an object of national regard. Let your surplus treasure, Mr. Chairman, for it would seem that you have much of it, and I shall not urge the more rapid reduction of the public debt, nor the repeal of any of the taxes at this time; let your surplus treasure destined by this bill, not to be wasted, I hope, but to the achievement of great schemes of national grandeur, be directed exclusively to the construction of canals.

He conceded the suspicions of his colleagues that his proposal was in support of plans for the canal from the Great Lakes to the Hudson River. Commissioners of the proposed Erie Canal were, at the time, seeking financial aid from Congress in the form of land or money. They had written to New York’s congressional delegation urging them to support the expected Bonus Bill, which they calculated would provide \$85,000 a year to New York. Combined with Bonus Bill funds from other interested States, including Ohio, the funds would allow New York to complete the canal without imposing additional taxes on its residents.

Representative Root concluded by saying that if Congress intended to proceed without care for its constitutional limits, he wanted the funds to go to “a great national work,” namely New York’s planned canal that would link the Hudson with the Mississippi via the Great Lakes, providing links with Illinois, Michigan, and Wisconsin as well as Ohio. “The intercourse between the Eastern and Western States might then form a ligature and a cement which no Hartford Convention could ever dissolve.”

(Near the end of the War of 1812, anti-war Federalists from New England gathered in Hartford, Connecticut. Despite fears that those States would seek to secede from the Union, they ended by demanding amendments to the Constitution to protect the region’s

interests that had been harmed prior to the war by the Embargo Act on December 22, 1807, and Non-Intercourse Act of 1809.)

Representative Thomas B. Robertson, who had served as secretary of the Territory of Louisiana from 1807 to 1811 and was elected to the House when Louisiana became a State in April 1812, addressed his colleagues. He opposed the bill, calling it “vague, general, and unsatisfactory; because, in fact, it professed much and meant nothing.” The bill, in fact, was “too general, and where it was specific, it was equally obnoxious to criticism.”

The idea behind the proposal was that internal improvements such as roads and canals would benefit the country, but he suggested a better purpose for the bonus funds:

Education had been forgotten; education, on which depended the existence of this Republic; he could consider no subject of so much importance; none which so urgently required the aid and intervention of a wise Administration.

If the bank funds were to be set aside for a purpose, education should be that purpose.

Instead of a bill that not cite specific projects, he would have preferred specificity:

He was unreasonable enough to wish to know some such facts as these: where and when and by whom were these roads and canals to be made; who was to have the care and management of them? Was the General Government to interfere in this sort of mere police? He thought it belonged more properly to individuals or to the States.

He was not opposed to internal improvements. However, he thought education more important. Moreover, he challenged the authority of the general government to fund internal improvements:

A clear line of demarcation ought to be drawn between the United States and State governments. Interference ought to be avoided. Let the one attend to internal improvement, the other to the great concern of this nation in regard to foreign nations – in relation to the sovereign States which form this Confederacy, and their clear, general powers of an external character, and their acknowledged specified powers of an internal nature . . . .

If the United States have money to spare, let it be distributed among the States to be applied to works of internal improvement. The States are better judges of their wants and interests; they know best whether they most require roads or canals, or schools, or dykes, or embankments. This plan, too, possesses other advantages. It will prevent the disgraceful scene which will be exhibited in this House, when we shall be called upon to designate the position and course of the contemplated roads and canals, when all our local feelings will be up in arms, and, under a pretence of general benefit, we shall have in view exclusively the interests of the State or district which we represent. There are already, necessarily, causes enough of this unpleasant and dangerous hostility. We had better diminish than

add to their number. But, above all, it is free from Constitutional objection, and leaves with the independent and sovereign members of this Confederation the care of internal improvements, peculiarly their province, unless indeed we are to have in practice what is anxiously wished by many – one grand, magnificent, consolidated empire.

Concluding his comments, he introduced a motion directing the bank fund to be distributed to the States, according to their representation, to be used as they think proper.

Representative Root's amendment took precedence for action. After the House voted against limiting the measure to canals, it took up Representative Robertson's motion.

Speaker Clay said he had not intended to enter the debate but in his view, "there were no two subjects which would engage the attention of the National Legislature more worthy of its deliberate consideration, than those of internal improvements and domestic manufactures." The present bill would set funds aside, with later congressional action needed to decide how it would be used:

If we attempt anything beyond this; if we touch the details; if we go into a specification of the objects on which the fund is to be expended, the inevitable effect will be, that we shall do nothing. Whether it was better to establish a board for the appropriation of the fund, or to distribute it among the several States, and what were the national objects which demand its application, were posterior questions, which ought to be discussed and decided hereafter.

As for the constitutional questions raised, Speaker Clay had no doubt about the general government's authority to fund roads and canals, "but it was not necessary, in his judgment, to embarrass the passage of the bill with the argument of that point at this time." The Bonus Bill proposed only to invest the bonus funds in bonds to pay the country's debt until Congress decided how to use the revenue.

Congress could debate the constitutionality of ideas for using the funds at a future date. If Congress decided it had the power, it would use it; if not, it would not designate the funds for internal improvements. He suggested several ways the Congress could appropriate the funds for internal improvements without interfering with the jurisdiction of the States:

It might distribute it among those objects of private enterprise which called for national patronage, in the form of subscriptions to the capital stock of incorporated companies, such as that of the Delaware and Chesapeake canal, and other similar institutions. Perhaps that might be the best way to employ the fund; but he repeated, that this was not the time to go into that inquiry.

As for the value of internal improvements "in augmenting the wealth and the population of the country," that subject was too well known for him to take up his colleague's time:

In reply to those who thought that internal improvements had better be left to the several States, he would ask, he would put it to the candor of every one, if there

were not various objects in which many States were interested, and which, requiring therefore their joint co-operation, would, if not taken up by the General Government, be neglected, either for the want of resources, or from the difficulty of regulating their respective contributions? Such was the case with the improvement of the navigation of the Ohio at the rapids; the canal, from the Hudson to the Lakes; the great turnpike road, parallel with the coast, from Maine to Louisiana. These, and similar objects, were stamped with a national character; and they required the wisdom and the resources of the nation to accomplish them. No particular State felt an individual interest sufficient to execute improvements of such magnitude. They must be patronized, efficaciously patronized, by the General Government, or they never would be accomplished.

The practical effect of turnpike roads in correcting the evil, if it be one, of the great expansion of our Republic, and in conquering space itself, as was expressed by the gentleman from South Carolina, is about to be demonstrated by the great turnpike road from Cumberland to Wheeling. The road is partially executed, and will be completed in about three years. In the meantime, Maryland is extending a line of turnpike roads from Baltimore to Cumberland, which is also partially finished, and will be completed in the same period. Three years from the present time, we shall have a continued line of turnpike roads from Baltimore to Ohio. The ordinary time requisite to travel from Wheeling to Baltimore, prior to the erection of these roads, was eight days. When the roads are completed, the same journey may be performed in three days. The distance, in effect, between those two points, will be diminished in the proportion of five-eighths, or, in other words, they will be brought five days nearer to each other.

As for Representative Robertson's objections, Clay replied that Louisiana was more vulnerable to a foreign enemy than any point in the country:

Louisiana is, at the same time, the most dependent upon the other parts of the Union for the means of her defence. Is she not, therefore, deeply interested in multiplying the channels by which those means may be transported to her? If two great roads, the one following the valley of the Ohio, and that of the Mississippi; and the other, the maritime coast, shall terminate at New Orleans, will not the security of Louisiana be greatly increased?

He opposed the Robertson motion. The 14<sup>th</sup> Congress should set the funds aside, then let future Congresses decide how to use it. "We cannot accomplish everything at once." Putting too many specifics in the bill would endanger it:

Indeed, he doubted whether we had a sufficient stock of local information yet collected, to guide our judgments in designating the various objects of internal improvement which may require the fostering care of the General Government. Let us provide the ways and means. Let our successors judiciously apply them.

He described his hope:

He even anticipated pleasure from the reflection, distant as it might be, that the traveler, as he comfortably prosecutes his journey on some road, or glides down on some canal, erected in virtue of this bill, will say, I owe this facility, this convenience, to the providence and sagacity of the Fourteenth Congress.

Representative Thomas Telfair of Georgia proposed to amend the Robertson motion by vesting in Congress the power to choose the improvements:

He would retain in the hands of the General Government, all objects of a general nature – such, for instance, as the road from Maine to Georgia, which the States individually could not carry into effect. Such great and general objects he thought ought to be directed, and the appropriations made by the General Government, but their execution should be left to the States, who would be better able for many reasons to carry the objects into effect.

Despite Representative Calhoun's objection to the Telfair and Robertson motions, the House, acting as a Committee of the Whole, approved the Robertson motion with the Telfair amendment. It next rejected the Wright motion to strike out Section 1, by a vote of 61 to 70. The Committee of the Whole then reported the bill to the House for formal action.

After extensive debate over several days, the House of Representatives approved the Bonus Bill by the narrow majority of 86-84 on February 8, 1817.

Debate was less extensive in the Senate. On February 14, Senator Lacock, on behalf of the committee established to consider President Madison's message as it relates to roads and canals, had reported the House bill without amendment. As discussed earlier, he outlined the need for internal improvements and "a general outline" of vital public works. In reporting the House bill to his Senate colleagues without amendment, he indicated the committee's full support.

On February 10, 11 and 22, the Senate agreed to motions by opponents to postpone discussion of the bill.

Finally, on February 26, the Senate, forming a Committee of the Whole, took up the bill. Senator David Daggett of Connecticut, who had initiated some of the delay, again asked for postponement of consideration, this time to March 4. He summarized the bill, pointing out that it "contains none of the details for the construction, superintendence, or management of the works, or for the regulation of the expenditure of the money."

He understood the importance of internal improvements, but had objected to the bill for several reasons. First, it was not authorized by the Constitution, "and, if it were, secondly, it is inexpedient":

Mr. D. said that he should with much reluctance urge any objections arising out of the Constitution, for he had long since learned that the Constitution is made to change with the times. It was one thing yesterday – it is another to-day.

However, the Constitution did not give Congress the power to construct roads and canals or tax the people for their cost. “No one asserts the existence of such power. There is not a word upon the face of the instrument on the subject,” except the authority to establish post offices and post roads:

This, so far from authorizing the establishment by Congress of all roads, limits, if it bear at all on the point, the power to post roads only; otherwise it must be shown that an instrument which gives a special power over post roads, in terms, gives, by implication a general power over all roads. Such absurdity should not be imputed to the wise men who framed this Constitution.

The Constitution was very specific in its description of congressional authorities:

The States, at the adoption of the Constitution, possessed the entire control over all the roads and canals within their respective limits. On this point there can be no doubt. Each State always has, and now does, exercise the power. Is it taken by the express prohibition? Certainly not. Is it taken by implication? Certainly not, unless the power is given to the Congress in such manner as to preclude the exercise of it by the States, and for such an idea no one contends.

If the power were given to Congress, it would have to have been under one of the enumerated authorities in Article I. For example, Congress had authority to enact laws for the “general welfare and common defence.” If those words were intended to give Congress all the authority it needed for specific purposes, such as building roads and canals, Senator Daggett asked why Article I enumerated specific authorities. If that were true, “an enumeration of powers was wholly unnecessary, and is worse than useless; then there is no Constitutional limit to the powers of this Government, but the discretion of the Legislature.”

Some argued that the power was implied by the congressional authority to regulate commerce:

If so, to regulate commerce, means to promote, to facilitate, to secure it by all discreet measures, and the bill seems to have been framed in reference to such an exposition.

With such a broad interpretation, Congress could do almost anything:

It may deserve much consideration, whether such a broad construction is not in the face of the Constitution, and especially of the tenth article of the amendments, which is in these words: “The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.”

It is said, however, the appropriations have been made, and roads laid out by Congress; and the Cumberland road and others are mentioned. Congress may undoubtedly make roads through the lands of the United States, not within the jurisdiction of any State, and the Cumberland road was established probably as a

post road. Be that as it may, precedents of such doubtful character, and of such modern date, will not weigh much. The Constitution is not to be expounded by a single decision of the Legislature.

He also addressed the argument that laws authorizing these roads were permitted because they relied on the consent of the States, “and thus the power of Congress, if doubtful, is confirmed, and the bill in question is drawn with this aspect.”

Senator Daggett had one question:

Can money be appropriated by Congress for an object over which it is not authorized to legislate, because the States assent? Or, in other words, can a law be made, with the consent of the States, which is not warranted by the Constitution?

The Constitution, he argued, was “the shield of every individual in the nation, and that its powers can neither be enlarged nor diminished by the States, except by amendments made in pursuance of its provisions.”

He discussed the records of previous Presidents of the United States. Neither President Washington nor John Adams “ever proposed a measure of this character.” President Jefferson supported internal improvements, such as roads, canals, and other projects, but as he said in his annual message to Congress on December 2, 1806, “I suppose an amendment to the Constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the Constitution, and to which it permits the public moneys to be applied.” Similarly, President Madison had endorsed internal improvements, “but always with doubts as to the propriety of an interference, without amendments to the Constitution.”

Even granting the constitutional authority for the sake of argument, Senator Daggett stated that “in his judgment, the project was inexpedient.” The bill dedicated the funds but provided no details on which projects, whether developed with States or individuals, would be funded or what to do with any profits. Before agreeing to “grant away” more than \$12 million over the 20-year charter of the Second National Bank, “it is reasonable that the manner of expenditure should be pointed out.” Moreover, with a debt of \$120 million arising from the war, the “time also is not proper.” Other needs existed, and would occur over the 20-year period.

Further, many States had “already expended large sums for the objects contemplated by this bill,” resulting in the public being “sufficiently accommodated.” Was it fair to burden the States with taxes “for a system of internal improvements, not needed by themselves, because States have neglected these objects”?

And what if the funds were dedicated, but States did not assent to the proposed projects? If Congress had the asserted authority “it should be examined in a manner becoming the supreme authority, and not by bargains with States.”

Finally, the measure would “produce much discord.” Every State and citizen had their own ideas about what was needed. “The State Legislatures and Congress will be besieged with applications and remonstrances, and a wide door opened to intrigue.” He concluded:

In view of all these considerations, is it not a dictate of wisdom to pause before we adopt a measure so important, so doubtful in its expediency, so questionable as to its constitutionality?

Senator Martin D. Hardin of Kentucky argued that the general government had responsibility to address conflicts among States as to their individual rights. For example, river transportation depended on reducing rapids in an individual State, such as the Ohio River rapids at Louisville, but if that State could not or chose not to address the problem, it was certain that the other States relying on the river could not. “This power, the power to regulate and to promote intercourse between the States, ought to belong to the General Government.”

Senator Daggett had argued that regardless, the general government did not have authority to help the States. True, Senator Hardin said, the Constitution did not expressly grant that authority to Congress:

This would be correct, if there were no other parts of the Constitution from which this power could be fairly deduced; if the subject of post roads was not one which particularly called for such a provision as is contained in the Constitution. If no provision were in the Constitution relative to the establishment of post roads, I should not doubt the power of Congress to establish post roads from State to State. But it might well be doubted whether they had the power to establish a post road between two little towns within the same State, and off from the main post routes, for the purposes of neighborhood, not State, convenience. Hence the necessity for the express power in the Constitution.

Senator Hardin suggested other language, such as “to provide for the general welfare” as granting the power:

If Congress possesses this power, the first question presenting itself is, will the public welfare be promoted by great roads, which shall extend from Maine to Louisiana, from the Atlantic to the Mississippi which shall by canals connect inland navigation from one end of our union to the other – promote intercourse between State and State, expedite the mail, and facilitate the transportation of troops and munitions of war from one place to another in the hour of peril? I shall not be answered in the negative by any honorable member. I will not dwell on this point – the good sense of every one who hears me will respond in the affirmative.

Thus the public welfare would be promoted, but would doing so jeopardize States’ rights? Senator Hardin agreed that States had the right to finance roads and canals, but Congress also had not only the right but the duty to do the same:

Suppose, in a time of war, two neighboring posts separated by marshy ground; would not Congress possess the power to make a road between them to facilitate the marching of troops and the transportation of munitions of war?

This authority was derived from the power to provide for the public defense and public welfare. “Then Congress may make roads whenever these objects will be promoted, provided, in so doing, the rights of States or individuals are not violated.” Senator Hardin acknowledged that these powers might be abused to the disadvantage of a State’s rights. If Congress were to take abusive actions, “it would be an usurpation, an act of tyranny on State and individual rights.” He doubted the general government would act in that manner:

For I will ask honorable gentlemen to inform me what State rights can be violated if Congress were to erect, by contract with all the proprietors on whose soil it passed, a great highway through any State; say, for example, a road from this District through Virginia, to the mouth of the Kenawha [sic]? Have not the citizens a right to sell their lands? To grant a right of way over them? Could not any citizen, or combination of citizens, construct such a road without consulting the Legislature of Virginia? And shall we be told that the national Government cannot purchase this right for the American family? I ask what difference there is in constructing a road by contract with the proprietors over whose soil it passes, and building a fortification or a seventy-four within a State by contracts with the proprietors of the ground used for either purpose?

(A “seventy-four” was a type of ship used in war, so called because it carried 74 guns or cannons.)

The bill specifically calls for the assent of the State, which Senator Daggett questioned by denying that State assent could be the basis for giving Congress power it did not possess under the Constitution. Senator Hardin hoped that he had demonstrated that Congress already possessed the power, thus State assent was not the source of the authority. If the State consented, “there can be no confliction of powers or rights.”

As for postponing consideration, Senator Hardin argued that, “We have had this subject before us the whole session, we have time enough to discuss it; why, then, not meet it.”

After additional discussion by other Senators on these issues, the Senate voted down the Daggett motion, 18 to 19.

The Senate resumed discussion the next day, February 27. Senator Eli P. Ashmun of Massachusetts, an opponent of the bill, introduced a motion to amend the bill by adding a provision to the second section. Section 2 of the bill, at the time, read:

*And be it further enacted*, That the moneys constituting the said fund shall, from time to time, be applied in constructing such roads or canals, or in improving the navigation of such water courses, or both, in each State, as Congress, with the assent of such State, shall by law direct, and in the manner most conducive to the general welfare; and the proportion of the said moneys to be expended on the

objects aforesaid, in each State, shall be in the ratio of its representation, at the time of such expenditure, in the most numerous branch of the National Legislation.

Senator Ashmun's motion added the following:

*Provided, however,* That no part of said fund shall be expended on any of the objects aforesaid, within the State, without the assent of the Legislature thereof: *And provided, also,* That if any State shall refuse its assent as aforesaid, there shall be paid to such State such proportion of said moneys as would be expended therein on the objects aforesaid, if such State had assented to said expenditure.

The *Annals* did not record discussion of the motion, including an explanation from Senator Ashmun of the purpose of his motion. However, the Senate rejected this measure by a wide margin, 5 to 33.

A supporter of the bill, Senator Richard H. Goldsborough of Maryland, moved to amend Section 3, which assigned the fund to the care of the Secretary of the Treasury. The Secretary's duty was "to vest the said dividend, if not specifically appropriated by Congress, in the stock of the United States; which stock shall accrue to, and is hereby constituted a part of, the said fund." Goldsborough's motion would delete everything after "duty" and add:

To apportion and divide the said fund, as it annually accrues, among the several States now existing, and such as may hereafter be admitted into the Union, according to the then existing ratio of representatives, as before directed; and to invest the same, so apportioned and divided, in funded debt of the United States, in the names of the respective States, and the funded debt, so set apart in the names of the respective States, shall be applied to the aforesaid objects, under the concurrent direction of Congress and the Legislature of the State interested; and he shall also lay before Congress, at their next annual session, the condition of the said fund.

The Senate approved the motion, 21 to 17. It also approved an amendment, 26 to 12, to the second section proposed by Senator Outerbridge Horsey of Delaware:

*Provided,* That the proportion of said fund to be assigned to any State, or any part thereof, may, by the assent of such State, be applied to the purposes aforesaid in any other State.

Senator Daggett proposed an amendment providing that in case of war, the funds could be diverted "for the purpose of maintaining such war." The Senate rejected the motion, 18 to 19.

Having completed consideration of motions, the Senate returned to the bill for final action on February 28. First, it rejected, 14 to 22, a motion by Senator Daggett to recommit the bill to the Committee on Roads and Canals. Then, by a vote of 20-15, the Senate approved the bill.

On March 3, the House of Representatives again took up the bill as amended by the Senate. After rejecting two motions to postpone debate, the House approved the bill as amended.

The bill went to President Madison for his approval.

### **President Madison's Action**

As approved, Section 1 of the bill set aside and pledged the bonus and stock dividends from the Second National Bank “as a fund for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States, and to render more easy and less expensive the means and provisions necessary for their common defence.”

Section 2, as noted previously, specified the general purposes for which the funds would be used and that they would be used in in the ratio used to determine membership in the House of Representatives. The number of Representatives from each State is determined by population based on the census conducted every 10 years, following which the House districts are revised accordingly. Thus, the funds were to be apportioned among the existing States, and any new States, by population rather than need.

Under Section 3, the Secretary of the Treasury was to administer the fund. He would divide the funds among the States based on their representation in the House to be used as provided in Section 2. In addition, he was to report annually on the condition of the fund.

The final section, #4, directed the Secretary to invest the bonus in the stock of the bank, so it would increase by interest payments until payments to the States were needed for internal improvements.

Clay biographers David S. Heidler and Jeanne T. Heidler explained that President Madison's December 1816 encouragement of internal improvements was one reason Congress passed the bill. “Madison's seeming conversion . . . to the idea of limited federal projects convinced skeptics that the Constitution's ‘Necessary and Proper’ clause might indeed sanction such enterprises.”

Speaker Clay and Representative Calhoun thought that with congressional passage, “the difficult part was done.” Then:

On March 2, Calhoun paid a customary courtesy call on the outgoing president and Mrs. Madison at the Octagon House, a wealthy Virginia planter's property that served as the president's residence while the gutted Executive Mansion was being rebuilt. Calhoun chatted politely with the Madisons, wished them well, and prepared to leave. As Calhoun walked toward the door, Madison called to him. The president seemed uncomfortable and clearly had something on his mind as he accompanied Calhoun toward the exit. After a pause, he hesitantly said that he planned to veto the Bonus Bill because he thought it unconstitutional.

The information stunned Calhoun. All of his hard work had been carried out on the assumption that the president wanted a bill authorizing internal improvements, and now with one in hand he was going to strike it down. Calhoun rushed to Henry Clay with this news, and Clay quickly wrote to the president . . . . [Heidler, David S., and Heidler, Jeanne T., *Henry Clay: The Essential American*, Random House, 2010]

Speaker Clay wrote to President Madison, “Knowing that we cannot differ on the question of the *object* of the Internal Improvement bill, however we may on the Constitutional point, will you excuse me for respectfully suggesting whether you could not leave the bill to your successor?” After President Madison’s departure, the bill would remain alive, subject to incoming President Monroe’s signature, until the 14<sup>th</sup> Congress adjourned on March 6.

President Madison could not. On March 3, his final full day in office, he vetoed the bill and explained his reasoning in a veto message. He could not reconcile the proposal with the Constitution. Section 8 of Article I of the Constitution enumerated the powers of Congress “and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation within the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution . . . .”

He dismissed each of the enumerated powers as authority for the bill. The power “to regulate commerce among the several States” could not be stretched to cover construction of roads and canals “without a latitude of construction departing from the ordinary import of the terms” in the article. Justifying the Bonus Act under the phrase “to provide for common defense and general welfare” would be “contrary to the established and consistent rules of interpretation” and would give Congress “a general power of legislation instead of the defined and limited one hitherto understood.” The phrase, if broadly interpreted, could embrace “every object and act within the purview of a legislative trust.”

He also rejected the procedure Congress had used to justify construction of the National Road:

If a general power to construct roads and canals, and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the States in the mode provided in the bill can not confer the power.

He concluded:

I am not unaware of the great importance of roads and canals and the improved navigation of water courses, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution, and believing that it can not be deduced from any part of it without an inadmissible latitude of construction and a reliance on insufficient precedents;

believing also that the permanent success of the Constitution depends on a definite partition of powers between the General and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill, I have no option but to withhold my signature from it, and to cherish the hope that its beneficial objects may be attained by a resort for the necessary powers to the same wisdom and virtue in the nation which established the Constitution in its actual form and providently marked out in the instrument itself a safe and practicable mode of improving it as experience might suggest.

The veto message did not address the provision in Article I giving Congress authority to establish post offices and post roads.

Later that day, March 3, the House voted on a motion reading “that the House on reconsideration, do agree to pass the said bill” despite the President’s reservations. The House voted 60 yeas, 56 nays. The *Annals* noted:

It will be observed that the Speaker, on this occasion, differing from every other question before the House, claimed and exercised the right to vote. Two-thirds being required to decide the question affirmatively, the bill did not pass.

Later that day, the House informed the Senate of the President’s veto and its failure to override. With the House unable to override, the Senate did not need to take any further action.

The Bonus Bill was dead.

Professor Larson explained the failure:

In their desperation to get authority into national hands, Clay and Calhoun had accepted a bill with no power to control local spoilsmen except by packaging their greed in pork barrels. Further, they had reinterpreted the Constitution to suit the wishes of majorities outdoors – a revolutionary practice virtually invented by Jefferson and Madison in the early years of the republic, but one the aging framer could not sanction in the hands of the coming generation. Much as he wanted progress toward internal improvements, Madison could not authorize such corruption in both the practice and structure of the American federal government.

In summary:

It was a bad bill, which could accomplish almost none of the coherence or control that earlier designs attempted. Gallatin later denounced it. Jefferson condemned it as threatening to “loosen all the bands of the constitution.” Madison himself had shared with Jefferson a private note of alarm, one of very few direct clues to the president’s motivation: the House was trying “to compass by law only an authority over roads and Canals”: Legislative construction was the offence that caught the president’s eye. Strict construction as a doctrine had been forced to

stop designs of overweening executives, but the same ganders could arise if the people themselves, greedy for the patronage of Congress, mounted an assault on the balanced Constitution. More than ever, outdoor partisan behavior looked to Madison like factious combination, and special-interest issues like internal improvements inexorably corrupted the legislative process.

The quote was a passing comment in a letter to Jefferson on February 15, 1817, in which President Madison explained that he had not seen the bill, but if what he had heard about it was true, the bill was “of an extraordinary character.”

Professor Larson continued:

Madison’s veto of the Bonus Bill effectively spread the burden of internal improvements, at least for the moment, on the backs of the states or private enterprises. Thirty years of frustration with local jealousies, rival jurisdictions, vested interests, straitened purses, and the preferences of local capital for less extravagant (and more immediately rewarding) projects all had failed to establish the legitimacy of a national system or design. Jefferson and Madison still believed (wrongly) that, if asked for an amendment, the states would “certainly concede the power.” Therefore, out of no hostility to national improvements, but to defend the Constitution against additional future encroachments, the leading architects of a Republican alternative to the designs of the Federalist gentry finally denied themselves – or at least their successors – the exercise of power for the general good.

In rejoining the battle against consolidation, broad construction, and the enlargement of federal authority, Madison and Jefferson underestimated the danger that was building from resurgent antifederal sentiments in the states. National purpose drifted dangerously while the kind of minimal caretaker governments promised by the Spirit of ’98 struggled to meet the demands of a changing world. Gallatin’s *Report* had perfectly described the need to integrate and arbitrate any differences among the states before they fostered more desperate rivalries; but “states’ rights” and “strict construction” – polemical tools from another context – now were being used by the strong to immobilize the weak (and, perversely by the weak to immobilize themselves), blocking any effort to cultivate fairness in a general system.

Historian George Rogers Taylor discussed the 19<sup>th</sup> century debates on internal improvements in his classic 1951 work *The Transportation Revolution – 1815-1860*. He wrote that the primary obstacle to a national system of internal improvements as suggested by Gallatin, Calhoun, and Clay was “the bitter state and sectional jealousies which were wracking the new nation”:

New England was almost solidly opposed to federally financed internal improvements. Her own roads were relatively good, and she looked with genuine alarm upon measures which would further augment the heavy migration of people

from her hills to the Ohio Valley to promote the commerce of New York, Philadelphia, or Baltimore to the disadvantage of Boston.

Initially, New York and Pennsylvania were strong supporters of routes to the Northwest Territory, “for across their territory lay promising routes to the West.” Taylor pointed out that New York and Pennsylvania “together marshaled nearly half the votes which made possible passage” of the 1817 Bonus Bill:

But this marked the high tide of such support from these states; each was soon financing its own system and consequently [was] opposed to the development of competitive routes to the West at federal expense.

The South had many navigable rivers, “yet no part of the country had poorer roads or stood more greatly in need of federal capital to provide internal improvements than the South.” Regardless, the South provided “little support” for internal improvements by the general government:

Even in 1817 Calhoun could not command a majority of southern votes in favor of his internal improvements measure. Later, as sectional issues became more clearly defined, the people of the South grew even more strongly opposed to federal grants for roads and canals. Southerners believed such expenditures would benefit other sections more than the South. But even more important to them was the fact that disbursements on internal improvements increased the need for revenue and thus gave justification for a tariff system which they bitterly opposed. Finally, the argument for federal internal improvements rested on a broad interpretation of the Constitution, a construction which became increasingly distasteful in the South as the defense of slavery gradually overshadowed all other issues.

The expanding western States comprised the one section of the country that regularly supported a national system of internal improvements:

Capital was scarce and the need pressing for improved routes to the East. But even in this section voters were not unanimous in their approval. The dominance of other issues as well as the existence of local jealousies always sufficed to produce some opposition. [Taylor, George Rogers, *The Transportation Revolution – 1815-1860*, Holt, Rinehart, and Winston, Inc.]

## **Part 4: The Toll-Gate Era**

### **Under President James Monroe**

On March 4, 1817, the day after President Madison's veto of the Bonus Bill, James Monroe took the Oath of Office as President of the United States. A Virginia native, he had a varied career of public service. Although he opposed ratification of the Constitution during the convention held for that purpose in Virginia, he served in the United States Senate (1790-1794), as Minister to France (1794-1796) and the United Kingdom (1803-1807), and as Governor of Virginia (January-April 1811) before becoming Secretary of State (1811-1815) under President Madison. While serving as Secretary of State, Monroe served simultaneously as Secretary of War during the final year of the War of 1812 (1814) and beyond (1815).

Speaker Clay had hoped President Madison would hold off acting on the Bonus Bill so that President Monroe could do so. However, if Speaker Clay thought President Monroe would have signed the bill, he was almost certainly mistaken. Like his predecessors, President Monroe supported internal improvements, but did not believe the Constitution granted authority to Congress to advance projects.

He made his views clear during his Inaugural Address on March 4, 1817. After discussing other topics, he said:

Other interests of high importance will claim attention, among which the improvement of our country by roads and canals, proceeding always with a constitutional sanction, holds a distinguished place. By thus facilitating the intercourse between the States we shall add much to the convenience and comfort of our fellow-citizens, much to the ornament of the country, and, what is of greater importance, we shall shorten distances, and, by making each part more accessible to and dependent on the other, we shall bind the Union more closely together. Nature has done so much for us by intersecting the country with so many great rivers, bays, and lakes, approaching from distant points so near to each other, that the inducement to complete the work seems to be peculiarly strong. A more interesting spectacle was perhaps never seen than is exhibited within the limits of the United States – a territory so vast and advantageously situated, containing objects so grand, so useful, so happily connected in all their parts!

The reference to “constitutional sanction” meant that the needed internal improvements did not yet have such sanction.

As he was preparing his first message to Congress for delivery in early December, President Monroe wrote to former President Madison on November 24, 1817:

I am now engaged in preparing the message to congress, whose meeting is so near at hand, that I shall, I fear, be badly prepared. The question respecting canals &

roads is full of difficulty, growing out of what has passed on it. After all the consideration I have given it, I am fixed in the opinion, that the right is not in Congress and that it would be improper in me, after your negative [in the Bonus Bill veto], to allow them to discuss the subject & bring a bill for me to sign, in the expectation that I would do it. I have therefore decided to communicate my opinion in the message & to recommend the procuring an amendment from the States, so as to vest the right in Congress in a manner to comprise in it a power also to institute seminaries of learning. The period is perhaps favorable to such a course.

The former President replied on November 29, 1817:

I am fully aware of the load of business on your hands, preparatory to the meeting of Congress. The course you mean to take in relation to roads & Canals, appears to be best adapted to the posture in which you find the case. A reluctance has generally been felt, to include amendments to the Constitution among Executive recommendations to Congress, but it seems to be called for on the present occasion, as preferable to arresting their deliberations by a notice that the result will be negated, or to meeting the result with an unexpected negative. For myself, I had not supposed that my view of the Constitution could have been unknown, and I felt with great force the delicacy of giving intimations of it, to be used as a bar or a clog, to a depending measure.

The expediency of vesting in Congress a power as to roads & Canals, I have never doubted; and there has never been a moment when such a proposition to the States was so likely to be approved. A *general* power to establish Seminaries, being less obvious, and affecting more the equilibrium of influence between the national & State Govts. is a more critical experiment . . . . I should consider it, as at least essential, that the two propositions, whatever may be the modification of the latter, should be so distinct, that a rejection of the one by the States may not be inconsistent with the adoption of the other.

President Monroe included his views in his first annual message to Congress on December 2, 1817:

When we consider the vast extent of territory within the United States, the great amount and value of its productions, the connection of its parts, and other circumstances on which their prosperity and happiness depend, we can not fail to entertain a high sense of the advantage to be derived from the facility which may be afforded in the intercourse between them by means of good roads and canals. Never did a country of such vast extent offer inducements to improvements of this kind, nor ever were consequences of such magnitude involved in them. As this subject was acted on by Congress at the last session, and there may be a disposition to revive it at the present, I have brought it into view for the purpose of communicating my sentiments on a very important circumstance connected

with it with that freedom and candor which a regard for the public interest and a proper respect for Congress require.

A difference of opinion has existed from the first formation of our Constitution to the present time among our most enlightened and virtuous citizens respecting the right of Congress to establish such a system of improvement. Taking into view the trust with which I am now honored, it would be improper after what has passed that this discussion should be revived with an uncertainty of my opinion respecting the right. Disregarding early impressions I have bestowed on the subject all the deliberation which its great importance and a just sense of my duty required, and the result is a settled conviction in my mind that Congress do not possess the right. It is not contained in any of the specified powers granted to Congress, nor can I consider it incidental to or a necessary means, viewed on the most liberal scale, for carrying into effect any of the powers which are specifically granted.

In communicating this result I can not resist the obligation which I feel to suggest to Congress the propriety of recommending to the States the adoption of an amendment to the Constitution which shall give to Congress the right in question. In cases of doubtful construction, especially of such vital interest, it comports with the nature and origin of our institutions, and will contribute much to preserve them, to apply to our constituents for an explicit grant of the power. We may confidently rely that if it appears to their satisfaction that the power is necessary it will always be granted.

In this case I am happy to observe that experience has afforded the most ample proof of its utility, and that the benign spirit of conciliation and harmony which now manifests itself throughout our Union promises to such a recommendation the most prompt and favorable result. I think proper to suggest also, in case this measure is adopted, that it be recommended to the States to include in the amendment sought a right in Congress to institute likewise seminaries of learning, for the all-important purpose of diffusing knowledge among our fellow-citizens throughout the United States.

After receiving President Monroe's message, the House appointed a committee to address the portion related to roads, canals, and seminaries of learning. On December 15, 1817, Representative Henry St. George Tucker of Virginia submitted the committee's report to the House. He addressed constitutionality in the first paragraph. Acknowledging that the President did not believe the Constitution gave Congress the authority to fund roads and canals, the report explained why the President's opinion should not be "permitted to have any influence on the disposition of Congress to legislate on this interesting subject; for if the constitutional majority of the two Houses should differ with the Executive Department, the opinion of the latter, however respectable, must yield to such an expression of *their* will."

After all, if Congress were to defer to the President's view by not legislating on the matter even though a two-thirds vote in both Houses of Congress could be achieved to override his veto of a road or canal funding bill, "the presidential veto would acquire a force unknown to the constitution, and the legislative body would be shorn of its powers from a want of confidence in its strength, or from indisposition to exert it."

It was proper, therefore, to consider the constitutional authority of Congress to pass legislation for the construction and improvement of roads and canals with the consent of the States. The goal of the discussion was "to compare what is manifestly admitted on the one hand with what is claimed and contended for on the other." The acts of past Congresses and past Presidents afford "evidence of what may be regarded as conceded to be within the powers of the General Government." With these acts as a guide, "we shall find it clearly admitted that there are some cases, at least, in which the General Government possesses the constitutional privilege of constructing and improving roads through the several States."

The report cited, first, the Cumberland Road authorized by the Act of March 29, 1806:

The fund provided for this noble undertaking was to consist of the proceeds of the sales of certain lands, the property of the United States, in the State of Ohio; so that this act furnishes the double admission, that "roads may be laid out by Congress through the several States with their consent," and that "the expenses of constructing such roads may constitutionally be defrayed out of the funds of the United States." The act was approved by the President in office in 1806; and other acts, confirming, amending, and enlarging it, were passed by subsequent Legislatures in the years 1810, 1811, and 1815, and approved by the President in office at those periods. Nay, more: the last three acts contained appropriations to the amount of \$210,000, payable out of any moneys in the treasury, but reimbursable out of the Ohio fund – a fund which might or might not prove adequate, and which, in point of fact, is believed hitherto to have been insufficient.

The report cited other roads funded by congressional action:

- An Act of April 27, 1806, authorized \$6,000 "to cause to be opened a road from Nashville, in the state of Tennessee, to Natchez, in the Mississippi territory." This funding was to improve the existing Natchez Trace to speed the U.S. mail.
- An Act of March 3, 1817, authorized \$4,000 for a road to be cut and opened, under the direction of the Secretary of War, from Reynoldsburg on the Tennessee River in Tennessee into Mississippi through the Chickasaw Nation to intersect the Natchez Road in accordance with a treaty dated August 5, 1815. The road had been surveyed by Commissioners Thomas Johnson and Michael Dickson in cooperation with two commissioners appointed by the Chickasaw Nation. They reported on May 15, 1816, that the 129-mile road was "level and well watered; but little causewaying and bridging will be necessary to make it as good a road as any in the western country." They estimated that "the sum of \$2,000 will be

- sufficient to make it a good road without any further expenses to Government; and we believe that if the General Government authorizes the opening, it will be done with promptness.” Representative Tucker pointed out that the legislation went further than the legislation behind the Cumberland Road “in omitting to require the previous consent of the State of Tennessee . . . and in directing the expenses to be defrayed out of the public Treasury of the United States, without providing for its reimbursement in any manner whatsoever.”
- “Since that period, they [the committee] have satisfactory information that a road has been directed by the Executive of the United States to be improved, at the expense of the General Government, and doubtless for military purposes. This road is laid out from Plattsburgh, or its vicinity, in the State of New York, to Sackett’s Harbor, in the same State.” Again, funding would come from the general Treasury, with construction undertaken without consent of the State. (The area between Plattsburgh and Sackett’s Harbor had been the site of battles during the War of 1812. In 1817, President Monroe’s tour of the northern States took him to Plattsburgh (July 25) and Sackett’s Harbor (August 3). He soon ordered construction of a military road linking the two military stations.)

(As discussed earlier, the Act of April 21, 1806, also appropriated \$6,400 for the road from Athens, Georgia, to New Orleans, but Representative Tucker’s report did not mention it.)

Based on precedence, then, Congress had the authority to lay out, construct, and improve post roads with the assent of the States involved; to open, construct, and improve military roads through the States, again with their consent; and to cut canals through the States, with their consent, “for promoting and giving security to internal commerce, and for the more safe and economical transportation of military stores, &c. in time of war; leaving in all these cases the jurisdiction right over the soil in the respective States.”

To justify these authorities, the committee did not find it necessary “to resort to what is called a liberal construction of the constitution.” Because the powers asserted “are not in derogation of State rights, (since they can only be exercised by their assent) there is less reason for adhering to extreme rigor of construction.” If the power were oppressive of States’ rights, dangerous to those rights, or “calculated to aggrandize the Union and to depress its members,” it might be necessary to resort to the “letter of their authority.” In this case, the authority “is beneficent in its effects, and only felt in the blessing it confers; where it is not proposed to act except with the assent of the party which is to be affected; where the measure is more calculated to increase the opulence and the power of the State than to aggrandize the Union at its expense, it might fairly be contended that a less rigorous construction of the constitution would be justified”:

It is neither unprecedented nor improper to construe the same instrument liberally where the interests of the contracting parties will be thereby promoted, and to adhere to a greater strictness where injury may arise to either by an interpretation too latitudinous. That the powers in question are neither dangerous in their tendencies nor calculated to prove injurious to the States, would seem fairly

inferrible [sic] from the recommendation to amend the constitution, and from the importance so vastly attached to these objects on all hands.

But your committee, nevertheless, do not conceive it necessary to call to their aid the liberal principles of construction which the occasion might justify. They disavow any use of the general phrase in the constitution “to provide for the common defence and general welfare” as applicable to the enumeration of powers, or as extending the power of Congress beyond the specified powers; and they admit that, to support their position, it must appear that the powers contended for are expressly granted, or that they are both “necessary and proper” for carrying into execution some other express power.

That Congress could construct and improve post roads under the power “to establish Post Offices and post Roads” was “manifest, both from the nature of things and from analogous constructions of the constitution.” If “establish” simply meant designate, the power “might be rendered in a great measure inefficient and impracticable.” If, for example, the general government designated a post road, a State might discontinue the road:

If the power to *establish* confers only the authority to designate, Congress can have no right either to keep a ferry over a deep and rapid river for the transportation of the mails, or to compel the owners of a ferry to perform that service; and yet our laws contain an act, acquiesced in for more than twenty years, imposing penalties on ferrymen for detaining the mail, and on other persons for retarding or obstructing its passage. It would be difficult to discover how this power of imposing penalties can be supported, either as an original or accessory power, except upon principles of more liberal construction than those now advanced. There are, therefore, not a few who believe that, under the authority to “*establish*” post roads, Congress have express power to lay out, construct, and improve roads for the transportation of the mails.

Beyond “establish,” the Constitution gave Congress authority to make all laws that were “necessary and proper” for carrying out the enumerated powers described in Article I. Thus, under the “necessary and proper” clause of the Constitution, Congress had all the authority needed for “the complete enjoyment of the privilege of ‘establishing post offices and post roads.’”

A narrow construction of the Constitution would mean that delegates to the Constitutional Convention intended that “the right of transporting the mails” would be held at the will of the States:

Can it be supposed, that the convention, in conferring the power and imposing the duty of transporting the mails, (in its nature a matter of national concern,) intended to vest in Congress the mere authority to designate the roads over which it should be carried? Can it be denied that the right to render a road passable is “necessary” to the enjoyment of the privilege of transporting the mails? Or can it

be denied that such improvement, with the assent of the States, is proper? And if “necessary and proper,” is it not justified as an incidental power?

If one believes that the Constitution meant to establish only a right of way, with the soil and jurisdiction remaining with the States, there should be no objection to the improvement of post roads with their assent. Under the 10<sup>th</sup> Amendment to the Constitution, if “this right is reserved to the States, it is within the power of the State to grant it, unless the United States are incapable of receiving such a privilege.” Past acts, such as Virginia ceding its claims to the Northwest Territory, showed that to be the case.

If the general government had the right to build roads in territories that the States cede to it, “can the inferior privilege be denied it of receiving from a State the right of making or repairing the roads over which it is compelled to transport the mails through the Union?”

The right to make military roads without State consent during a war is not disputed; “it seems fair to assume that, whenever a military road becomes necessary for the national safety, it is in the power of the General Government to construct it.” In times of peace, the general government can best judge when a road is necessary to prepare for possible wars:

It is not proposed to enter upon the delicate inquiry whether this right can be exercised by the General Government *without* the assent of the respective States through whose territories a road is constructed, in time of peace, with a view to military operations in any future wars. Leaving this question for discussion whenever the occasion may call it forth, your committee are content in this report to assert the right to exercise this “necessary” power, *with the assent of the States*.

Having examined the constitutional basis for the construction of roads by the United States, “it may not be unimportant to examine what has been the practice under its provisions.” Admittedly, “the act of the Executive branch of the Government, though they cannot be relied on to support acknowledged error,” but those acts may be referred to in determining the authority of Congress to fund internal improvements:

Among the most conspicuous of the analogies afforded by the acts of Congress is the establishment of the Cumberland road already mentioned. This road has been constructed under the authority of the United States, with their funds, and through several of the States, with their assent. It has received the sanction of several distinct representative bodies, and of two Presidents of the United States. In short, if precedent alone were wanting, this act would furnish it.

The roads from Nashville and Reynoldsburg to Mississippi were similar examples, but the report focused on the War Department’s military road from Plattsburgh to Sackett’s Harbor:

This road is not to be constructed with any express assent of the State through which it passes, nor by the authority of Congress, but the President has deemed it

necessary as a military road, and has ordered it to be made accordingly; a measure, the advantages of which are understood to be so palpable, as to have given great satisfaction in the country where the road is made. Hence, however, the question results, whether the exercise of this power by the President is not an express admission of the right of the General Government to open military roads even in time of profound peace, when they are believed to be necessary; and, if the power of judging of this necessity is possessed by the Executive, it cannot, it is presumed, be denied to the yet more important organ of the nation's will – the Legislature of the Union.

(Progress on the military road was slow. The soldiers who were expected to build the road were initially committed instead to improving facilities in and around the military bases. A summary of progress dated January 20, 1823, reported that construction from Plattsburgh to French Mills (Fort Covington) on the Salmon River had been completed for only 20 miles. “The remainder is opened, but required to be cleared of stumps and stones, and to be so formed as to carry off water.” Between Sackett's Harbor and Morristown on the St. Lawrence, the road also had been completed for 20 miles, with the remainder open but in need of clearance of stumps and stones and drainage improvements. “It was foreseen that the natural growth of the country between French Mills and Morristown would soon complete the connexion without external aid. By means of this communication, the land forces on the two lakes (Ontario and Champlain) may be promptly united at any point on our St. Lawrence border, and thrown at once upon the possessions of the enemy.” The report estimated that the remaining work, involving a level country, free of mountains and “considerable hills,” and rivers could be “completed in two seasons, and that the expenditure in each season would not exceed \$3,500.” According to an 1882 Treasury Department compilation of expenditures on internal improvements, Congress appropriated \$3,500 for the work by an Act of March 3, 1823, which was expended in 1823-1825. [ASP Doc. No. 534; *A Statement of Appropriations and Expenditures for Public Buildings, Rivers and Harbors, Forts, Arsenal, Armories, and Other Public Works* (from March 4, 1789, to June 30, 1882), compiled by the Department of the Treasury])

Similar arguments, the report pointed out, would apply to the congressional authority to fund construction of canals:

It may suffice to add, that the power to make canals and roads, for the promotion and safety of internal commerce between the several States, may justly be considered as not less incidental to the regulation of internal commerce than many of the powers exercised under the authority to regulate foreign commerce are necessary to that power . . . .

It is true that the wants of the Union cannot confer power under the Constitution; but they may justly be touched upon as affording aid in its construction. They must have been clearly foreseen, and must have been supposed to be provided for. If the power to carry on war implies “the necessary and proper” means of conducting it to a safe and proper issue, and if, without the use of these means, the

burdens, and the privations, and the miseries of war, are to be indefinitely increased, and its issue (always doubtful) rendered yet more precarious and unprosperous, are we not justified in presuming these means to have been contemplated as being vested in the General Government? Are we not justified in asserting this “necessary” power – the power of constructing roads and canals – at least with the assent of the States?

The Constitution provides the authority for Congress to initiate taxes “to pay the debts and provide for the common defence and general welfare of the United States.” Although this phrase “general welfare” did not identify specifics, “it would be difficult to reconcile either the generality of the expression or the course of administration under it, with the idea that Congress has not a discretionary power over its expenditures, limited by their application “to the common defence and general welfare.”

He cited activities that Congress had authorized to illustrate how the term was applied although no examples were mentioned in the Constitution: buying Thomas Jefferson’s library to restart the Library of Congress that the British had burned during the war; the services of a Chaplain for Congress; the purchase of paintings for the walls of the Capitol building; to relieve “the wretched sufferers of Venezuela”; or the Lewis and Clark Corps of Discovery from Missouri to the Pacific Northwest. “Yet, to these and to similar objects have the funds of the United States been freely applied, at every successive session of Congress, without a question as to the constitutionality of the application.” They and many other appropriations can be justified only “upon the principle that the general clause in question has vested in Congress a discretionary power to use for the “general welfare” the funds which they are authorized to raise.”

The committee did not see “any danger that such a power will be abused, while the vigor of representative responsibility remains unimpaired.” The founders, in adding the phrase “general welfare” to the Constitution, relied on this principle “for the protection of the public purse. It was a safe reliance.” They could not have anticipated the future well enough to specify a limited list of purposes that would restrict Congress no matter what happened:

Hence proceeds the use of this general phrase in relation to the purposes to which the revenues may be applied, while the framers of the instrument, in the clause which concludes the enumeration of powers, scrupulously avoid the use of so comprehensive an expression, and confine themselves to the grant of such incidental power as might be both “necessary and proper” to the exercise of the specified powers.

Admittedly, the power of taxation is not unlimited:

There is a distinction between the power to appropriate money for a purpose, and the power to do the act for which it is appropriated; and if so, the power to appropriate money “for the general welfare” does not by fair construction extend the specified or incidental powers of Government. Thus, in the case under

consideration, if the power to make a road or dig a canal is not given, the power of appropriating money cannot confer it, however generally it may be expressed. If there were no other limitation, the rights of the respective States over their soil and territory would operate as a restriction.

If this explanation was too strict a construction of the Constitution, the examples already cited and many others would appear to be “a continued series of violations of the Constitution, from the first session after its adoption, to the present day.”

The committee’s report concluded:

From all these considerations, your committee submit it as their opinion that Congress has the constitutional power to construct roads and canals through the several States, *with the assent of the States*, on such terms as may be agreed on, leaving the *jurisdictional rights* in the States, respectively. To these and other national improvements which may be found to be within the constitutional powers of the Government, they think it advisable that the interest of the Government in the Bank of the United States should be appropriated. They forbear to give greater length to this report by enlarging on the important advantages to be derived from their national improvements; they also forbear, at this time, to offer the details of any plan upon the subject, presuming it most proper to obtain the sense of the House of Representatives, in the first instance, on the general proposition. For this purpose, they respectfully submit the following resolution:

*Resolved*, That, in order to promote and give security to the internal commerce among the several States; to facilitate the safe and expeditious transportation of the mails by the improvement of post roads, with the assent of the respective States; to render more easy and less expensive the means and provisions necessary for the common defence by the construction of military roads, with the like assent of the respective States; and for such other internal improvements as may be within the constitutional powers of the General Government, it is expedient that the sum to be paid to the United States, by the twentieth section of the act to incorporate the subscribers to the Bank of the United States, and the dividends which shall arise from their shares in its capital stock, be constituted as a fund for internal improvement. [ASP, Doc. No. 435]

On December 22, 1817, President Monroe wrote to former President Madison on a couple of issues, including the Tucker committee’s report:

The subject of an amendment to the Constitution as brought before Congress, in the message is opposed by a report from Mr. Tucker, which I have not yet read, but shall to-day. I understand that it criticizes with severity the doctrine contained in the message, & endeavours to invalidate it, by the measures already sanctioned by Mr. Jefferson, yourself and in part by me, in ordering a fatigue party to improve the road between Plattsburg and Hamilton. Be so good as to give me in

detail the reasons which justify the Cumberland road which presents the greatest difficulty.

Former President Madison replied on December 27, 1817. After discussing the other issue that President Monroe had raised, the former President turned to the road issue:

The Cumberland road having been a measure taken during the administration of Mr. Jefferson, and as far as I recollect not then brought to my particular attention, I can not assign the grounds assumed for it by Congress, or which produced his sanction. I suspect that the question of Constitutionality was but slightly if at all examined by the former, and that the Executive assent was doubtingly or hastily given. Having once become a law, and being a measure of singular utility, additional appropriations took place of course under the same administration: and with the accumulated impulse thence derived, were continued under the succeeding one, with less of critical investigation perhaps than was due to the case. Be all this as it may, the case is distinguished from that now before Congress, by the circumstances 1. that the road was undertaken essentially for the accommodation of a portion of the Country, with respect to which Congress have a general power not applicable to other portions. 2. that the funds appropriated and which alone have been applied, were also under a general power of Congress, not applicable to other funds. As a precedent, the case is evidently without the weight allowed to that of the National Bank, which had been often a subject of solemn discussion in Congress, had long engaged the critical attention of the public, and had recd. reiterated and deliberate sanctions of every branch of the Govt: to all which had been superadded many positive concurrences of the State Govts and implied ones by the people at large. The Bank case is analogous to that of the Carriage tax which was generally regarded by those who opposed the Bank as a direct tax and therefore unconstitutional, and did not receive their acquiescence, untill their objections were superseded by the highest Judicial as well as other sanctions. As to the case of post roads and military roads; instead of implying a general power to make roads, the constitutionality of them must be tested by the bona fide object of the particular roads. The Post cannot travel nor troops march without a road. If the necessary roads can not be found, they must of course be provided.

Serious danger seems to be threatened to the genuine sense of the Constitution, not only by an unwarrantable latitude of construction, but by the use made of precedents which can not be supposed to have had, in the view of their authors, the bearing contended for, and even where they may have crept, thro' inadvertence, into Acts of Congress, and been signed by the Executive at a Midnight hour, in the midst of a group scarcely admitting perusal, and under a weariness of mind as little admitting a vigilant attention.

Another and perhaps a greater danger is to be apprehended from the influence which the usefulness & popularity of measures may have on questions of their Constitutionality. It is difficult to conceive that any thing short of that influence

could have overcome the constitutional and other objections to the Bill on roads and canals which passed the two Houses at the last Session.

These Considerations remind me of the attempts in the Convention to vest in the Judiciary Dept. a qualified negative on Legislative *bills*. Such a controul restricted to constitutional points, besides given greater stability and system to the rules of expounding the Instrument, would have precluded the question of a Judiciary annulment of Legislative *Acts*. But I am running far beyond the subject presented in your letter, and will detain you no longer that [sic] to assure you of my highest respect and sincerest regard.

(Madison's comment about a carriage tax referred to an Act of June 5, 1794, in which Congress approved a tax on "all carriages for the conveyance of persons, which shall be kept by or for any person, for his or her own use or to be let out to hire, or for the conveying of passengers," with the tax ranging from one to ten dollars annually depending on the vehicle. Treasury Secretary Hamilton had suggested the tax, among others, to raise funds during a period when war with England again seemed likely. It was essentially a luxury tax at a time when few people could afford carriages. Representative James Madison voted against the bill, which he considered unconstitutional.

(In a challenge arranged by anti-Federalists, Daniel Hylton, a Virginia import merchant, refused to pay the tax on the 125 vehicles he claimed, falsely, to own for his own use (a later scholar pointed out that he claimed to own more carriages than existed in the entire State of Virginia at the time). Under the Constitution, "all duties, imposts and excises shall be uniform throughout the United States." The issue, therefore, was whether Congress could impose a tax, namely the tax on carriages, that was not uniform in every State. The United States sued Hylton as part of a plan the government worked out with him to get the case to the Supreme Court – all parties knew he did not own 125 carriages and, if the court ruled against him, he would be required to pay the tax on only one carriage, probably the only one he owned in reality. The key to the number was that the tax per 125 vehicles equaled the threshold amount that would qualify for a Supreme Court review.

(When the case was to be argued before the Supreme Court, the Treasury Department hired former Secretary Hamilton to defend the tax, which he did in a 3-hour presentation. Chernow, in his Hamilton biography, wrote:

He also argued notable constitutional cases, finally traveling to Philadelphia in early 1796 to defend before the Supreme Court the constitutionality of the carriage tax he had introduced as treasury secretary. "He spoke for three hours, said one newspaper, "and the whole of his argument was clear, impressive, and classical."

(In *Hylton v. United States* (1796), the Supreme Court agreed with Hamilton that the tax was not a tax that had to be applied uniformly among the States and, therefore, was constitutional. Later legal scholars have questioned the court's reasoning, but the more

important point was that *Hylton v. United States* was the first time the Supreme Court determined whether a law passed by Congress and signed by the President was constitutional – at the time, the court’s jurisdiction was a questionable issue in itself. This authority was later established in the Supreme Court’s landmark *Marbury v. Madison* opinion (1803). The tax on carriages for personal use was repealed along with other internal taxes, including on stills, domestic distilled spirits, and refined sugar, by an Act signed by President Thomas Jefferson on April 6, 1802.)

### **McCulloch v. Maryland**

The Second National Bank of the United States was controversial from the start. The bank, based in Philadelphia, opened branches in other cities, including Baltimore in 1817. The following year, Maryland imposed a tax on all banks not chartered by the State. When the Second National Bank refused to pay the tax, the State filed suit against the branch’s James William McCulloch (he actually spelled his name M’Culloch, but the case is known by the misspelling). The result was the landmark Supreme Court opinion *McCulloch v. Maryland* issued by Chief Justice John Marshall on March 6, 1819.

The opinion stated that the Constitution, as was clear, did not mention a power to establish corporations, but when doing so “becomes an appropriate means of exercising any of the powers given by the Constitution to the Government of the Union, it may be exercised by that Government.” The Bank, “has, constitutionally, a right” to establish its branches or offices of discount and deposit” in any State:

The State within which such branch may be established cannot, without violating the Constitution, tax that branch.

The State governments have no right to tax any of the constitutional means employed by the Government of the Union to execute its constitutional powers.

The opinion discussed interpretation of the right of Congress to make all necessary and proper laws for carrying out its enumerated powers. Maryland had argued that this phrase was necessary only to give Congress the power of making laws – that otherwise, doubts might arise regarding the ability of Congress to exercise its powers in the form of legislation. Chief Justice Marshall dismissed this thinking. “That a legislature, endowed with legislative powers, can legislate is a proposition too self-evident to have been questioned.”

Nevertheless, he agreed that the phrase limited the power of Congress. “Congress is not empowered by it to make all laws which may have relation to the power conferred on the Government, but such only as may be ‘necessary and proper’ for carrying them into execution.” The word “necessary” was critical because it limited “the right to pass laws for the execution of the granted powers to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to Congress in each case that only which is most direct and simple.”

In common usage, “necessary” conveyed such means as are “convenient, or useful, or essential.” Elsewhere in the Constitution, the framers had felt the need to limit the term

("No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws"), but did not limit the phrase "necessary and proper." Context, therefore, must be taken into account.

The framers intended the Constitution "to endure for ages to come, and consequently to be adapted to the various crises of human affairs":

To have prescribed the means by which Government should, in all future time, execute its power would have been to change entirely the character of the instrument and give it the properties of a legal code. It would have been an unwise attempt to provide by immutable rules for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances.

The Constitution specified a few cases where Congress may punish those who violate its laws, such as counterfeiting securities and coins of the United States, though for other purposes, punishment is not an enumerated power:

The several powers of Congress may exist in a very imperfect State, to be sure, but they may exist and be carried into execution, although no punishment should be inflicted, in cases where the right to punish is not expressly given.

Take, for example, the power "to establish post-offices and post-roads." This power is executed by the single act of making the establishment. But from this has been inferred the power and duty of carrying the mail along the post road from one office to another. And from this implied power has again been inferred the right to punish those who steal letters from the post office, or rob the mail. It may be said with some plausibility that the right to carry the mail, and to punish those who rob it, is not indispensably necessary to the establishment of a post office and post road. This right is indeed essential to the beneficial exercise of the power, but not indispensably necessary to its existence. So, of the punishment of the crimes of stealing and falsifying a record or process of a Court of the United States, or of perjury in such Court. To punish these offences is certainly conducive to the due administration of justice. But Courts may exist, and may decide the causes brought before them, though such crimes escape punishment.

If "necessary and proper" were interpreted as Maryland proposed in this case, "it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word the only possible effect of which is to qualify that strict and rigorous meaning, to present to the mind the idea of some choice of means of legislation not strained and compressed within the narrow limits for which gentlemen contend."

In summary, the opinion rejected Maryland's argument because, "The clause is placed among the powers of Congress, not among the limitations on those powers. Its terms

purport to enlarge, not to diminish, the powers vested in the Government. It purports to be an additional power, not a restriction on those already granted.”

Chief Justice Marshall stated that the government’s powers were limited and those powers must not be transcended. Nevertheless, a sound construction of the Constitution “must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people.”

Addressing the power to establish corporations, such as the Second National Bank, the opinion continued with the landmark view on the Supreme Court’s jurisdiction:

Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground. This Court disclaims all pretensions to such a power.

After this declaration, it can scarcely be necessary to say that the existence of State banks can have no possible influence on the question. No trace is to be found in the Constitution of an intention to create a dependence of the Government of the Union on those of the States, for the execution of the great powers assigned to it. Its means are adequate to its ends, and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another Government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other Governments which might disappoint its most important designs, and is incompatible with the language of the Constitution. But were it otherwise, the choice of means implies a right to choose a national bank in preference to State banks, and Congress alone can make the election.

After the most deliberate consideration, it is the unanimous and decided opinion of this Court that the act to incorporate the Bank of the United States is a law made in pursuance of the Constitution and is a part of the supreme law of the land.

Therefore, the bank had the authority to establish branches where it thought best, including in Maryland. The general government and the States had separate authority to impose taxes. “That the power of taxing it by the States may be exercised so as to destroy it is too obvious to be denied.” If States and the general government had concurrent powers, the power of the general government to tax State-chartered banks

would sustain the power of the States to tax a nationally chartered bank. However, the source of authority differs in the two cases:

The people of all the States have created the General Government, and have conferred upon it the general power of taxation. The people of all the States, and the States themselves, are represented in Congress, and, by their representatives, exercise this power. When they tax the chartered institutions of the States, they tax their constitutions, and these taxes must be uniform. But when a State taxes the operations of the Government of the United States, it acts upon institutions created not by their own constituents, but by people over whom they claim no control. It acts upon the measures of a Government created by others as well as themselves, for the benefit of others in common with themselves. The difference is that which always exists, and always must exist, between action of the whole on a part, and the action of a part on the whole – between the laws of a Government declared to be supreme, and those of a Government which, when in opposition to those laws, is not supreme.

The States, in short, “have no power, by taxation, or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think the unavoidable consequence of that supremacy which the Constitution has declared.” The law enacted by the legislature of Maryland imposing a tax on the Bank of the United States was, therefore, “unconstitutional and void.”

*McCulloch v. Maryland* remains one of the Supreme Court’s most important decisions, for it confirmed the important principles of Federal supremacy and the implied powers derived from the Constitution.

## **A Constitutional Amendment**

The Senate and the House reacted to President Monroe’s comments on internal improvements in his message of December 2, 1817.

The Senate took the most direct approach. On December 9, Senator Barbour introduced a motion containing an amendment that would do exactly what Presidents Jefferson, Madison, and now Monroe wanted:

Congress shall have power to pass laws appropriating money for constructing roads and canals, and improving the navigation of water-courses: *Provided, however,* That no road or canal, shall be conducted in any State, nor the navigation of its waters improved, without the consent of such State: *And provided also,* That whenever Congress shall appropriate money to these objects, the amount thereof shall be distributed among the several States, in the ratio of representation which each State shall have in the most numerous branch of the National Legislature. But the portion of any State, with its own consent, may be applied to the purpose foresaid, in any other State.

Senator Barbour told his colleagues that his views had not changed. Congress “had the authority already which it was intended to give them by this amendment.” However, in view of President Madison’s veto of the Bonus Bill and President Monroe’s restatement of the view that an amendment was needed, Senator Barbour concluded that the “impracticability” of passing the Bonus Bill now “he presumed, must be palpable.”

He thought it better to “recur to the people – the original and only legitimate fountain of power.” If Congress had the power, but knew that the people opposed the exercise of it, “he presumed Congress would forbear to resort to it.” If the people wanted Congress to legislate on internal improvements, “there is no cause to apprehend that the State Legislatures, bringing with them into the councils that will, and the sentiments of their constituents, will withhold the grant of power intended by the proposed amendment.”

Having been guaranteed the power to fund internal improvements, “Congress may proceed with a certainty that they not only have the power, but that it is the wish of their constituents it should be exercised”:

But if the people should think we have not the power, however they might approve the expediency of the measure, in itself, yet being, in their opinion out of the limits of our Constitutional power, they, as watchful guardians of our Constitutional power, could not fail to condemn us.

It was difficult to know what the public opinion was “except that we are warranted in saying, if we take the votes of the last Congress as a fair representation, they are nearly equally divided.” The proposed amendment was, in “the true spirit of free principles,” a way to go back to the people “for their interpretation.”

Senator Barbour acknowledged the drawback of advancing the amendment:

Some gentlemen say that if they vote for this amendment they commit themselves as to consistency, and weaken the Constitution.

This was the argument, mentioned previously, that if the States did not approve the amendment, the Members of Congress who voted for it, despite their view that Congress had the authority, would commit themselves to the idea that the Constitution did not give Congress the power to approve funds for roads and canals:

Mr. B did not perceive the correctness of that view of the subject. On the contrary, the vote in favor of the amendment by those holding the affirmative of the right of Congress already, will manifest a liberality by uniting with those who are of a different sentiment; and none will make a surrender of their opinions. For, if the amendment should be carried, whether the opinion as to the present power of Congress be right or wrong will be insignificant. If it should fail, each will recur to his opinion, as now entertained, and act upon it without any restraint arising from his liberality in uniting with those who differ from him on the constitutionality of this question.

He based the amendment on the discussions during debate in the previous Congress on the Bonus Bill. The amendment restrained congressional power by requiring the consent of the State in which an improvement is proposed. "This prevents an unpleasant collision." The funds would be divided among the States based on their numbers in the House of Representatives. Although it might be more advantageous to concentrate the efforts of the United States on some great object, yet there is a fear and jealousy among the small States, that the large would monopolize the whole. During debate in the previous Congress, the concern had been expressed that without fixed apportionment, the power granted by the failed Bonus Bill and now the amendment "might become an instrument of intrigue and corruption; and a canal or a road might be weighed against a Presidential candidate, and the scale would be inclined as avarice or ambition preponderated."

Moreover, without a fixed apportionment among all States, he feared that "all attempts at amendment would prove abortive":

The small States, it is to be apprehended, will surrender themselves to these fears, if this guaranty is not given; with it there could be no cause of apprehension, and he could perceive no cause to doubt its success.

He was not, he emphasized, trying to enlarge the power of the General Government:

He was anxious to see the spirit in which it originated kept perpetually in view; namely, that whatever could be as well done by the States as the General Government, the power of doing it should be retained exclusively to the States; while the General Government should exercise its authority on objects exclusively national; and there should be a coincidence of authority only where its exercise should be dictated by necessity or great advantage. The establishing [of] military roads from one end to the other of this extensive empire, or an internal navigation on the same scale, required the resources and the superintending power of the General Government. While all minor objects of internal improvement, particularly affecting the State, may be therefore well and correctly given exclusively to the States, that which is national should belong to the General Government. It was with these sentiments, Mr. B said, he presented the proposed amendment to the consideration of the Senate.

The *Annals* summarized that, "The resolution passed to a second reading."

Senator Barbour brought the resolution to the floor on March 17, but on motion of Senator Lacock, agreed to postpone consideration. Barbour again brought the amendment to the floor on March 26. The *Annals* explained:

[On] motion of Mr. Daggett, that the further consideration thereof be postponed until the first Monday in July next, it was determined in the affirmative – yeas 22, nays 9.

Because the Senate would not meet in July, the vote effectively killed the amendment. As Professor Larson put it, “It was exactly what Monroe had asked for, but the Barbour amendment died without fanfare in the Senate.”

### **The House Takes a Different Approach**

As noted, Representative Tucker of Virginia had presented a report on December 15, 1817, compiled by a committee formed to consider President Monroe’s comments on internal improvements.

On March 6, 1818, with the House organized into a Committee of the Whole, Representative Tucker offered a resolution on behalf of the select committee that pointed out the advantages of internal improvements, with the conclusion that:

. . . it is expedient that the sum to be paid to the United States by the 20th section of the act to incorporate subscribers to the Bank of the United States, and the dividend which shall arise from their shares in its capital stock, be constituted as a fund for internal improvement.

Representative Lemuel Sawyer of North Carolina moved that the House rise for a quick vote. He doubted that two-thirds of Congress – the number needed to override a likely presidential veto – would favor the resolution, and the President’s views were well known:

It was known also that there was now before the Senate a proposition to amend the Constitution, so as to give to Congress this power, which was an evidence that that branch thought such a measure first necessary to enable Congress to exercise the power. To prevent a tedious and useless debate, and to save time, Mr. S. therefore moved that the Committee rise and report progress, that the House might postpone the subject indefinitely.

Representative Tucker urged the Committee of the Whole to take up the resolution. “He would not be bound by the deliberations of one branch of the Government or the declarations of another. If his colleagues wanted to save time, “let the advocates of the proposition be heard, and then let the House decide whether they will adopt the measure.” He also cited “the number of petitions before the House on this subject. Shall they be disregarded, said Mr. T., because the President has said he cannot sanction this measure, and we thus say to the people, we fear to oppose the President’s veto?”

Speaker Clay asked Representative Sawyer to withdraw his motion. Clay said that “instead of taking shelter behind the Executive declaration,” he hoped Sawyer would deliver a constitutional speech on the subject.

Representative Clifton Clagett of New Hampshire supported Sawyer’s motion and “preventing a waste of the time of the session . . . without the probability of a

Constitutional majority for it, after the Executive had officially avowed that he could not sanction it without an amendment to the Constitution.”

Representative Charles F. Mercer of Virginia did not see a point to the Sawyer motion as a means of saving time. If the House rose to vote on the motion, it would “be debated as fully as they could now in Committee. “Without feeling in his heart a sentiment at war with the dignity of the President, or with a respect for his opinions, yet the Executive avowal was no reason for dispensing with a full consideration and discussion of the proposition, and he hoped it would proceed.”

Representative Sawyer declined to withdraw his motion or deliver a speech on the constitutionality of congressional action on internal improvements:

Mr. S. said he had taken an oath to support the Constitution, and, in his conscience, he could not reconcile a vote in favor of this resolution with the oath he had taken. It was sufficient for him that there was no express provision in the Constitution granting this power. Does this House, said Mr. S., wish to hear long speeches? Have we not already had so many, that wearied patience had cried out, enough, enough! Every gentleman’s mind had been long made up, Mr. S. said, on this subject, and where was the use of wasting the time of the House, when it was certain that no member’s mind would be changed if the subject were to be discussed for weeks.

The *Annals* reported: “The question was taken on Mr. S.’s motion, and negatived by a large majority.”

Representative Tucker thanked his colleagues for allowing the discussion to proceed. His committee could not act on the petitions received on the subject without directions from the House:

Nor shall I, sir, said Mr. T., be deterred from a due investigation by any apprehensions of an unfavorable result. It is intimated, indeed, that the Executive department having declared its opinion on the subject, it is an hopeless effort to attempt in this body to control that opinion by a Constitutional majority. I will not permit such a consideration to influence my course upon this occasion. I will not upon such a suggestion yield in hopeless despair the prospect of availing ourselves of the power vested in us by the Constitution.

He would avoid “a dry and uninteresting recapitulation of what is advanced in the report” on the President’s remarks and would “waive a further discussion of the Constitutional question,” which the report had covered.

Instead, he would discuss past actions of Congress, citing messages by President Jefferson and his successors on the subject as well as Secretary Gallatin’s 1808 report on roads and canals. All these items have in common “no difference of opinion as to the propriety of vesting in the General Government the important power of undertaking great

national improvements – of constructing roads and canals, and opening and perfecting the navigation of rivers.” The issue was whether Congress had the authority for the great, national projects that individual States could not undertake.

At a time of prosperity in 1807, the Senate had asked President Jefferson for a report on possible road and canal projects that the surplus in the Treasury might support. Secretary Gallatin’s report arrived in 1808:

But, before the subject was acted upon, perhaps, indeed, before the report was made, the golden vision was fled; the unprosperous state of our affairs left no reason to hope that we should soon possess the means of carrying on the important national improvements that had been suggested, and the plan was accordingly abandoned.

The difficulties continued for 4 years, followed by the War of 1812:

The war, however, had not been terminated a year before the rapidly increasing revenues of the United States again induced President Madison to recommend the subject to the consideration of Congress.

The efforts in that regard, namely the Bonus Bill, had come to an end when President Madison vetoed the bill in the absence, in his view, of constitutional authority for congressional action.

Representative Tucker emphasized that he was speaking of projects of general and national concern, “for as to those matters of inferior importance which fall more properly under State regulation, I have found no one either disposed to interfere with them, or inclined to the opinion that they are within the Constitutional powers of the General Government”:

The national character of the object is that which gives it both its importance and constitutionality, and it is not to be wondered, that, whilst there is such a diversity of opinion as to the construction of the Constitution, there cannot be found a statesman who has expressed a sentiment unfavorable to the possession of this power by the General Government.

He wondered if anyone thought projects of national importance should be thwarted because a State would not benefit as much as the country. “Shall the great Cumberland road which binds the East and the West be abandoned because the central country in which it is made derives little advantage from its construction?” He appeared to be referring to Pennsylvania, the central State involved in the Cumberland Road that favored its own east-west road.

The country’s powers would never be fully achieved “if the aggregated powers of the nation are not to be devoted to the completion of what is more than half finished to our hands.” His colleagues were aware of “too many instances of the inefficacy of State

efforts to permit ourselves to be deluded by the hope that these great works can be effected by State exertion.” Navigation on the Potomac River had languished for 30 years “for want of locks”:

Look at your roads within twenty miles of this metropolis; in such a state that the Representatives who travel here are in constant and imminent danger of breaking a limb or their necks.

The New York canal was equally important to Ohio, Indiana, and vast tracks of public land, while the road connection between the Kenawha and James Rivers was equally important to Virginia and the western States. The beneficiaries of these and other projects outside a State’s border let the State pay for it. “How different is the situation, how different the powers and resources of the Union in relation to these great objects.”

Given all the benefits of internal improvements, why not just amend the Constitution:

The answer is easy. Those who do not believe we possess the power, are right in wishing an amendment. Those who believe we have it, would be wrong in referring it to the States; and as the Committee were of this opinion, they could not recommend an amendment. For, if an amendment be recommended, and should not be obtained, we should have surrendered a power, which we are bound to maintain if we think we possess it.

The amendment might fail simply by the negative votes of States that believe Congress already had the power. In taking the oath to support the Constitution, Members of Congress had “no right . . . to put in jeopardy a power we believe to have been given us.”

Some opponents feared the increasing power of the general government, but Presidents Jefferson, Madison, and Monroe, all of whom called for an amendment on internal improvements, “could not have regarded it as dangerous, but they saw that it would be beneficial.” To show “that there is nothing novel or extraordinary in the proposition before the committee” he cited the Cumberland and Plattsburgh roads:

The Cumberland road is constructed from the banks of the Potomac, through parts of Maryland, Pennsylvania, and Virginia, to the river Ohio. The road has been made by the United States, and at their expense. Three or four laws have been passed, at different times, appropriating money for its construction, and these have received the assent of two Presidents, (Mr. Jefferson and Mr. Madison.)

He intended to prove that construction of this road “does not differ in principle from the power asserted to exist in the Federal Government by these resolutions.”

The Cumberland Road had been developed with legislation by the general government and the three States the road passed through. By contrast, the Plattsburgh road to Sackett’s Harbor was made without legislative action or State consent “except that, in the

contemplation of the employment of our soldiers in the construction of military roads, an addition [sic] *per diem* of fifteen cents was allowed by the last Congress”:

Without calling in question the validity or propriety of any of these acts, they are regarded as exculpating the committee entirely from the hardihood of advancing bold and novel and dangerous propositions. With that view only they are at present introduced.

He had no concern about encroaching on State authority “so long as they preserve their Legislatures”:

If we do wrong, our constituents may cast us from their confidence; the States may pass an amendment declaring we shall not exercise the power we claim. With all these checks, let us act fearlessly, according to our consciences, assert the power if we think we possess it, well assured that if we are wrong, the evil will be speedily remedied, without any essential hazard or injury to the political body.

Nearing the end of his speech, Representative Tucker pointed out that:

When we consider the flourishing state of our finances, and reflect upon the vast sums which are expended upon less important objects, I trust we shall not hesitate to appropriate liberally to this great purpose of internal improvement.

He spoke of current appropriations for buildings in Washington, such as completion of the wings and center building of the damaged Executive Mansion, adding up to about \$3 million, compared with Secretary Gallatin’s estimate of \$3,050,000 for completion of inland canals parallel to the Atlantic Coast from Boston to St. Mary’s, Georgia”:

Whilst, therefore, we manifest a just liberality in some respects, let us not be blind to the great interests of the nation, or pursue a false economy in relation to the improvement of the face of our country. Let us recollect that the whole expense which we may incur will be fully reimbursed in a few campaigns, should we again be involved in war, by the great saving to the nation which these facilities will produce. Let us husband our resources; let us not waste them upon unworthy objects, but devote them liberally to the promotion of the comfort and happiness of the people, and of the property and union of this great Confederacy.

The debate that Representative Tucker initiated on March 6 continued through March 14, occupying much of *Annals* pages 1113 to 1390 (each page contained two columns, with each column given its own page number). Many of the themes would be recapitulated during later debates about appropriations for the Cumberland Road. Professor Larson summarized the debate:

States’ rights Virginians answered with a blistering attack on the exercise of power in Washington. First Alexander Smyth laid down the general rule that wherever the powers of the states and the Union overlapped, the latter must

withdraw. The power to build roads and canals rightly was exercised by every state government, and while precedents existed for federal encroachments (the Cumberland Road, for example), these precedents were wrong and no excuse for encroaching again. Echoing the rhetoric of recent legislation in Virginia, Smyth reported (without foundation) that “experience had proved” that internal improvements were “most economically made, and best managed” by private corporations: “So soon as the wants of society shall render such works profitable, individuals will associate, unite their stock, and construct the works.”

Philip Pendleton Barbour continued the constitutional exegesis. Whatever Congress or the executive may have done in the past had been done without legitimate authority. Pretending that the meaning of the Constitution was transparent and incontestable, Barbour disallowed all inferential precedents as tending to perpetuate the struggles for power that constitutions intended to settle. However desirable the object in question, it was best, he concluded, not to disturb “that political balance which our ancestors had settled between the several governments of this country.

Such appeals to original intention usually covered an interested position, and this renewed fundamentalism after seventeen years of Virginia control of the national executive [the exception being John Adams of Massachusetts] seemed especially self-serving.

Representative Smyth turned to history to rebut the idea that because the general government had the power to make military roads, “therefore they infer that Congress have power to construct roads and canals, which will facilitate military operations.” It did not follow that because the President had the power “to make military roads in time of war that therefore Congress, without power expressly granted, may assume power to make commercial roads in time of peace, because they may happen at some future time to facilitate military operations”:

The President is commander-in-chief of the military force; in time of war he may construct roads for the march of troops and conveyance of stores; and he may dig canals to forward his operations as did Croesus, Cyrus, and Julian; in doing which, I contend that he is under no obligation to ask the consent of any one. It is the President who makes war. Congress declare it, and furnish him with the means; but they cannot direct his military operations. As he commands the army in time of peace, he may employ the soldiers on fatigue duties; but if he would make a road in time of peace, I will say, that he must obtain the consent of the proprietors of the soil. The State Governments have no authority to forbid the owners of the soil to permit this; and Congress have no authority to protect the road by penal laws, or wrest from the citizen his property . . . .

The admission that the Commander-in-Chief may cause such roads to be made, when necessary in time of war, affords no foundation for the claim of power on the part of Congress to make roads and canals.

He also objected to the idea that because internal improvements were beneficial, Congress should somehow find authority in the Constitution for the general government to initiate them:

The “beneficent effects” of the proposed measure are urged as furnishing an argument in favor of a liberal construction, that is, a stretch of the Constitution. But, who were they that ever seized upon power not granted to them, and did not offer the same argument in their justification? Caesar, Cromwell, and Napoleon, overturned the liberties, and seized upon the whole power of their respective nations, with a view to produce “beneficial effects,” according to them. The powers of Congress should not be extended by construction, in any case. Should that be done, all the advantages of a written constitution will be lost . . . . Although the select committee say that the power will only be felt in “the blessings it confers,” yet the Constitution does not grant to Congress every power that may confer blessings. Every usurpation is dangerous in its tendency. Every additional power tends to the aggrandizement of the General Government. Every surrender of power that the States can be lured to make, tends to their degradation.

On March 7, Speaker Clay responded to the Virginia presentations. Their speeches “had met the question with an ingenuity and ability rarely exceeded.” However, “he must enter his protest against some of the general principles which had been advanced in relation to the construction of the Constitution.” He had learned from James Madison, who as a Virginia legislator had drafted the Resolutions of 1798 in opposition to the Alien and Sedition Acts signed by President Adams:

The attempt then was to destroy the Constitution by a plethora; but he begged the gentlemen from Virginia to reflect, that that was not the only malady by which the Constitution could be afflicted; another complaint, equally dangerous to that Constitution, was an atrophy; and if, said he, I do not go along with them in the water-gruel regimen they would administer to the Constitution, in constructing it to a dead letter, and reducing it to an inanimate skeleton, let me now be charged with abandoning principle, but let them answer to the charge of thus attenuating the strength of that instrument.

(Madison’s resolutions, adopted by the Virginia State legislature in December 1798, argued that the law was unconstitutional. Because the Constitution was a compact among the States, they had “the right, and are in duty bound, to interpose, for arresting the progress of evil, and for maintaining, within their respective limits, the authorities, rights and liberties, appertaining to them.” Because an individual State could not “interpose” alone, the resolution called on other States to agree regarding the constitutionality of the law. Around the same time, the Kentucky legislature adopted resolutions, secretly drafted by Thomas Jefferson, arguing that, “a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy.”)

Clay explained that the States, “twenty local sovereignties,” had charge of “their interior concerns,” including rights of property and municipal regulation. The general

government, the “one great sovereignty,” was responsible for “the general peace, and for the regulation of commerce, internal and external.” These purposes should be kept in mind, and anyone who “should deny to the Constitution – the sheet-anchor of the national safety – that vigor which is necessary, in the exercise of its powers, to fulfil the purposes of its institution, and to carry the country to the high destination which it is one day to reach.”

The Constitution, he recognized, was subject to different interpretations:

He subscribed entirely to the doctrine, that power in the General Government was deducible only from express grant, or as fairly incident to the express grant. But in interpreting the Constitution, we were not to shut our eyes against all those lights which common sense and experience had furnished in expounding all instruments. We were to look at the whole Constitution; at the history of the time when it was adopted; at contemporaneous expositions; and, above all, at the great aim and objects of its framers.

If power was held by the general government, but uncertainty remained as to which branch held that power, “he would contend that it belonged to Congress, as the safest repository.” He would not yield to “the too fashionable and prevailing sentiment, that of aggrandizing the Executive branch, and disparaging the Legislature”:

It appeared that a power was perfectly harmless when exercised by the President, and that the tocsin of alarm was sounded the moment that Congress dared to act on the same power. He never could admit, he said, that the President should take an airing in his barouche, or a Major General a promenade, with his suite of aids-de-camp [sic], and exercise the power of ordering roads, in time of profound peace, wherever they pleased, and that the Constitution had denied the power to Congress . . . .

He referred to Representative Smyth’s recourse to history:

And yet, what had this Committee been told to-day? Why, that Croesus, and Cyrus, and Napoleon had exercised the power of constructing military ways; and, therefore, it was inferred that the President of the United States possesses it. What! said Mr. C., are we come to this – that imperial powers shall be ascribed to our Executive? Or, was it possible that a mere military officer might order a road, and construct it, and yet that power should be denied to the Legislative branch of the Government? And, said he, we are not only desired to acquiesce, with folded arms, in this Executive and military power, but more: whenever an appropriation, in the form of an allowance to the soldiery for fatigue duty, is asked to complete any such road, we are now, according to one of the justly reprobated doctrines of 1798, to acquiesce in the appropriation, being under a moral obligation to submit to the demand and not daring to question it.

Clay explained that the authority existed, not based on “expediency merely, but a compound question of Constitutional power and expediency.” If the Constitution did not authorize the power, he admitted, “no principle of expediency would authorize it”:

He admitted, also, that if the Constitution did not give the power without the assent of any State or States, short of the number required to authorize an amendment to the Constitution, Congress could not exercise the power. The power exists without the consent of the States, or not at all; although, in the exercise of that power, it might be prudent, and discreet, or highly proper, to consult the States, whose local and private interests were to be seriously affected by any road or canal passing through them.

He wondered how the proposed power “had produced this attempt to excite alarm – this call upon the friends of State rights to rally around the State authorities, and contest every inch of ground with those who favor this report?” Anyone who knew only what the current debate indicated “would suppose that Congress were about to introduce some plague or pestilence – some gorgon dire – which was to destroy the liberties of the country”:

And of what power was such language used? Of a power to promote social intercourse; to facilitate commerce between the States; to strengthen the bonds of our Union; to make us really and truly one family – one community in interest and in feeling. What was there alarming in such a power?

He understood his Virginia colleagues to agree with him on how to interpret the words of the Constitution. They had, however, “pushed, in their application, those rules of interpretation further than I am disposed to go”:

. . . for, (if the gentleman [Barbour] will excuse me,) the pleasure with which I heard his argument, was something like that which a surgeon may be disposed to feel when a skillful operator is amputating a limb or dissecting a body; and the ingenuity which he displayed in frittering away the Constitution is not consistent with my idea of the great principles of 1797 [the Virginia resolutions of 1798], in which I profess implicitly to confide.

The object of the Constitutional Convention was union, as George Washington, who had presided over the proceedings, had said in his letter sending it to the States for their ratification. Washington wrote:

In all our deliberations on this subject, we kept steadily in view that which appears to us the greatest interest of every true American – the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence.

Accordingly, Clay said, when there was a dispute about the meaning of the Constitution, “that construction should be preferred which tends to promote the objects of the framers

of the Constitution, to the consolidation of the Union, not in the alarming sense of the phrase, but in that sense in which it was used” in Washington’s letter.

Clay referred to President Monroe’s northern tour as evidence of what that union meant to people:

We have had, to be sure, what may be considered strong proofs of it; we have seen, during the late tour, the people of those parts through which the President passed, rise *en masse*, as the audience at the Theatre Français or Covent Garden, upon the entrance of the Sovereign, to greet, to honor, and salute him; we have seen that part of the audience from whom, for sixteen years before, nothing had been heard but scoffs and abuses, groans and hisses, enthusiastically join in the general applause, and swell the triumph. These are perhaps strong proofs – I hope they are solid – of this state of peace and harmony throughout the Union; of which the President speaks.

(President Monroe’s northern tour began on June 1, 1817, and ended with his return to Washington on September 17, 1817. It covered 2,000 miles, and took him north to Portland, Maine (then part of Massachusetts until statehood in 1820) and as far west as Detroit, passing through Maryland, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, New Hampshire, Vermont, and Ohio. Traveling from Baltimore to Philadelphia at the start of the tour, he became the first President to travel in a steamship. The last leg of his tour after leaving Pittsburgh on September 10 was via the Cumberland Road, giving him a chance to travel on the road, not yet completed, that would be a concern during his two terms in office. The ride took place without advance notice to the many communities, including Brownsville and Uniontown, along the road that did not have sufficient time to stage the type of elaborate welcoming ceremonies he had experienced throughout the earlier stages of the tour.

(During the northern tour, a Massachusetts newspaper used the phrase “Era of Good Feelings” to describe the post-war lessening of partisanship. The term has come to characterize Monroe’s two terms in office, coinciding with the waning influence of the Federalist Party after the war and its collapse in the 1820s, and reflected in Monroe’s reelection in 1820. He ran unopposed, receiving 231 of the 235 electoral votes. According to biographer Harlow Giles Unger, the tabulation included three abstentions and one elector “who, legend has it, cast his vote for John Quincy Adams to ensure George Washington’s place in history as the only presidential candidate to be elected by unanimous vote.” [Unger, Harlow Giles, *The Last Founding Father: James Monroe and a Nation’s Call to Greatness*, Da Capo Press, 2009])

With general comments out of the way, Speaker Clay maintained that the Constitution granted Congress the authority to “make roads and cut canals without the assent of the States”:

He contended that they have the power to do that which appeared so alarming to gentlemen, to feel the oak of the mountain, to gather the stone which has slept for

centuries useless in its bosom, and therewith construct roads – with the qualification which the Constitution has provided in one of its amendments, that, when the Government takes private property, it is bound to make compensation therefor.

He would go further: when the road is once made, he contended that Congress have a jurisdiction, concurrent with the States, over the road, for the purpose of preserving it, but for no other purpose. In regard to all other matters occurring on the road, whether of crime, or contract, &c., or any object of jurisdiction unconnected with the preservation of the road, there remained to the States exclusive jurisdiction.

He cited the power in Article I “to establish Post Offices and post Roads.” If that clause were amended to combine it with the final clause in Article I, it would read:

Congress shall have power to *establish* post offices and post roads, and to make all laws which shall be necessary and proper to carry into execution the power to *establish* post offices and post roads.

He asked, in that case, what laws would be necessary to establish post roads? He answered:

If, said Mr. C., the gentleman [Representative Barbour] really be the Achilles he has been represented to be, here I have him by the heel. What is the power to establish post roads? Does it merely mean to adopt, to designate, what has before existed? That was the gentleman’s proposition; but he would show, from the well-ascertained meaning of the word itself, and from the sense in which it was used in the clause under consideration, and other parts of the Constitution, that *establish*, meant to *make*, to *build*, to *construct* . . . .

The meaning of the expression was strongly illustrated, he said, when applied to post offices, to which it referred as well as to post roads. Could the expression “to establish post offices,” mean to designate some office already established by State authority? That would be absurd; for there being no post offices previously established, there were none to adopt or designate. To establish a post office, then, was to make an office; to build or hire one, and to provide all the appurtenances. “To establish,” then, had not the meaning which was contended for; and it was those persons who construed away the meaning of the instrument, and not those who were for adhering to the Constitution, and giving to it that vigor which its framers intended, who were chargeable with doing violence to its provisions.

Speaker Clay then cited other uses of “establish” in the Constitution, such as “Congress shall have power to establish a uniform system of naturalization.” Did that mean, he asked, that Congress shall “have the power only to designate some pre-existing rule?” The provision giving Congress the authority to “establish a uniform system of

bankruptcy” also was clear that Congress was to create a system. The term also appeared in the preamble:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The *Annals* continued:

In what sense, Mr. C. asked, was the Constitution thus “established?” Was it a mere adoption of a form of Government already in existence? No. There are principles in that instrument which are to be found in no Constitution previously existing. This establishment was constructing a Constitution, not adopting a Confederacy, in being prior to the Constitution.

These other uses of “establish” illustrate how the word was “used in one sense, and only one sense, as authorizing Congress to construct a system according to the extent and convenience of the country.”

With this understanding in mind, he asked, “What, then, was the object of this power to establish post offices and post roads?” The Founders saw the mail as a means of circulating “intelligence, for commercial, military, and social purposes, that all parts of the country might derive the benefits intended from the Constitution”:

Generality, certainty, and celerity of transmission, were the qualities to be consulted in the establishment of post roads. What sort of certainty was it, if, on the principle of gentlemen, the mail is liable to be interrupted, say in time of war, between the Seat of Government and New Orleans, the most defenceless point in the Union, at the mere caprice of any county court choosing to change a road, or commit any other trespass, and we, in the execution of this important power, are to submit to it?

For, even the provision in the Virginia law, which had been referred to, availed nothing in argument, since the same Legislature which enacted might repeal it.

Representative Barbour interjected that “he had mentioned the provision of the laws of Virginia, but incidentally – he had then said, that the United States had the right of way over any road which was once declared a mail road.”

Then, resumed Mr. Clay, all is conceded that I want. If I now understand the gentleman, then, we have the right of way over mail roads, and it is so conferred upon us, by virtue of this Constitution, that no gentleman, or Virginia court, can interrupt that right. What sort of right of way was that, Mr. C. asked, where there was no road? If Congress have the right of way, have they not also the means to

make that right efficient? What! said he, is it contended that we have the right of way for the purpose of circulating intelligence, and that we possess no power to improve and make that right of way effectual?

In the view of the Virginians, if a tree fell across the post road, the General Government did not have the authority to remove it. "If the gentleman will excuse the expression, I cannot view a power, thus qualified, thus admitted, at the same time that it is substantially denied, in any other than a ridiculous light."

He also was dismissive of the idea that if the general government and the States had like powers, they would somehow result in "a conflict of authorities." The general government and States had the like power of taxation and authority to appoint collectors of that tax. If the collectors were to clash, "reason, moderation, and good sense, must come into the councils of the Government, and reconcile this conflict of jurisdictions as they can." He did not expect such collisions to arise between governments:

The case which had been supposed, of roads established by the General and State authorities, running parallel, was not likely to occur. No, said he, depend upon it, the States will accept, with avidity, the bounty proposed to be bestowed on them, and will not refuse a great benefit from any fastidious jealousy of the hand which offers it.

The circulation of intelligence throughout the country "was an object of great importance," but, he said, "an inequality now exists in the condition of the citizens of various parts of the country, which, although acquiesced in from necessity, would be an unceasing object of solicitude and remonstrance until remedied":

What, he asked, was the inequality of the situation, for instance, of members on this floor, coming from different parts of the country? For seven successive mails, said he, for the want of the exercise of this right of way, we have inquired in vain at the post office for letters from the West, informing us perhaps of the fate of some sick friend and relatives at home, or of the state of our private concerns, and for seven successive mails have we been held in painful suspense; whilst the gentlemen from the seaports have received their daily intelligence with that sort of certainty and celerity which every part of the United States ought to experience. Could it be said, he asked, that the Government was exercising its powers properly, when such an inequality prevailed in respect to different sections of the country? Did it become gentlemen, not subject to this inconvenience, to which we are constantly exposed every session of Congress, to say, that they would deny to other parts of the Union, the great interior, western and other sections of the country, the same advantages which they derive from the celerity and certainty of the mails? He conceived not, and he would not impute to them that intention.

Having demonstrated the general government's power to make post roads, he did not need to cite other provisions that supported that power. After all, having constructed the

post roads “may we not . . . allow them to be used for other purposes, connected with the good of society?” There was, for example, military defense and to regulate commerce:

Would it be contended that, in respect to the twenty-five millions to which our revenue has risen, and to the fifty or sixty millions to which it may rise, that there is no object in the interior worthy of the application of any part of it . . . . Was he to be told that from the interior one continued stream of riches was to flow into the Treasury of the United States, without a single drop falling to fertilize the soil through which it passes?

Clay also discussed the argument that precedents were all wrong and should be ignored as demonstrating the power of Congress:

Mr. C. said, that, with the gentleman from Virginia, when the precedents in point bore against the honorable gentleman, they were wholly rejected, and it was abominable to tie down the minds of the members by rules of construction, from whatever authority derived. But when those precedents were in favor of his doctrine, said Mr. C., we find the gentleman referring to the acts by dates and titles; and in this manner the gentleman had endeavored to show that the clause in the Constitution respecting the establishment of post roads meant designation merely.

There was, Mr. C. said, one complete answer to this argument, derived from the acts passed in the infancy of this Government, when the Treasury was impoverished; it was not at all extraordinary that the Government did not at that period undertake to construct roads or cut canals – it would have been extraordinary indeed if they had done so under such circumstances. The laws passed at that day were passed without any discussion in relation to the subject, as far as he had heard, and could therefore, by no implication, be construed to involve a surrender of the power.

The Virginians had conceded that the general Government might construct a military road during a state of war if needed for a particular military operation. Prudence, he thought, suggested that “providing for contingencies, a preparation in peace for war, were favorite themes of the present day,” as might be borne out by the recent war. He thought that Representative Smyth would agree that the recent war would have been much more easily fought if good roads had existed:

If such roads had then existed, we should have had, Mr. C. said, a different result to the campaign which terminated in the ignominious surrender of Hull, and to some other campaigns, with a particular reference to the occurrences of which he would not, at present, trouble the House. If the exigencies of the occasion had been anticipated and provided for, would that disgraceful scene have happened at the Capital, to which no American could recur without feeling the blood fly into his face? Would it have happened, if the means of intercourse had been properly

improved, from which we should have called for the means of the country for its defence? He confidently answered that it would not.

(Brigadier General William Hull, Governor of the Michigan Territory (1805–1813), surrendered Detroit to the British on August 16, 1812. He would eventually be court-martialed and sentenced to death, but pardoned by President Madison. The “disgraceful scene” at the Capital was, of course, the British burning of the White House, the Capitol, and other official buildings on August 14, 1814.)

He dismissed the fear that the general government might build roads for ordinary purposes under the claim of power to build military roads in peace time. “It is no objection to constructing a post road or military road, that it may also be used for the purpose of circulating the commodities of the country, for the purpose of traveling, or, in short, for any of the general purposes of commerce and of society.”

In closing, he rested his argument “on the provisions of the Constitution, construed with a due and necessary regard to the objects with a view to which it is formed”:

We are not to look at that instrument, said he, with the eye of an ingenious advocate, who is seeking to screen from merited punishment a convicted felon. You are, said he, to take into view the great destinies of our country; to reflect, that the powers granted by the Constitution are the same at all times; that they apply with precisely the same extent to a population of five as of fifty millions.

Finally, he said the power to establish or construct post roads should be exercised only with the consent of the States “as preliminary to exercising the power within any State, not that it was necessary, but because it was desirable; and, with that prudence and moderation which should characterize the acts of the Government relating to its internal policy, the power perhaps ought not to be exercised without such consent.”

In the brief time remaining for the Saturday session, Representative Barbour criticized only Clay’s use of the word “ridiculous” regarding the former’s idea. Barbour said he always rose to make his arguments in “the most perfect politeness to his opponents.” He advised the Speaker, in the future, “to prove their arguments ridiculous, rather than to call them so.”

Speaker Clay appreciated any advice, he said, but had applied the word to Barbour’s idea, not to Barbour himself:

What I said was, that as the gentleman admitted that we have the right of way over post roads, to deny the use of that right is ridiculous. I did not mean, in what I said, to claim for myself the character of an American statesman. I did not deny it to the gentleman from Virginia – I think he is an eminent statesman – an ornament to his country, and to this House, in which I am happy to serve with him.

We view the Constitution, however, with different eyes; he considers everything gained to the States from the General Government as something snatched from a foreign Power. I consider it as a Government co-ordinate with them, and the true construction, I think, is to give to it all that vigor and vitality which rightfully belong to it.

When Congress returned on Monday, as Professor Larson put it, “debates raged anew” and continued until votes were finally taken on March 14. The House voted on four resolutions:

1. *Resolved*, that Congress has power, under the Constitution, to appropriate money for the construction of post roads, military, and other roads, and of canals, and for the improvement of water-courses.

After rejecting a motion to postpone a vote (77 to 87), the House adopted the resolution, 90 to 75.

2. *Resolved*, That Congress has power, under the Constitution, to construct post roads and military roads, Provided that private property be not taken for public use, without just compensation.

The House defeated the resolution 82 to 84.

3. *Resolved*, That Congress has power, under the Constitution, to construct roads and canals necessary for commerce between the States; Provided, that private property be not taken for public purposes, without just compensation.

Once again, the House rejected the resolution, 71 to 95.

4. *Resolved*, That Congress has power, under the Constitution, to construct canals for military purposes: Provided, That no private property be taken for any such purposes, without just compensation being made therefor.

The vote was again in the negative, 81 to 83.

Representative George Poindexter of Mississippi introduced an additional resolution:

*Resolved*, that Congress have power, under the Constitution, to appropriate money in aid of the construction of roads and canals, which shall be laid out, and constructed, under the authority of the Legislature of the States through which they pass.

The *Annals* reported that after “some conversation,” the House decided in the negative on the resolution, without reporting a vote count.

Representative William Lowndes of South Carolina summarized the result:

Mr. Lowndes then remarked that, after the decision of this House to-day, there could be no doubt that a large majority of the House entertained the conviction of the power of Congress to appropriate money for the purpose of constructing roads and canals. The sense of the House being thus ascertained and the obstruction removed to any proposition embracing that object; he moved that the further consideration of the report lie on the table.

The motion was agreed to.

The *Annals* report concluded the internal improvements debate with the observation that:

Mr. Tucker, of Virginia, from the Committee on Roads and Canals, reported a bill making further appropriations for the Cumberland road; which was twice read and committed.

Professor Larson discussed the meaning of the votes:

Virginians and North Carolinians overwhelmingly rejected all of these propositions; New England did the same. South Carolina and Georgia divided evenly on each, as did Maryland in the Middle Atlantic region. Strong support for federal improvements came from the largest Middle Atlantic states (three-to-one for New York, even higher for Pennsylvania) and the new states of the West, although Kentucky and Tennessee posted significant ambivalence to federal action.

The one positive vote was far short of the two-thirds total that would be needed to override a veto. “Clay, of course, was chastened and desperately seized upon his single victory as proof of congressional authority.” The Virginians “had labored to make these polls referenda on their neo-Antifederalist doctrines (not necessarily shared by Jeffersonians everywhere), but the meaning of the result was ambivalent.”

Unlike the Senate, which never voted, then or later, on a proposed constitutional amendment, the House debated the issues with passion in the larger context of the debate on the balance among the general and State governments, but without clear result, as Professor Larson summarized:

In the end these debates, long on passion and rhetorical art, had failed to settle a quarrel that began with the Bonus Bill veto. Instead, they fueled a new campaign to redefine the American Union and tilt the balance of power in federalism, a campaign that would spread and last into Andrew Jackson’s presidency – and beyond. By the spring of 1818 the problem of internal improvements embodied the question of liberty and power for a new generation of American republicans.

## Advancing the Cumberland Road

In 1817, new President Monroe chose to retain William H. Crawford of Georgia as Secretary of the Treasury, a carryover from the Madison Administration. Crawford was a former Senator (1807-1813), Minister to France (1813-1815), and Secretary of War (1815-1816). In October 1816, Crawford became Secretary of the Treasury and continued in that post through President Monroe's two terms.

The Monroe Administration decided to split responsibility for construction of the Cumberland Road. David Shriver, based in Cumberland, remained responsible for the section from Cumberland to Brownsville, while Josias Thompson, the former commissioners' surveyor, became superintendent for the western segment to Wheeling.

As in the past, Shriver informed Secretary Crawford on April 28, 1817, that, "Our road requires repair." With the completed segments of the road continuing to experience the same injuries as in the past, Shriver suggested a method of continuous repair, as summarized by Theodore Sky in his study of the National Road:

He suggested the employment on an annual basis for a man and a cart to be responsible for the repair of the road for a ten-year period. Shriver then listed the advantages of such an approach, including the possibility that the man might become a resident of the area in question and might work at a more modest rate than if only employed during the summer. Shriver strongly recommended a trial of the approach to ensure the maintenance of the road. [Sky, Theodore, *The National Road and the Difficult Path to Sustainable National Investment*, University of Delaware Press, 2011]

Although no action was taken on the maintenance issue, Thompson and Shriver reported continued progress on construction. On December 15, 1817, Thompson informed Secretary Crawford that work was being completed between Washington, Pennsylvania, and Brownsville, and was progressing near Wheeling. Sky added, "Difficulties with individual contractors were described as well as a damage issue involving several inhabitants of the area."

A little later that month, on December 31, Shriver also reported progress. On the eastern segment, 46 miles and the remaining miles to Uniontown would probably be completed in the summer of 1818. He estimated that construction of the road between Uniontown and the Monongahela River would be less than \$10,000 a mile, including bridging. Noting that "the whole of the produce for a considerable distance beyond the west side of the mountains will be transported over the road," he "strongly pressed [for] ample provision for repairs." Because broad wheels on double-loaded wagons would do less damage to the surface, Shriver recommended a tax on narrow wheels to discourage their use.

Despite assuring Secretary Crawford of progress on the western segment, Thompson expressed some concerns in January 1818, as summarized by Sky:

Thompson continued the dialogue with Secretary Crawford, writing to determine the status of payments for a number of contractors who were falling behind in the pace of their work while assuring the secretary that the work would be completed in due course, despite the distress of the contractors. He speculated about the remedies the government might have for enforcing the terms of construction contracts where the contractor had no property and where he lacked money of his own to fund overruns. He worried as well as to the permanency of the road built along the sides of the hill. In these cases it was necessary to “wall all deep fillings to prevent the road from running off.” Thompson was writing from Washington, Pennsylvania, where he had evidently made his headquarters, twenty-five miles from Wheeling, where the artery was headed in its last stretch.

On December 9, 1817, the House of Representatives had approved a resolution introduced by Representative Tucker asking President Monroe for information on “what roads have been made, or are in progress, under the Executive authority of the United States.” President Monroe transmitted the report to the House on January 23 1818. He enclosed a letter dated December 29, 1817, from Secretary Crawford addressing all the roads under the Treasury Department’s authority, including the Cumberland Road:

The road is completed from Cumberland forty-five miles west of that place. Contracts have been executed early in the present year for the construction of that part of the road lying west of the forty-fifth mile from Cumberland to Uniontown, a distance of nearly fifteen miles; and, from the activity with which the work is carried on by the contractors, there is just ground to believe that it will be completed thus far early in the ensuing year.

Contracts have also been made for completing upwards of thirty miles of the road west of the Monongahela, including a section on the eastern margin of that river.

These contracts embrace such parts of the roads between the Monongahela and the Ohio as presented the most serious difficulties to traveling and the transportation of heavy articles between those rivers . . . .

It may be proper to observe that the demands which have already accrued beyond the appropriation for that object, and which now remain unpaid, exceed \$38,000.

The vigor with which the present contractors have prosecuted their labors furnishes the most satisfactory evidence of their capacity and determination to perform their engagements within the time stipulated. There is also just reason to believe that the whole of the distance yet to be undertaken, both on the eastern and on the western side of the Monongahela, may be advantageously let in the course of the ensuing year; and that the road from Cumberland to the Ohio may be completed in the best manner in two years from the present time, if

appropriations equal to the object shall be made during the present session of Congress.

He estimated that to complete the road, the 35 miles not yet undertaken, including construction of the bridge over the Monongahela, would cost \$400,000.

A supplement reported that for the road from the frontier of Georgia to New Orleans, Postmaster General's account included:

Warrant No, 8658, dated March 11, 1807, \$4,000.00  
1505, dated July 28, 1809, \$1,500.00

Secretary of War John C. Calhoun also reported on his road building activities, which included:

During the last autumn the troops at Plattsburg were ordered to repair and complete the military road between that station and the station at Sackett's Harbor, on the St. Lawrence, through Chautauque county, State of New York, in which some progress is made. [ASP, Doc. No. 443]

A bill for further appropriations for the Cumberland Road passed the House on April 1, 1818. The Senate passed the bill on April 8, 1818. On April 14, 1818, President Monroe signed the law appropriating \$52,984.60 "for the claims due and remaining unpaid at the treasury, on account of the Cumberland road, to be paid out of any money in the treasury not otherwise appropriated." The law also provided:

That to meet the demands which will be made under existing contracts, on account of the Cumberland road, the sum of two hundred and sixty thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the treasury not otherwise appropriated.

The legislation did not cite reimbursement from the two-percent fund.

In response to a followup request from the House, Secretary Crawford provided additional information on April 20, 1818, regarding the Cumberland Road. He reported that:

[The] road is cleared of timber to the width of sixty-six feet; that the bed of the road is levelled to the width of thirty-two feet; that twenty feet is covered with stone, eighteen inches in the middle, gradually diminishing to twelve inches at the side. The road east of the Monogahela is graduated so as nowhere to exceed an elevation of five degrees. That part of it which is west of that river is graduated to four degrees and a half.

He pointed out that "the expense of mason work east and west of the Monongahela is extremely different." He had noted the difference to Thompson "with a request that he

will curtail that part of the expense.” Secretary Crawford assured the House, “There can be no doubt but that a considerable saving will be effected upon the estimate which he has furnished.”

The statement from Shriver he transmitted with his message indicating that completion of the road to Uniontown would cost \$88,750. “The sum stated as wanting to complete the road to Uniontown may be relied on, except the item of small mason work, which cannot be known until the whole is done; the sum, however, allowed is believed to be sufficient.” He added that on the eastern section, the road “cost about \$9,744.21 per mile; and this expense includes every species of it: locating, road-making, bridge-making, (two of which are the largest in the United States,) gravelling, superintending; in short, it includes every expense.”

Regarding a subject dear to Shriver and Thompson, Secretary Crawford added to his transmittal letter:

No special appropriation has been made for repairs. The expense has been defrayed out of the general appropriation for the road. [ASP, Doc. No. 458]

### **Waste, Fraud, and Abuse**

In An Act of March 3, 1819, for support of the government for 1819, Congress approved appropriations for the road from Cumberland to the Ohio River, including \$250,000 for existing construction contracts and \$285,000 for completion of the road:

. . . which several sums, hereby appropriated, together with the amount heretofore advanced by the United States for making said road, shall be repaid out of the fund reserved for laying out and making roads to the states of Ohio, Indiana, and Illinois, by virtue of the several acts for admission of the aforesaid states into the Union.

Construction of the road relied on the contractors chosen for the work. Peyton discussed the contractors:

Contractors were expected to follow specifications, but the quality of work varied from contract to contract. Lax supervision and no existing federal standards for road-building gave contractors a fair amount of freedom in the execution of contracts. Contractors had no formal training in roadbuilding, and so they relied on written specifications to complete their work. Many had outstanding reputations and performed admirably, while others took shortcuts, scrimped on materials, or showed little pride in workmanship. Potential problems might be attributed to any number of things, such as inexperience, mismanagement, shortage of funds, or an overriding desire to open the road at all costs.

Actual cost of construction to Wheeling averaged \$13,000 per mile, more than double the commissioners’ original \$6,000-per-mile estimate. From Cumberland

to Uniontown the Road cost \$9,745 per mile, a fair price considering the rugged terrain; from Uniontown to Wheeling it shot up to around \$16,000 per mile, an exorbitant figure attributed to reckless extravagance and too-liberal contracts.

Secretary Crawford had already noted the higher cost for the western section and warned Thompson to lower the cost. On February 10, 1819, he wrote to Representative Samuel Smith (the former Senator from Maryland), chairman of the Ways and Means Committee. Secretary Crawford explained that the general estimates he had provided to Congress for 1819 were based on estimates the two superintendents had provided to him for closing contracts awarded in 1817. On September 1, 1818, he asked the two superintendents to furnish a statement by November 1 on “the expenditures which had been made by them, respectively, and an estimate of the sums which would be necessary to satisfy the contracts which had been made in the above-mentioned year.”

Shriver complied, but Thompson had not replied until early 1819:

The estimates which he had furnished, and which were immediately communicated to the Committee on Internal Improvement, exceed those made by him the last year by about \$180,000. This sum, however, will be diminished by refunding of about \$30,000, which was advanced to several of the contractors at the commencement of their undertakings. The sum now necessary to meet the demands under the existing contracts may be estimated at \$150,000, in addition to the sum presented in the general estimate. It may be necessary to state that no new contract has been authorized since the meeting of Congress in 1817.

He added that contracts for the road between Uniontown and Washington could be made at the rate of \$9,500 per mile, “including culverts, bridges, and all other incidental expenses, except the bridge across the Monongahela, if it should be deemed expedient to erect one over that river.” He estimated that the contracts yet to be awarded for 30 miles would cost \$285,000. A contractor proposing to build the bridge was “capable of complying with their engagements, and will bind themselves to complete the whole extent to be contracted for within two years from the date of their contract.”

By November 1819, doubts about alterations in location, the manner of construction, dimensions of bridges, and the method of building them had resulted in Thompson’s dismissal. On November 30, 1819, Secretary Crawford asked Alexander Lacock, Thomas McGiffin, and Thomas Wilson to undertake an investigation. Crawford explained that in view of the doubts, “injurious to the interest of the United States, it has been judged expedient by the President, as well from a sense of justice to the late superintendent as from a due regard to the national interests, that a full and complete examination be made into the premises, in order that justice may be done.” The President was “desirous of obtaining the aid of persons in whose justice and impartiality unlimited confidence may be reposed.” For that reason, the President “directed me to request that you take upon yourselves this examination, and that you will proceed to the execution of it with as little delay as possible.”

The following day, Secretary Crawford wrote to inform Thompson of the investigation:

The President has determined that it is expedient to cause the road constructed under your superintendence to be examined, as well to ascertain whether it has been constructed agreeably to contract, as to determine whether you have conformed to the instructions under which you acted. The persons requested to execute this service will give you notice of the time and place at which it will commence, in order that you may be present, if you think proper, and may furnish such explanations as may be necessary to the ends of justice, as well to yourself as to the Government.

On January 3, 1820, the three men updated Secretary Crawford on their investigation. They had met in Brownsville on December 20. With McGiffin detained, Lacock and Wilson continued on to Wheeling making observations and general inquiries before returning to meet McGiffin in Washington, Pennsylvania. The winter – “cold has become intense, the ground frozen, the snow of considerable depth and increasing daily” – made “actual investigations, inspections, and measurements” impractical. The trip to Wheeling and back resulted in observations that were “necessarily general,” but Lacock and Wilson had observed that “little more is necessary than to observe that general appearances strongly corroborate the allegations which seem to have pointed out the particular subjects of inquiry embraced in your letter of instruction”:

We are decidedly of opinion that unnecessary expense to a large amount has been incurred in the erection of bridges, when culverts would have been sufficient; side walls, when fillings of earth would have been less expensive, more permanent, and, in many instances, would have been effected at the expense of the road contractor; in unnecessary increase of dimensions of side and wing walls; the erection of expensive bridges where the stream might have been turned or avoided at a much less expense; and in the number of arches to each bridge. Deviations from the location are by Mr. Thompson admitted in several instances, one of which he admits to been adopted without advising the Department. The effects of such deviations we have not ascertained, nor have we been able to examine the reasons assigned by Mr. Thompson in justification of them.

To Thompson’s credit, the investigators wrote, he cooperated with them and “evinced every disposition to afford all the lights and facilities in his power; and is now engaged in preparing copies of the grading notes, accounts of the dimensions, and calculations of the mason work, which accounts are lengthy.” Thompson “appears satisfied, and even solicitous, that the inquiry proceed with as little delay as possible.”

Although they were unable to continue the investigation until the spring, they were concerned about the delay in drawing conclusions because of the impact it would have on the contractors:

The sub-contractors under Colonel Shepherd’s contract have, as they allege, (and not improbably,) nearly completed their different works. They and their workmen

and laborers state (and we believe correctly) that they are in great want of money; that they are without the means of providing winter clothing and subsistence; and many who reside in distant parts, having small sums due them for labor, &c., will be subjected to great hardship, by either going to their homes or being detained for the winter unpaid.

The investigators recommended that Shriver be authorized to pay the subcontractors, “with the consent of the original contractors, and on bonds, if deemed necessary, to an amount not exceeding \$6,000.”

On March 10, 1820, Secretary Crawford wrote to update Representative Smith on the situation. As explained in the earlier letter to Smith, Secretary Crawford wrote that “an additional appropriation of forty-four thousand dollars will be necessary”:

Doubts having arisen of the correctness of the conduct of the superintendent, he has been removed, and an investigation has been directed, with a view to ascertain whether impositions have not been practised upon the Government. This investigation, after having been commenced, was postponed until the 20th instant, when it will be resumed and brought to a speedy conclusion. It is not improbable that it will result in the exclusion of some part of the demands which have been admitted by the late superintendent, and are still unsatisfied. It is believed, however, that it will be expedient to make the appropriation, as no part of it will be expended but what is indispensable to the fulfilment of the public engagements made in 1817. [ASP, Doc. No. 486]

Commenting on the investigation, Peyton wrote that after Thompson was dismissed, he “had no formal affiliation with the Road after this time, but went on to help found, settle, and serve as first mayor of the National Road town of Triadelphia, (West) Virginia,” located in Ohio County within the Wheeling metropolitan statistical area.

According to the town’s Web site:

Originally chartered in 1829. Name adopted from the Greek word meaning three brothers, and probably named for the three sons of Colonel Josias Thompson, who donated the land upon which the town was originally laid out.

### **Secretary of War Calhoun’s Report**

The Second National Bank of the United States, confirmed by the Supreme Court and begun with high hopes, would disappoint its supporters, as Professor Larson described:

The trouble with the national bank began immediately in 1817. Taking advantage of the private authority within this mixed corporation (private stockholders elected four-fifths of the directors), President William Jones and a band of intensely self-interested directors virtually hijacked the new central bank, subverting all requirements (most notoriously the requirement to stock the vault with specie), expanding loans (often to themselves) far in excess of authorized

limits, and covering their misappropriations by freely issuing notes to all who desired them.

Because of these and other misdeeds, the bank was unable in October 1818 to meet a government call for \$2 million to pay off the Louisiana Purchase. The repercussions rippled through the economy as State banks failed; merchants, farmers, and land speculators struggled as prices declined; and increased bankruptcies resulted in more unemployment. (M'Culloch was one of several people involved with the Baltimore branch indicted for corrupt practices.)

Many factors contributed to what years later would be known as the Panic of 1819, but it would last through the early 1820s, causing not only economic strife but polarization in Congress. Senators and Representatives drew lessons from the panic based on their views on the role of the general government prior to the downturn and as proof that the measures they had advocated – whatever they were – should now be employed to rescue the country.

The Bonus Bill had been based on the theory that revenue from the Second National Bank of the United States would allow development of internal improvements. Even if President Madison had not vetoed the bill, the Panic of 1819 would have delayed such an outcome.

On April 4, 1818, the House Committee on Roads, Canals, and Seminaries of Learning had introduced a resolution asking Secretary of War Calhoun and Treasury Secretary Crawford to submit plans “for the application of such means as are within the power of Congress” to make national roads and canals:

. . . together with a statement of the undertakings of that nature, which, as objects of public improvement, may require and deserve the aid of the Government; and, also, a statement of works of the nature abovementioned, which have been commenced; the progress which has been made in them; the means and prospects of their being completed; the public improvements carried on by States or by companies, or incorporations which have been associated for such purposes, to which it may be deemed expedient to subscribe or afford assistance; the terms and conditions of such associations and the state of their funds, and such information, as, in the opinion of the Secretary shall be material in relation to the objects of this resolution.

The House adopted the resolution, 76 to 57.

Mindful of President Monroe’s views on internal improvements, Secretary Crawford did not respond, but on January 7, 1819, Secretary Calhoun submitted a report that reflected his enthusiasm for the subject. He saw an “intimate connexion” between national defense and the country’s “improvement and prosperity”:

There is no country to which a good system of military roads and canals is more indispensable than to the United States. As great as our military capacity is, when compared with the number of our people, yet, when considered in relation to the vast extent of our country, it is very small; and if so great an extent of territory

renders it very difficult to conquer us, as has frequently been observed, it ought not to be forgotten that it renders it no less difficult for the Government to afford protection to every portion of the community. In the very nature of things, the difficulty of protecting every part, so long as our population bears so small a proportion to the extent of the country, cannot be entirely overcome, but it may be very greatly diminished, by a good system of military roads and canals. The necessity of such a system is still more apparent, if we take into consideration the character of our political maxims and institutions. Opposed in principle to a large standing army, our main reliance for defense must be on the militia, to be called out frequently from a great distance, and under the pressure of an actual invasion. The experience of the late war amply proves, in the present state of our internal improvements, the delay, the uncertainty, the anxiety, and exhausting effects of such calls . . . As it is the part of wisdom to profit by experience, so it is of the utmost importance to prevent a recurrence of a similar state of things, by the application of a portion of our means to the construction of such roads and canals as are required “with a view of military operations in time of war, the transportation of the munitions of war, and more complete defence of the United States.”

After outlining the country’s needs by regions, Secretary Calhoun continued:

Much undoubtedly remains to be done to perfect the roads and improve the navigation of the rivers; but this, for the most part, may be safely left to the States and the commercial cities particularly interested, as the appropriate objects of their care and exertions. The attention of both has recently been much turned towards these objects, and a few years will probably add much to facilitate the intercourse between the coast and the interior of the Atlantic States.

Other needs, such as “the great and important line of communication extending along the coast through the Atlantic States,” could be met only by “the General Government, or not be perfected at all, at least for many years.” If the country ever were invaded again, “the roads and canals necessary to complete the communication with that portion of our country would be of the utmost importance”:

The interest of commerce and the spirit of rivalry between the great Atlantic cities will do much to perfect the means of intercourse with the west. The most important lines of communication appear to be from Albany to the lakes; from Philadelphia, Baltimore, Washington, and Richmond, to the Ohio river; and from Charleston and Augusta to the Tennessee – all of which are now commanding the attention, in a greater or less degree, of the sections of the country immediately interested. But in such great undertakings, so interesting in every point of view to the whole Union, and which may ultimately become necessary to its defense, the expense ought not to fall wholly on the portions of the country more immediately interested. As the Government has a deep stake in them, and as the system of defense will not be perfect without their completion, it ought at least to bear a proportional share of the expense of their construction.

Many of the roads and canals the report suggested would be of “first importance to the commerce, the manufacture, the agriculture, and political prosperity of the country, but are not, for that reason, less useful or necessary for military purposes”:

It is, in fact, one of the great advantages of our country, enjoying so many others, that, whether we regard its internal improvements in relation to military, civil, or political purposes, very nearly the same system, in all its parts is required. The road or canal can scarcely be designated, which is highly useful for military operations, which is not equally required for the industry or political prosperity of the community. If those roads or canals have been pointed out which are necessary for military purposes only, the list would have been small indeed. I have, therefore, presented all, without regarding the fact that they might be employed for other uses which, in the event of war, would be necessary to give economy, certainty, and success to our military operations, and which, if they had been completed before the late war, would, by their saving in that single contest in men, money, and reputation, have more than indemnified the country for the expense of their construction.

He did not attempt to estimate the cost of needed facilities; that could be calculated only by skilled engineers after a careful survey:

Should Congress think proper to commence a system of roads and canals for the “most complete defence of the United States,” the disbursement of the sums appropriated for the purpose might be made by the Department of War, under the direction of the President.

Based on what the House resolution had called for, he did not think it appropriate to address the longstanding constitutional questions about internal improvements, or the arguments that might be considered to implement the network proposed. [ASP, Doc. No. 462]

Although Congress would regularly engage in the familiar debates on internal improvements, it did not act on Secretary Calhoun’s proposal initially.

### **Thinking About Tolls**

While Congress was tending to construction of the Cumberland Road to Wheeling, it also took up legislation enabling statehood for Illinois (1816) and Indiana (1818), both of which contained language related to roads. The Enabling Act of April 19, 1816, for Indiana contained this provision:

Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of Congress.

The Enabling Act for Illinois, approved April 18, 1818, included a similar provision:

Third. That five per cent. of the net proceeds of the lands lying within such state, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: two-fifths to be disbursed, under the direction of Congress, in making roads leading to the state; the residue to be appropriated by the legislature of the state, for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

Also as with Ohio, the legislation exempted public land in both States, following its sale by the general government, from State taxation for 5 years.

Representative Daniel P. Cook of Illinois recalled these provisions when he introduced a resolution on February 15, 1820, regarding the appropriation act of March 3, 1819, which provided:

For claims due and becoming due, under existing contracts for constructing the United States' road from Cumberland to the Ohio river, two hundred and fifteen thousand dollars; and for completing the said road, the sum of two hundred and eighty-five thousand dollars; which several sums, hereby appropriated, together with the amount heretofore advanced by the United States for making said road, shall be repaid out of the fund reserved for laying out and making roads to the states of Ohio, Indiana, and Illinois, by virtue of the several acts for the admission of the aforesaid states into the Union.

The resolution provided that the Committee of Ways and Means should "be instructed to inquire into the expediency of repealing" the provision that directed land sale revenue from Indiana and Illinois to be used "for constructing the United States road from Cumberland to the Ohio river, and of appropriating the same to defray the expenses of laying out and making a road from the Ohio river opposite to Wheeling, by Columbus, in the State of Ohio, and by the permanent seat of government of Indiana, on the most eligible route, to Vandalia, in the State of Illinois."

Representative Cook explained:

By the acts of 1816 and 1818 authorizing the admission of Indiana and Illinois, respectively, two per cent. of the net proceeds arising from the sale of the public lands in those States was reserved by Congress to the laying out and making of roads leading to those States, respectively; and in consideration of the appropriation made by Congress, with others, which were understood on all hands to be for the benefit of those States, respectively, the States surrendered a part of their sovereignty: they agreed that the lands of the United States, then remaining to be sold, should be free from taxation for five years after the day of sale; and in Illinois the bounty lands given to the soldiers of the late army, were also to be exempted from taxation for three years from the date of their patents.

For Congress to divert “this fund from the channel in which Mr. C. could not but think it was intended to flow, Illinois would consider a violation of that compact.” Using the funds to repay the expense of building a road several hundred miles from the Illinois border could never be “in unison with the intention either of Congress or of the State of Illinois.” Could anyone contend, he asked, that when the funds were reserved to Indiana and Illinois that the funds were intended to be used to defray the expenses of building a road authorized a decade before either territory became a State that approached neither State?

He thought it far more likely that Congress intended the land sales funds “to have been reserved for the purposes contemplated by the resolution which he had offered, to extend that road to the borders of those States, respectively; and unless it was so appropriated, or at least in making roads leading *to*, and not *towards* them, he did not think they would have just cause of complaint against the Government.” The wording of the Act of March 3, 1819, was “a violation of the compact between those States and the United States.”

The resolution, the *Annals* stated, “was then considered and adopted, without a division.” (A “division” is one option when a voice vote results in an uncertain result. The chair calls for a division. Those in favor of a measure rise and are counted; then those opposed rise to be counted. The totals are not recorded.)

On March 16, 1820, the House of Representatives was again considering the general appropriation bill. The *Annals* reported:

The remainder of the day was occupied in debate on the civil appropriation bill; and chiefly on the clause which proposes an appropriation of one hundred and forty-one thousand dollars “for completing the contracts for constructing the road from Washington, Pennsylvania, to Wheeling, made during the year 1817.”

On this there was a rather animated debate; Mr. [Jesse] Slocumb [of North Carolina] having moved to strike it out of the bill. The objections to it were, principally, 1. To the power of Congress to construct roads at all; and, 2. To the nature of the contracts, some of which it was suggested had originated in collusion and fraud.

After deciding the question on Mr. Slocumb’s motion in the negative, the Committee rose and the House adjourned.

On March 17, the House voted, 90 to 66, to include \$141,000 in the general appropriation act to pay for the 1817 contracts on the Cumberland Road east of the Ohio River.

Despite the divisive debate, Congress could not ignore the problem on the original section of the Cumberland Road. It was deteriorating from use and misuse, prompting Congress to debate how to restore the heavily used road. Because funding for the road had become a controversial topic, some Members of Congress sought a different solution that would settle the issue.

Representative Henry R. Storrs of New York, from the Committee on Roads and Canals, introduced a bill on March 20, 1820, to restore and maintain the Cumberland Road by imposing tolls on those using it. The bill specified the amount of toll to be charged, the pay of toll collectors, and the penalty for improper collection techniques and evasion. It exempted some travelers, such as those going to or from worship or a funeral, and military travelers and vehicles. The final section was the key:

*Sec. 6. And be it further enacted,* That the amount of tolls collected on said road shall be paid into the Treasury of the United States semi-annually, by the toll-gatherers on said road, and a separate account kept thereof; and the said moneys, after deducting therefrom the expenses and charges of collecting the same, shall be applied, under the direction of the President of the United States, to the repairs and preservation of said road, in such manner and under such regulations as he may prescribe, and to no other purpose whatever.

In keeping with House rules, the bill was read, but before its second reading could occur, Representative Barbour introduced a motion to reject the bill. The *Annals* explained:

This motion gave rise to a short debate . . . . In general, the motion to reject the bill was supported on the ground that the question which it involved had been as much discussed as any ever presented to the view of the Legislature; that the discussions and solemn decisions had gone forth to the world; that the mind of every member was made up on it, and therefore there was no need of delay for reflection; and that the principle of the bill was, in the opinion of the advocates of its rejection, so obnoxious that it ought not to be entertained by the House for a moment.

The motion to reject was opposed on the ground that the question was one of much importance, and ought not to be hastily disposed of; that the preservation of a national work which has already cost so much money was an object of importance, if within the Constitutional power of Congress; that, in fact, the question involved in the bill had never yet been decided by Congress; that, being but this day presented, it would be unreasonable to call upon the House to say it was so odious they would not look at it.

On the question, "Shall this bill be rejected?" the House voted 47 to 111 to reject the Barbour motion.

The House then read the Storrs bill a second time and committed it to the Committee of the Whole for a third reading.

Although the 16<sup>th</sup> Congress did not pass the toll-gate bill, Congress did pass two bills affecting the Cumberland Road. The first was the general operations appropriation of April 11, 1820, in which the provision survived appropriating \$141,000 for completing the 1817 contracts for the road from Washington, Pennsylvania, to Wheeling. All of the appropriations in the legislation, including the funds for the Cumberland Road, were to come out of any money in the general Treasury not otherwise appropriated.

## **The Western Extension**

The second and more significant legislation was the Act of May 15, 1820, which authorized the appointment of commissioners to lay out a continuation of the Cumberland Road from Wheeling through the States of Ohio, Indiana, and Illinois. Senator Rufus King of New York had introduced the bill from the Committee on Roads and Canals on April 20, 1820. It moved through the Senate and House quickly and with limited controversy as reported in the *Annals*.

The final legislation called on the President to appoint “three impartial and judicious persons, not being citizens of any of the states aforesaid” as commissioners to examine the country between Wheeling and “the left bank of the Mississippi river, to be chosen by said commissioners, between St. Louis and the mouth of the Illinois river.”

They were to lay out the road “to be on a straight line, or as nearly so as, having a due regard to the condition and situation of the ground and water-courses over which the same shall be laid out, shall be deemed expedient and practicable.” In doing so, the commissioners could employ “able surveyors, chain-bearers, and other necessary assistants.” All were to take an oath, or affirmation, “faithfully and diligently to perform their respective duties.” Each commissioner would be paid \$6 for each day they were involved in the business of the road. Surveyors were to receive \$3 a day, with other workers receiving \$1 a day.

The legislation spelled out the nature of the road:

The said road to be eighty feet wide, and designated by marked trees, stakes, or other conspicuous monuments, at the distance of every quarter of a mile, and at every angle of deviation from a straight line.

The commissioners were to present an accurate plan of the road, with a written record, to the President. The report also was to divide the plan into sections between 5 and 10 miles long, “noticing the materials that may be used in making, and given an estimate of the expense of making, each section of the road aforesaid.”

The Act appropriated \$10,000 out of the general Treasury “to defray the expense of laying out the road aforesaid.”

The one controversial topic was that the original bill called for survey of the route of the Chesapeake and Delaware Canal through Maryland, Delaware, and New Jersey. That unrelated provision was dropped.

When the 17<sup>th</sup> Congress convened in December 1821, one of the questions to be decided was what to do about the Cumberland Road.

Representative David Trimble of Kentucky, on December 18, 1821, introduced a resolution calling on the President to report to the House on the progress of the survey of extension of the Cumberland Road beyond Wheeling. If the survey had not been completed, the resolution asked the commissioners to explain why they had suspended their duties.

He also submitted two more direct resolutions:

1. *Resolved*, That the Committee on Roads and Canals be instructed to inquire into the expediency of providing by law for the repair and preservation of the Cumberland road, and for the establishment of toll gates thereon.
2. *Resolved*, That the same committee be instructed to inquire whether any, and, if any, what, further provision ought to be made by law to enable the President of the United States to complete the survey and location of the proposed continuation of the Cumberland road from Wheeling, in the State of Virginia, through the States of Ohio, Indiana, and Illinois, to the Mississippi river; and whether any, and, if any, what, provision ought to be made to enable the President to cause the said road to be constructed.

The three resolutions were “ordered to lie on the table” for discussion at a later date.

On December 20, Representative Trimble called for discussion of his Cumberland Road resolutions. The first resolution, calling on the President for a report on the western survey, was agreed to without objection.

The two other resolutions were read. Representative Patrick Farrelly of Pennsylvania suggested holding off on consideration until the House received the Secretary of the Treasury’s report from the commissioners. The *Annals* summarized his argument:

It was desirable that the House should act upon the subject with the best lights that the case afforded. It was an important subject. Large sums of money had been expended, and, he feared, to very little purpose, for he had understood that the commissioners had examined the road this season, and had given an unfavorable report of the manner in which the public money had been expended, and that those disbursements were made with an eye to private speculation rather than public utility.

He appeared to be referring to the allegations about the contracts awarded under Superintendent Josias Thompson.

Representative Trimble said “his object was to have as early an inquiry as possible into this subject. He wished the committee to be raised now, that they might have an opportunity of investigating this subject at a period of the session most convenient for the purpose, the House being less engaged than it would be after the holidays.”

Representative Farrelly said he “had only thrown out his suggestion . . . without intending to object to the resolutions.” According to the *Annals*, “The question was then taken on the passage of the resolves, and decided affirmatively without objection.”

### **The Commissioners’ Report**

The President had appointed the three commissioners to survey extension of the road, namely Lacock, David Shriver, and William McRee. Secretary Crawford submitted their initial report to the House by letter dated January 14, 1822, containing the commissioners’ January 2 summary of their work. The Secretary’s transmittal included

the report, plan of survey, and field notes the commissioners had submitted to him. They had not been copied, so he requested their return as soon as no longer needed.

The commissioners began by discussing the confusion caused by an effort in the Senate to amend the law calling for their appointment and directing that the line be as straight as conditions permitted. The Senate had passed a bill directing that the extension go through Columbus, Indianapolis, and Vandalia, the capitals of the three States. The bill had failed in the House of Representatives “for want of time to consider it.” Under the existing law, therefore, the three capitals could not “be embraced” by the straight-line extension:

In this situation, they considered it expedient, with the balance of the appropriation in their hands, to prosecute the location as far as the Muskingum river at Zanesville, believing it highly probable that, whether the law were modified or not, from the nature of the country on both sides of that river, a point at or near that place must be selected at which to pass the stream; and, also, that their labors must be ultimately bestowed on this ground, whatever might be the points fixed or agreed upon westward of it.

They focused, therefore, on the 81-mile distance between Wheeling and Zanesville “on the present travelled road.” The routing had to overcome several problems:

The ground throughout the entire distance is very hilly and broken; the principal streams run nearly at right angles with the course of the location; and the hills bordering those streams have to be passed in a lateral direction, and making a considerable angle with the general direction of the location, otherwise a descent and ascent sufficiently gentle could not be had.

Crossing the bottoms and streams would involve “great expense in bridges and causeways.”

The ground was another problem:

The substratum, particularly on the sides of hills, is generally a lime or rotten slate stone. The superstratum, of different depths, consists of the decomposition of the one below, combined with the decayed vegetation on its surface.

The hill sides regularly slipped into the valleys below:

The necessity of avoiding ground of this nature is obvious; for, if a road be made on a side hill where the ground is of this description, the support is cut off by the road, and the surface, perhaps charged with trees and rocks, will force itself upon the road and destroy it.

The commissioners were concerned that “the erroneous location of a road, designed for permanent national purposes, would be worse than a useless expenditure of public money; for as the location must be made the basis of all future contracts for construction of the road, if left imperfect, the Government would either have to be at the expense of a new location, or make the road on the old one; and, in the latter case, the public would

probably be at the inconvenience of occupying it for a great length of time without attempting an alteration.”

By experiments, many of which failed, the commissioners selected a route that was 5 miles shorter than the existing road:

They do not pretend to say that the route represented as the shortest is brought to that state of perfection which is practicable; some necessary trials yet remain to ascertain whether better ground cannot be had, and the distance diminished; but the labor, it is thought, will be inconsiderable compared with what has been bestowed the last summer. The routes have all been graded at an angle of not exceeding  $4\frac{1}{2}$  degrees with the horizon, with the exception of 123 chains 28 links

.....

West of the Muskingum River, “the difficulty of making a location will considerably diminish”:

The surface of the earth is, in general, gently undulating, and the highlands bordering the largest streams are much less elevated. But the probability is, that, in some considerable part of that region, a difficulty in procuring stone convenient for a turnpike will be experienced; but pebble or gravel was discovered in some places, of excellent quality, a small depth below the surface. Between Wheeling and Zanesville, but little difficulty, they apprehend, will be found in procuring stone for the road.

The commissioners closed their report with an update on the Cumberland Road east of Wheeling:

The commissioners would further observe, that that portion of the national road between Uniontown and Washington, Pennsylvania, including about thirty miles, was contracted for in the year 1819, and since completed, including mason work and other expenses, for \$6,400 per mile. Taking into view the scarcity of money in circulation, and the reduced price of labor and provisions, they have no hesitation in saying that the probability is that the road between the Ohio and the Muskingum rivers, including culverts and bridges, with stone arches, could, at the present time, be contracted for, and completed in a similar manner, for a much less sum.

Their expenditures “exceed by a small amount” the appropriation, but the surveyor and assistants had been paid. [ASP, Doc. No. 511]

The Senate would again consider amending the law to direct that the road should connect the three State capitals, but action was not taken during the 17<sup>th</sup> Congress.

### **Restoring the Original Road**

With the extension inactive, the 17<sup>th</sup> Congress took up the problem of restoring the Cumberland-to-Wheeling road. On January 7, 1822, Representative Andrew Stewart of Pennsylvania offered a resolution calling on the Ways and Means Committee to “report a

bill applying the unexpended balance of the moneys appropriated by the act of 3d March, 1819, for completing the Cumberland, for the purpose of repairing the same.”

Representative Stewart would emerge as one of the chief advocates for the Cumberland Road. An attorney who had been born in the vicinity of Uniontown, he served in the Pennsylvania House of Representatives (1815-1818) before President Monroe appointed him U.S. Attorney for the western district of the State (1818-1820). He resigned in 1820 and was elected to serve in the U.S. House of Representatives, a post he held through March 1849. In 1825, Representative Stewart married Elizabeth Shriver, whose father was David Shriver, Jr.

After some speculation on whether a balance of funds existed, the motion “was then ordered to lie on the table.”

Representative Stewart contacted the Treasury Department, which assured him the funding was still available. Therefore, he reintroduced his amendment on January 24:

And, since he was up, he would state to the House that the balance remaining of the money appropriated, to complete this road, had been reduced since the last session to less than \$10,000. This sum, however, he thought, (if judiciously applied,) would be sufficient to effect such repairs as were immediately necessary to the presentation of the road. A few thousand dollars would do more to preserve it now than ten times the amount a year or two hence – unless the Government did something, the road would soon be destroyed, and the money expended lost. It had been entirely neglected by the Government for a considerable time past.

The amount involved was “inconsiderable” compared with the millions expended along the Atlantic coast for forts, lighthouses, and other facilities:

He spoke of the superiority of this public work over any other to which the attention of the Government had been, or could be, directed. He also alluded to the claims of the West, and interior, generally, where little or nothing had been expended, compared with the immense sums expended on the Atlantic Coast for the benefit of foreign commerce.

Because the funds of less than \$10,000 had already been appropriated, he hoped the resolution would be adopted and that the Treasury Secretary would apply the funds to repairing the road.

Representative Lewis Williams of North Carolina offered an amendment directing the Ways and Means Committee to inquire into the expediency of how to use the balance instead of prescribing the outcome of the probe. Representative Stewart was apprehensive of the amendment because he was concerned that the committee would direct the balance to the surplus fund rather than the road. Moreover, he put his motion in the context of the proposal to place toll-gates on the road:

To erect toll-gates he considered inconsistent with the liberal and enlightened policy which had conceived and executed this work. But were they to be erected, yet the amount now asked for would be necessary for the preservation of the road,

which was in a state of rapid dilapidation, before any system establishing gates could be carried into effect.

When Representative Henry Baldwin of Pennsylvania said he could not consent to the Stewart motion, Representative Stewart reluctantly agreed to the Williams amendment “and the resolution was adopted.”

The Senate also was considering repair of the road. Senator Richard M. Johnson of Kentucky had introduced a motion on December 17, 1821, calling for a select committee “to inquire into the expediency of providing for the preservation and repairing of the National turnpike road, beginning at Cumberland, on the Potomac, and terminating at Wheeling, on the Ohio river and that they have leave to report by bill or otherwise.”

The following day, amid brief dialogue on the motion, Senator Johnson revised it to call on creation of a committee of the Roads and Canals to study the matter. The Senate agreed to the motion, resulting in appointment of a five-man committee, including Johnson.

On January 3, Senator Johnson, on behalf of the Committee on Roads and Canals, reported a bill to keep the Cumberland Road in repair by erection of toll-gates. According to the *Annals*, the bill passed to a second reading, without discussion. The second reading took place on January 4, again without reported debate.

The Senate considered the bill on January 7. Senator John Chandler of Maine pointed out that the bill did not provide for cases “where persons might forcibly pass the gates without paying the toll required.”

Senator Johnson responded that the Committee on Roads and Canals had considered that question, “but they concluded that, as such a clause would involve a question of constitutionality, and of course of some difficulty, it would be better to avoid the impediment which it might present, by reporting the bill in the naked form in which it was presented.” Future amendments could occur if necessary.

Senator Nathaniel Macon of North Carolina pointed out that the bill was basically a money bill because it involved “a tax levied on everybody that travelled on the road.” He added that he “rose only to make this remark, without going into the merits.”

As introduced, the Johnson bill had a blank for the salary of the superintendent. The Senate agreed to a Johnson motion to fill the blank in with the amount of \$1,000.

Senator John H. Eaton of Kentucky suggested delaying consideration of the bill because it might affect State rights. He thought “it was proper to proceed cautiously to the adoption of any measure which might possibly produce further collision with the States.” The Senate agreed to postpone consideration.

The Senate took up the measure again on January 17. As the reading of the bill was about to proceed, Senator Walter Lowrie of Pennsylvania objected that the reading was a waste of time. If the Senators looked at the bill they “must see that it was a revenue bill, and that this House had therefore nothing to do with originating it.” Revenue bills, under the Constitution, had to originate in the House of Representatives.

Senator Johnson expressed surprise at the objection. Briefly citing the importance of the Cumberland Road, he “could not view this at all in the light of a revenue bill.”

Senator Lowrie pointed out that the revenue from the tolls would accrue to the general Treasury “and out of this fund the expenses of repairing the road were to be paid.” Levying any tax was the House’s province, but he recommended postponing consideration of the toll-gate bill until the issue could be reviewed.

Senator Isham Talbot of Kentucky disagreed with Senator Lowrie. The bill “does not contemplate the raising of a revenue, within the terms of the Constitutional limitation of the origination of such bills to the House of Representative.” A revenue bill involved a general tax on all people for the general purposes of the government. “This bill . . . proposed to collect money for a specific object, and for no other – a mere imposition of toll for a special purpose could not be considered as raising revenue”:

This road which had cost so much money, and was of vast importance in a commercial as well as political view, which was a monument of the wisdom and liberality of the General Government, ought to be preserved from dilapidation and other injuries, and he trusted that the Senate would not concur in the objection which was now taken to the bill which had been reported for that purpose.

Senator Johnson pointed out that if Senator Lowrie’s interpretation were adopted, “the Senate would have very little to do with originating laws.” There might be other legitimate objections to the bill, but not that it was a revenue bill:

If it was opposed on other grounds – that, for example, of a want of power over the road now it was made, that was another and a fair ground of opposition. But, in the words of the Constitution, “All bills for raising revenue shall originate in the House of Representatives.” Perhaps his zeal in favor of the object of the bill had blinded him; certain it was, he said, he could imagine nothing much further from a revenue bill than this bill was. If, he said, this great road was to be suffered to go to decay, after the million [sic] of dollars which had been spent upon it, to connect New Orleans and Boston by an interior communication, let it go. He could trudge over the mountains, and through the valleys, without the road, as well as others, but he should lament it; and he hoped the question on this bill would be tried on its merits, and not on an incidental question.

After further discussion, Senator Lowrie made clear that he did not object to Congress passing the bill for its important purpose but only to the fact that the Senate was originating it. “By forcing it upon the Senate, as originating here, some gentlemen, among whom Mr. L. said he was one, would be compelled to be against this bill, though on principle favorable to its provisions.

The Senate agreed to delay consideration.

On February 28, the Senate again took up the Cumberland Road bill appropriating \$10,000 for the survey of the extension to the Mississippi River:

Mr. Johnson, of Kentucky, observed that the bill was merely to authorize the completion of an important object which had been commenced. The people of the

West, far removed from the seat of empire, asked for very few things, and he hoped this little boon would not be refused.

Some amendments of detail were proposed to the bill, on which some discussion took place; after which the bill was ordered to be engrossed for a third reading.

(“Engrossed” meant putting the bill in final form.)

On March 1, the bill was read a third time, passed, and sent to the House for consideration.

The House considered the provision in the general appropriation bill appropriating \$9,000 to aid repair the Cumberland Road east of Wheeling on April 6, 1822, as a Committee of the Whole. Representative Lewis Condict of New Jersey moved to strike out the clause:

He said the United States had already expended enormous sums in the construction of this road, and he could not consent to impose upon his constituents any further expense in repairing it.

Representative James D. Breckenridge of Kentucky said he was surprised by Representative Condict’s objection to the provision, “and the manner was as unexpected as the matter,” namely that he was unwilling to tax his constituents for this purpose. Representative Breckenridge pointed out that citizens from the west were regularly taxed “to build fortifications on the seaboard, and support navies, in which they have no special interest.” What would Representative Condict say if Members of Congress from the west were to refuse to back such expenditures:

This was a magnificent plan of connecting the Eastern with the Western States. It was creditable to the munificence and policy of the Government; and he would not ask whether it was expedient to suffer this valuable road to go to decay and ruin, rather than appropriate this trifling sum to an object so important. It was the common property of the nation, and it could not be comfortable to the interests of the country to break the chain that binds the Eastern and Western States together.

Representative Farrelly, who represented a district based in Meadville in northwest Pennsylvania, did not appreciate the reference to local considerations. “He did not understand in what way this appropriation found its way into the bill.” He did not believe the appropriation was constitutional, and was willing to go only as far as the original compact specified. “The act of Congress, on this subject, provided for the construction, but not for the repair, of the road.” If Congress appropriated the funds, “it would be followed by similar calls from year to year to keep it in repair”:

It had been said, indeed, that the sum asked for was a trifle. He admitted it; and if this was to be the end of it, it would perhaps be worth the time to be occupied in the contest. But he regarded this as only an entering wedge for future appropriations for the same purpose. The State of Pennsylvania has a road nearly parallel with this, from Harrisburg to Pittsburg, which is materially affected by this.

Moreover, the expenditure of funds granted for the road “had been wasteful and corrupt; and there was no guaranty that the sum which is now asked for would not be applied in a similar manner.” He continued:

Mr. F. did not wish to have this road go to destruction; but he thought if those who live on its borders would not support and repair it, it should revert to the States through which it passes. And he could not think that, for the sum of \$9,000, it was expedient to draw into discussion a Constitutional question of doubtful construction. After so large a sum had been expended, so far beyond the amount that was originally contemplated, he thought it was time to put an end to these appropriations.

As for the comment about Atlantic coast projects, he pointed out that “in these fortifications, New Orleans had not been overlooked, which was done almost entirely for the benefit of the people of the West. As much attention has been paid to the fortification of that place as to those of New York, and he thought no fair argument could be adduced from that source.”

In view of the concern about how the measure was included in the appropriations act, Representative Smith of Maryland explained that it had been added “in consequence of a resolution of the House directing the Committee of Ways and Means to inquire into the expediency of applying the unexpended balance of former appropriations for this purpose.” The committee had obeyed the House’s direction “and they thought themselves justified in that course when they knew that \$1,000,000 had been expended by the United States in constructing the Cumberland road, and that it was now in a state of dilapidation.” The committee had consulted the superintendent, who thought that “the road, owing to the torrents, &c., in that mountainous country, will soon be impassable, unless the necessary repairs are made.” The basic question was whether to waste what had already been expended on the road “rather than be at a little expense to sustain it.”

Representative Smith rejected Representative Farrelly’s notion that those who live along the road should repair it:

But they have little interest in it. It is those who pass a great distance on the road that have the greatest interest in maintaining it. The construction of this road had done great honor to the nation, and he hoped it would not now be abandoned.

Representative John W. Campbell of Ohio said he had traveled the road recently:

. . . and he found that the first part made wanted but little repair. That portion of it which was more recently constructed naturally required attention. The hills slide down, and the road is filled up, so that repairs are necessary.

Given the importance of the road, “the people of the West had a right to expect this small appropriation for such an object.” The small sum of \$9,000 was all that was required “and probably not even so large a sum as that will be necessary in future years, after the road shall have been thoroughly completed.”

Representative Rollin C. Mallery of Vermont was in favor of the appropriation:

The Government had expended \$1,800,000 on this road, and the policy of that expenditure had been repeatedly confirmed. It was now out of repair, and there were no means provided to maintain it.

The first question, then, was, whether it was an object of sufficient consideration to authorize this appropriation? It was admitted to be the great chain to bind the East and West together, and for the accomplishment of that object much depended on the facility of communication.

He pointed out that the same bill appropriated \$6,000 for John Trumbull's national paintings to be displayed in the Capitol. "And was it not an object at least as national and important to preserve the great avenue to the West":

We annually appropriate thousands, said Mr. M., for the completion of this stupendous pile, the Capitol. And is not the Cumberland road as valuable a monument of national policy and munificence? When we appropriate so much to construct the road, he thought it worth while to contribute a pittance to save it. The people in that region, Mr. M. contended, had calculated and prudently calculated, that the Government would not be at so much expense to construct the road, and then abandon it. He thought it was now ungenerous, if not unjust, to disappoint their expectations.

He added that the road from Philadelphia to Pittsburgh was a great thoroughfare for the State, and it was natural that the State should take care of the road. "But the nation had decided in favor of the Cumberland road, and he thought it was expedient that Congress should not now depart from that decision."

(The final general appropriation bill, approved by President Monroe on April 30, 1822, included \$6,000 to Trumbull "for paintings commemorative of the most important events of the Revolution." The Trumbull historical paintings were the "Signing of the Declaration of Independence" (1818), the "Surrender of Cornwallis at Yorktown" (1817-1820); the "Surrender of Burgoyne at Saratoga" (1817-1821); and the "Resignation of Washington at Annapolis (1824)." They are displayed today in the Capitol Rotunda.)

Representative Farrelly was not convinced. He did not think "the road was . . . of so great importance, nor of such utility to the West as had been represented." He had no confidence in the oversight of road construction, "but, if the sum now asked for should be granted, it would probably be squandered as the former appropriations had been, and that it was inadequate to the accomplishment of the object in view, of effectually repairing a road 120 miles long." He also argued that the Cumberland Road was no more national in character than any other public road.

Representative Stewart rose for a lengthy speech in response to Representative Farrelly's observations opposing the \$9,000 appropriation for repair of the Cumberland Road. He began:

This road, he observed, was completed the last Summer. Every Congress, for the last ten or twelve years, influenced by a liberal and enlightened policy, had appropriated money for its construction. It was now asked, merely to apply to the

reparation of the road an unexpended balance which had previously been appropriated for its completion, and a trifling sum to erect a bridge. It was not expected, with this sum, to make durable repairs of stone, but to remove obstructions, and put it in passable repair, until Congress should make some permanent provision on the subject. In some places the hills had slipped and filled the road; in others, the road has given way and precipitated so as to become almost impassable. The consequence has been, that the public travel and the public mail have been seriously obstructed.

Representative Farrelly's suggestion that the people living along the road should repair it was impractical. "But it would be recollected that this road was made over a mountainous, and, to a considerable extent, an uninhabited country." Moreover, much of the road was in Pennsylvania, "which, as a State, is known to be hostile to it":

The gentleman (Mr. F.) has stated that it is destructive to Pennsylvania; she has \$600,000 of stock in her own road, running from Philadelphia to Pittsburg; yet, he said that, if the road could not support itself, it ought to be given back to the State of Pennsylvania; this, by the gentleman's showing, would be to give the lamb to the keeping of the wolf. This was a national road. It was built for a national purpose, and in a spirit of national munificence. And the important question before us now is, whether the whole object for which the expense was incurred shall be lost, for want of a trifle to repair and preserve it.

Commenting on the idea that funds had been misspent, Representative Stewart said that even if that were true, it was not an argument for not repairing the road. Large sums had been spent on the Capitol, some of it misspent by "agents employed [who] had been unfaithful to their trust." Would that be a basis for halting all work "on this stupendous fabric, and leave it roofless, merely because there may have been extravagance and want of economy in the application of the public money?"

Representative Stewart wanted to correct the impression left by Representative Farrelly's remarks:

The western part of the road has been made under the direction of Messrs. Thompson and Williams, about thirty-six miles, and had cost upwards of \$16,000 per mile; but with respect to the eastern part of it, which had been built under the superintendence of Mr. Shriver, it was but just to say that he had performed his trust with great economy, at an expense of less than \$9,000 [per mile], and a part for \$6,400, and with a fidelity and zeal that entitled him to the warmest commendations. It was due to him, therefore, to rescue him from imputations that were calculated, though not intended, to mislead the House.

The importance of the road was without doubt. Representative Stewart cited the transportation of goods from west to east and from east to west. Because of shipments by boat on the Ohio River and the Mississippi River, people in a few western counties of Pennsylvania "can no longer compete with our more western neighbors in the market of New Orleans. We are compelled to turn to the East." The Cumberland Road was their path.

A few western counties of Pennsylvania had manufactured 371,000 barrels of flour and 29,000 barrels of whiskey that could be shipped to Baltimore or Washington for \$5 per barrel before the road, and could now be carried for \$2.50 per barrel, “while we appropriate millions for the benefit of the merchant who exports it, by supporting navies, lighthouses, foreign agents, and ministers.” The cost of shipments from Baltimore to Wheeling had been reduced by as much as two thirds.

Representative Stewart also emphasized the economic aspect of the road:

It was an important feature in the national policy to smooth and soften the rugged point of difference between the different sections of the country, and to create a mutual dependence of each upon the other. His colleague (Mr. Farrelly) had observed that other sections of the country had not been provided for. To this a reply was at hand. This was a national object, but the Pennsylvania road was a State object. The New York canal partook of both, for, though it was entirely within the State, yet other States also participated in the benefits it was calculated to produce. This road could never have been built by a State. State funds were not adequate to such an object. There was, therefore, a strong and a fair claim upon the liberality of the people of the East – and this claim was fortified by the liberal appropriations which the House had made by this very bill in their favor.

No one objected to the hundreds of thousands of dollars appropriated for lighthouses, beacons, and buoys. In fact, he had voted for those appropriations:

All this was right and proper . . . . But this is bottomed on the same principle that we ask for this. The one is to travel in ships and boats, and the other in wagons. The surface over which they pass cannot vary the principle of affording them facility, safety, or aid. The element of earth is as much privileged for protection as the element of water. But this is not all. Not only lighthouses are erected, but causeways to reach them – and what are these but roads? And if so much can be done for the merchants, shall nothing be done for the farmers?

People in the west did not object to spending funds for the lighthouses, \$28,000 to send a Minister to Lisbon, or upwards of \$200,000 “to defray the expense of running a boundary line – not much longer than this road, and all will be contentedly borne by the Western people if they are permitted to participate in the national bounty.”

(The Adams-Onis Treaty of 1819 included a provision specifying the eastern border of Spain’s Texas. (Adams was Secretary of State John Quincy Adams.) The Senate ratified the treaty in 1821 but before a team could be dispatched to mark the border, Mexico won its independence from Spain in September 1821, with Texas part of the newly established country. As many Americans migrated into Texas, Congress debated in 1822 whether to survey and mark the border specified in the 1819 treaty with Spain or renegotiate the border with Mexico during new treaty talks. Ultimately, the treaty with Mexico that was signed in 1828, but not ratified until 1832, recognized the border as stated in the 1819 treaty with Spain. Before the border could be surveyed and marked, however, Texas won its independence from Mexico on March 3, 1836, necessitating a new treaty. The border line was not determined until 1841. [Ruffin, Thomas F. “The Elusive East Texas Border,” *East Texas Historical Journal*, Vol. 11, Issue 1, 1973])

He also addressed Representative Farrelly's comments on constitutionality. Congress, Representative Stewart said, had the right to establish post roads:

On this road your mail now runs daily, and have you no right to repair and protect it? Have you no right to remove obstructions which the Postmaster General officially tells us has rendered it impassable?

The Constitution also gave congress the right to regulate commerce among the States, "and does not this road promote a very extensive and highly important commerce between the Atlantic States and the Western world?"

The power to provide for the common defense and general welfare also supported congressional authority:

[Good] roads were often more important as a means of defence than forts and fortifications. In a country like this, supporting a small Peace Establishment, good roads, by which the military means and physical forces were rapidly concentrated at the point of attack were immensely important . . . .

And is not the "general welfare" promoted by this road, connecting and uniting the East and West by the ties of interest and intercourse, by which the immense mountains which have been pointed at as the line of division are removed?

He also pointed out the compact by which the general government agreed to build the road and, in return, Ohio exempted the public lands from taxation to facilitate emigration and intercourse, "added to the value of the public lands by facilitating emigration and intercourse":

The Western lands had put into the public Treasury more than thirty millions of dollars, and would yield as much more; and will you return no part to those who have paid it, but expend the whole for the benefit of the Atlantic coast and foreign commerce, which had cost this nation, in support of navies, lights, forts, &c., more than one hundred millions of dollars?

Representative Stewart concluded his speech by saying:

This road, he repeated, had been completed, at an expense of near two millions; it is now in a state of rapid dilapidation; and will you suffer the money and the road to be lost to the nation? He hoped a policy so inconsistent with the liberal and enlightened views of those who had commenced and finished this great work would not be adopted.

Representative Henry Baldwin, who represented a district that included Crawford County in northwestern Pennsylvania, objected to the appropriation and some of Representative Stewart's comments, such as his comment about production of flour and whiskey. When Representative Baldwin heard that, "he thought it was too much to say that they were so poor that they could not repair the slip of a hill that had fallen into the road."

When someone wanted to argue in support of a measure, his method often was "to excite a clamor, in order that the real question might be lost sight of, as in this case":

The gentlemen in favor of the appropriation had talked much of this as a national road and national object, and of the illiberal, local views of those who oppose it. But gentleman [sic] should recollect that there is a wide difference between the victims and the favorites of the Government. This road had gone far to desolate ninety miles of the mountainous part of Pennsylvania. Was it then to be expected that it could be viewed by that State with indifference? Even the worm that is trod on had the right to groan.

When the last appropriation was made for the Cumberland road, a pledge was given that no more should be asked for. But now it is openly avowed by the gentleman from Ohio, (Mr. Campbell,) that this is to be followed by future appropriations, and to be sustained by the nation as a perpetual charity.

If this road is so valuable, Representative Baldwin wanted to know, why can it not support itself:

Where the Cumberland road passes over the mountains, the country is not more barren than the corresponding county where the Pennsylvania road crosses them. But we are told that this is a connecting chain that binds together the East and the West. It is a singular chain, indeed, that is broken in the middle. What is the situation of the road between Hagerstown and Boonsborough [part of the connection between Cumberland and Baltimore in Maryland]? Little better than a mud hole or a swamp. This is a part of the chain.

He pointed out the absence of national roads connecting north and south or others linking west and east:

The House are now to decide an important question – Whether a part of the country that lives upon and grows rich by this road, shall be exempted from the expense of keeping it in repair? His colleague, (Mr. Stewart,) had stated the great reduction in the price of transportation. But this took place before the Cumberland road was made, and was owing to other causes.

He also objected on procedural grounds. According to the Ways and Means Committee, appropriation acts were “only to provide for fulfilment of existing laws. But now the Committee of Ways and Means have converted themselves into a Committee on Roads and Canals”:

An appropriation bill should not give a preference of one over another; and if the Committee on Manufactures had introduced a bill to establish a road leading into Pittsburg, it was easy to divine that something would be heard of it from the chairman of the Committee of Ways and Means.

(Representative Smith of Maryland was the chairman.)

Representative Baldwin continued:

But when a road is to be made or repaired from Cumberland to Wheeling, the national funds cannot be withheld. The effect of this road was, Mr. B. observed, to destroy the stock in the other roads in Pennsylvania; and how would gentlemen

feel if the whole weight of the National Treasury was brought to bear on their own section of the country?

He could understand the support for the measure, which hurt only one State, namely his own State of Pennsylvania, “but that State, if too feeble to arrest the measure, would at least be allowed to protest against the application of the public money for a private and local object, so deeply injurious to its own interest.”

The House, still sitting as the Committee of the Whole, then voted to support the motion to strike out the \$9,000, with the ayes totaling 70. Representative Condict moved to strike out the appropriation for erection of a wooden bridge over the Monongahela River at Brownsville. The motion was carried, 80 to 32. Because these actions were votes by a committee, under House rules, a vote by the House would have to be taken.

The Committee of the Whole resumed consideration of the general appropriation bill on April 8. After discussing other provisions, the committee reported the bill to the House. Among other matters, the House considered the question of concurrence with the Committee of the Whole’s decision to refuse the \$9,000 for repair of the Cumberland Road. The *Annals* stated:

Mr. F. [Francis] Jones [of Tennessee] opposed the concurrence in a speech of considerable length; but, before he had concluded, on motion of Mr. H. [Hugh] Nelson [of Virginia], the House adjourned.

When the committee took up the matter again on April 9, “Mr. F. Jones concluded his speech of yesterday, and called for the yeas and nays on the question; which were thereupon ordered.”

Representative James Buchanan, a future President of the United States (1857-1861) who had joined the House in March 1821 from a district surrounding Lancaster in eastern Pennsylvania, rose to address the House, saying he would make no apology for doing so.

He began:

The character of Pennsylvania, he said, had been attacked and her views had been misrepresented, by honorable gentlemen upon this floor; and he should feel himself utterly unworthy of the trust reposed in him, as one of her representatives, if, after what had been said, he were not to stand forth in her defense.

As it often happened, said Mr. B., that men are most afflicted by imaginary diseases, so it occurs that they most dread imaginary dangers.

His comments were prompted by Representative Jones’ long speech, not summarized in the *Annals*. Representative Jones was one of those suffering from imaginary dangers:

He has been grappling with the State of Pennsylvania, as though she stood ready to hurl the mountain into the Cumberland road and he were the Atlas who could sustain it upon his shoulders, and thus make the attempt unavailing. This fancy of the gentleman has produced an excellent speech. Indeed, without much imagination and ardor of feeling, there can be but little eloquence. Let me,

however, assure that gentleman and this House, that neither Pennsylvania nor her representatives dream of the destruction of the Cumberland Road.

Pennsylvanians admitted the road must be preserved. The question “is not whether the road shall be destroyed, but by whom shall it be repaired, whether by the United States or by the people who use, and for whose benefit it was constructed.” Despite talk of a compact justifying the large expenditures on the road, “it now appears that five-sixths of this enormous expenditure has been pure bounty.” In his arithmetic, the general government had paid \$1 million for the road, but the two-percent fund from public lands sales intended for construction “does not exceed \$300,000. The United States, then, in the construction of the Cumberland road, have been actuated by the most liberal policy towards the people of the West.”

The principal argument in support of funding the repair – that because the general government has made the road, “you should, therefore, be at the expense of supporting it” – was “one of the most wonderful which has ever been presented to this House.” But the conclusion was the “reverse of one which would naturally flow from the premises”:

If we have been so generous as to make a road for you, ought you not, at least, to keep it in repair?

He could accept the argument if tolls could not be collected on the road:

This, however, is not pretended. Indeed we should be almost induced to believe, from the representations of its friends, if we did not know to the contrary, that it was the only road which connects the West with the East.

Representative Buchanan presented the analogy of an individual who received a gift of a valuable farm, but when it needed repairs, “should demand from his benefactor the sum which they might cost, and assign his generosity in conferring the original bounty, as a reason why he was bound to satisfy this new claim.” Representatives Jones and Benjamin Hardin of Kentucky had gone even farther than the farmer by attributing to Pennsylvania “a selfish and illiberal policy, because they have resisted this unreasonable demand.” The House could determine the justice of the charge.

He did not agree with the effort to compare expenditures for the Atlantic coast with expenditures for the west:

The truth is, we are all so connected together by our interest, as to place us in a state of mutual dependence upon each other, and to make that which is for the interest of any one member of the federal family beneficial, in most instances, to all the rest. We never can be divided without first being guilty of political suicide. The prosperity of all the States depends as much upon their Union as the human life depends upon that of the soul and the body.

If the general government had given Pennsylvania funds to build a road, “you should never afterwards have been asked to advance money to keep it in repair. We should have considered such a request both ungrateful and unjust.” The State had completed 1,807 miles of turnpike road, “of which about twelve hundred and fifty are of solid stone.” The State had passed laws calling for 714 miles more. One of the roads, which

connected Philadelphia and Pittsburgh, was in part nearly parallel with the Cumberland road:

The gentleman from Tennessee, two years ago, found this [State] road to be a bad one. The temper of mind with which people travel has a wonderful effect upon their judgment of the road, and I fear this cause has operated, in no small degree, upon the mind of my honorable friend.

It is expected that this road, as well as all others of the same kind in Pennsylvania, shall not only support itself, but yield some small dividend upon the stock subscribed for its construction. I ask, then, with what justice towards the State can you repair the Cumberland road out of the Treasury, and make it perfectly free?

(The “Pennsylvania Road” between Philadelphia and Pittsburgh was developed over about 70 years, incorporating the Philadelphia-Lancaster Turnpike, Allegheny Indian Path, the Raystown Path, James Burd’s Road, and Forbes Road. State legislation in the 1780s and 1790s provided funds to improve east-west transportation, as Pennsylvania transportation historian William H. Shank wrote in his book about his State:

Thus was created the great Pennsylvania Road from Philadelphia to Pittsburgh, via Lancaster, Harrisburg, Shippensburg and Bedford, following the main line of the old Forbes Road across the mountains to Ligonier and then taking a course a few miles south of that road through Greensburg to Pittsburgh, approximately the route of the modern Lincoln Highway [U.S. 30]. This became one of the main routes by which settlers and travelers by the thousands, arriving in the Port of Philadelphia, migrated to the new Western Territories . . . .

During its early years of operation most of it was dirt road, subject to the usual mud holes in wet weather. However, the completion of the new Philadelphia-Lancaster Turnpike in 1795 [the first major toll road in the United States] was the first in a series of steps to “turnpike,” or stone-surface, the entire route to Pittsburgh. This was accomplished, stage by stage, over the ensuing years and by 1820 it was stone-surfaced all the way.

(The Pennsylvania Road paralleled the Cumberland Road in western Pennsylvania from Bedford to Pittsburgh.

(In the 1910s, the road across Pennsylvania was included in the Lincoln Highway, the most famous transcontinental road of its day – from New York City to San Francisco. In 1926, the Lincoln Highway in Pennsylvania was included in the newly designated United States highway system as part of U.S. 30, a transcontinental road from Atlantic City in New Jersey, to Astoria, Oregon.)

Even with toll gates, the Cumberland Road would be unfair competition. “No more toll will be collected upon it than will be necessary for its preservation, whilst our road, in addition to that amount, must pay an interest to the State, and to the stockholders.”

Under these circumstances, why should Pennsylvania be censured “for maintaining the principle that those who travel upon the Cumberland road, and are most interested in its preservation, should keep it in repair”:

She does not deserve, at your hands, that you should give a premium out of the public treasury, for the purpose of diverting travelers away from her road, and inducing them to use another which is in no respect superior . . . .

Notwithstanding all that has been said, I believe, as firmly as I do in my existence, that the friends of this road might with safety retrocede it to Pennsylvania. It would not be delivering up the lamb to the wolf, to use the expression of an honorable gentleman.

Nothing in the State’s history suggested it would “destroy this great public work, if it were placed in her power.” Instead of asking for control of the road, Pennsylvania asked only “that the road may hereafter support itself and not be a perpetual drain upon the public treasury.”

As for the rivalry for economic progress, Representative Buchanan assured his colleagues that the Cumberland Road “is not a subject of such alarm to the State of Pennsylvania, nor to her metropolis, as they suppose.” Philadelphia would continue to thrive in service to the west “no matter over what road they may travel.”

What was certain was “that the road shall not be suffered to go to ruin”:

Whatever doubts may at present be entertained, either of the policy of its original construction or location, about which I have my own opinion, we must not allow it to be destroyed.

Before tolls could be demanded from travelers, the road must be repaired. “The mountain, which it is said has slid down into it, must be removed.” Out of generosity to the people of the west, not out of justice, he was “willing a provision shall be introduced into the bill for the collection of tolls, appropriating to the road this unexpended balance of \$9,194.25”:

After, however, we shall have given them that amount and our blessing, it should be explicitly understood that we shall never again hear any more demands for money from that quarter on the same account.

What he was not willing to do was support including the \$9,194.25 in the general appropriation bill. One reason was that if the general appropriation bill included the balance, “we should not again, during the present session, hear any thing about the collection of toll.” He also agreed with those who were concerned about introducing a new subject into an appropriation act. He thought doing so in the case of the Cumberland Road would be especially dangerous. “It might then hereafter, with some degree of propriety, be considered as the settled policy of the country to support the road; and as a pledge of the public faith that it shall be repaired out of the public Treasury.” With that thought in mind, he concluded:

In every view, therefore, which this subject has presented to my mind, I have been led to the conclusion that we should concur with the Committee of the Whole in their report, and strike out this appropriation from the present bill.

Representative Thomas Bayly, who represented a district on Maryland's Eastern Shore, said he had not usually "occupied as much of your time upon this floor as some other gentlemen have done, but shall, upon this question, give you a little of my slang." Some gentlemen, he said, "take the liberty of talking a great deal without knowing much of the subject, and some of the newspapers have styled this the wisest Congress we have ever had; and, if being dilatory in action, is a mark of wisdom, it is eminently entitled to that appellation." After all, what "is this \$9,000, compared with its object," the Cumberland Road. The "great national object" was needed to "facilitate the intercourse between the East and the West, and diffuse knowledge." Without communication, "we shall in time become divided, and think we have separate and distinct interests."

As for Pennsylvania, it "would seem more willing to put a mountain in the middle of the Cumberland road, than to repair it." A large portion of the State, particularly in the Pittsburgh area, had always opposed the road because it did not pass through that city:

Is this road exclusively advantageous to that part of Pennsylvania and Philadelphia? That is the question with them. I am myself perfectly disinterested, living upon the Atlantic, having never been on this road, and perhaps never shall, for I have no intention as yet of becoming an emigrant . . . .

The current migration to the west, partly driven by economic conditions, troubled him, but he was confident that in better times, they would "return to the delightful land of their fathers, and then let them have a good road and bridges to facilitate their return."

The road should be repaired, then maintained by a toll, and a good bridge across the Monongahela River should be built. Instead of \$40,000 in the appropriation bill for a wood bridge, "there should be one hundred and forty thousand to make a good substantial stone bridge."

The complaint on constitutional grounds about appropriation without an authorizing act came too late. The road had been built with the sanction of many Congresses and Presidents Jefferson, Madison, and Monroe. "There is, however, now, rarely an appropriation that can be thought of, but some gentleman has Constitutional scruples, and one would suppose that, in Virginia, from the nice scruples manifested by some of her members, that it is their thought to be unconstitutional to have or to travel upon a good road."

He had no personal interest in the matter, and spoke only "to assist his Western brethren." Addressing an unnamed Virginian, he said he hoped that he "would lay aside his Constitutional scruples, and lend his assistance."

A few more voices were heard before the vote on the \$9,000 balance of previously appropriated but unexpended funds. Representative David Chambers of Ohio said he spoke reluctantly but was aroused by "so great an opposition in many parts of the House to granting this pittance, which, although deemed of immense importance in promoting

the views and interests of the people of the West, was so small as scarcely to be worth contending for.” He appealed “to the liberality of the representatives of this nation for a small share of the general benefits.” Aside from constitutional objections, he hoped “the present state and condition of the road, and the necessity of a prompt repair, which could be timeously [sic] effected in no other way, would be sufficient to induce the liberal and enlightened representatives of this nation to maintain this work, heretofore generally considered as of a national character.”

He did not want to get into comparing funding for the Atlantic region and the west, but estimated that the “public moneys expended on the seaboard and Eastern section of the country, compared to that expended in the West, is at least as fifteen or twenty to one. The revenues drawn from the people to the East are recirculated among them, while the Western people are drained of nearly their last dollar for the public lands and foreign importation purchased.”

He also addressed Representative Buchanan’s concern that appropriating \$9,000 for repair of the Cumberland Road would block consideration of the separate toll bill. “That gentleman need not be alarmed on this ground. Mr. C. pledged himself to join in any reasonable measure for the support and maintenance of this road. It must be repaired; and, if he could do no better, he would agree to place toll-gates upon it.”

Unlike some speakers, he did not claim to be disinterested. “He was highly interested in this work, as are all the people of the West, and, therefore, would be excused for manifesting his earnest desire that this trifling sum would not be withheld from so important an object.”

Representative Silas Wood of New York, the final speaker, said he had not intended to speak but decided to do so because much of the discussion related to the constitutionality of the appropriation. “The real question . . . was, have Congress the power to legislate upon the subject of internal improvements within the States? He could not believe that there was a single member who had attended to the preceding enumeration, who would not disclaim any such power.” It was not one of the powers stated in the Constitution, leaving all other activities to the States. Strict adherence to the enumerated powers was absolutely essential to the continued independence of the States, “and it would have been political suicide to have surrendered them to the General Government.” For the States to grant the power to Congress over internal improvements “would lead directly to consolidation, and destroy every federal feature of the Constitution.”

The fact that so many advocates of the appropriation for the Cumberland Road did not think Congress has the power to erect toll-gates on the road was “a surrender of the whole argument, and a complete admission that the General Government has no power over the subject of internal improvements.” In voting to oppose the appropriation, he was not motivated by “the amount of the appropriation, but the Constitutional principle that would be violated.”

One of the House’s last acts on April 9 was to vote on the motion to overturn the Committee of the Whole’s decision to delete the \$9,000 appropriation for repair of the Cumberland Road. By a vote of 105 to 58, the House struck out the provision. It then

struck out the appropriation for construction of a bridge over the Monongahela River “without a division.”

Over several days, the Senate considered differences with the House’s general appropriation bill. The *Annals* reported that on April 26:

The Senate took up the message from the House of Representatives, announcing that they insist on their disagreement to that amendment of the appropriation bill, which proposes an appropriation of nine thousand dollars for the repairs of the Cumberland road; and, on motion, the Senate resolved to recede from said amendment.

As a result, the general appropriation bill, which President Monroe signed on April 30, 1822, did not contain funds for the Cumberland Road.

### **The Toll-Gate Bill**

On January 21, 1822, Representative Joseph Hemphill, who represented a district in the Philadelphia area, introduced a resolution for repair and preservation of the Cumberland Road by the erection of toll-gates. The motion was read twice and committed.

The matter came up again on April 25:

Mr. Hemphill rose and said, that so much of the money of the nation had been expended on the Cumberland road, it would not be prudent or provident to suffer it now to go to decay for want of repairs. He therefore moved to discharge the Committee of the Whole from the further consideration of the bill providing for the erection of turnpike gates on the Cumberland road, and that the same be laid on the table, that he might have an opportunity of asking the House to act on it at a future day.

The motion was agreed to.

Representative Hemphill reported to the House the following day, April 26, on resolutions and petitions referred to the Committee on Roads and Canals. After discussing several road and canal proposals and projects, he pointed out that, “The commencement of internal improvements upon a large scale has generally been attended with difficulties, and improvidently delayed.” The Erie Canal, still under construction, managed to get underway only because of the “ardency of the most energetic minds [to] overcome the opposing obstacles in the State of New York”:

We must be convinced, from the example of other nations, that the natural advantages of this country will not remain unenjoyed forever; national improvements will at some time be prosecuted and perfected; but why should we be deprived of their eminent advantages by further delay?

It is said that the proper period has not arrived, and that we have neither resources nor Constitutional power.

He recalled the Bonus Bill’s ill-fated history.

He did not want to get into constitutional points. “Enough, they think, has been done on the part of Government to preclude this question from further inquiry.” If Congress did not have the power, how could legislation have been enacted setting aside 5 percent of public lands sales for roads to and through the new States?

He cited several examples, including the road authorized in 1806 from Nashville to Natchez and the Cumberland Road:

In 1806 the President was authorized by Congress to open a road from Nashville, in the State of Tennessee, to Natchez. This road passes through a State, without asking consent. In 1809 the President was authorized to cause the canal of Carondelet, leading from Lake Pontchartrain, by way of the Bayou St. John, to the city of New Orleans, to be extended to the river Mississippi. The Cumberland road has cost one million eight hundred thousand dollars, which exceeds the proceeds arising from sales of public lands in that State [by] more than one million of dollars.

How is it possible to reconcile these acts with the idea that Congress possesses no power to construct roads and canals? If there should ever be a construction of the Constitution dangerous to liberty, there will be an apology for repeated resistance; but when there has been a series of legislation in pursuance of a construction of the Constitution which is calculated to promote the best interests of the country, it is not consistent with wisdom, or the peace and welfare of society, to disturb it.

In what age or nation has the power of improving a country been willfully abused? Even the unsuccessful attempts at great undertakings have received the admiration of mankind. No power can be more safely placed in the hands of the representatives of the people; and it may be truly said, that, among the objects of a national character, which at intervals engage the patriotism and resources of a nation, none are more beneficial, and none so permanent, as the internal improvements of a country.

Later, after discussion of other matters, the House Committee of the Whole considered the Senate toll-gate bill for the Cumberland Road, with a vote of 112 to take up the bill.

After discussion for and against the bill (not described in the *Annals*), the committee voted down a motion by Representative Farrelly to strike out the enacting clause of the bill, 37 to 75.

Representative Farrelly proposed an amendment making it necessary to secure Pennsylvania’s consent before toll-gates were erected. At the suggestion of Virginia Representative Burwell Bassett, the motion was expanded to include Virginia, but after discussion of the Farrelly motion, “the question was taken thereon, and negatived, by a large majority.”

Representative Trimble proposed to substitute his proposal for the nine sections of the Senate bill. The committee voted to approve the substitution, which the *Annals* summarized:

The effect of this amendment is not in any manner to change the principle of the bill, but to make its details such that it may be carried into effect without the necessity of further legislation.

His amendment to apply the \$9,000 balance for repair of the road was approved without debate, 64 to 59.

Representative William Plumer, Jr., of New Hampshire proposed an amendment “the purpose of which was to confine all the expenditures, under the act, to the moneys collected by tolls on said road.” The motion carried “without a division.”

The Committee of the Whole then reported the amended bill to the House.

Representative John W. Taylor of New York moved to amend the bill “in lieu of the amendments reported” with a provision authorizing the President to cede all rights and title in the road to the three States. After some discussion not described in the *Annals*, Representative Taylor modified his motion “so as to have the cession made upon such terms and conditions as shall insure the preservation of the road, and that no further tolls shall be collected therefrom by the States respectively, than may be necessary to keep the same in repair.” The House rejected the motion, 50 to 103.

Representative Stewart offered an amendment providing that if any county made its portion of the road a county road, but kept it in good repair, no tolls need be collected. The House rejected the motion “without a division.”

Representative Farrelly introduced his motion to require the assent of Pennsylvania and Virginia before the erection of toll-gates. As had happened with the same motion in the Committee of the Whole, the motion was “negatived, without debate, by a large majority.”

The House then concurred in the amendments made by the Committee of the Whole, except for the provision appropriating the \$9,000 balance. After brief discussion of the provision, the House approved appropriation of the balance, 84 to 71.

The House then voted, 88 to 71, on the question, “Shall the said bill be engrossed, and read a third time.”

On April 29, the House took up the bill, which was read for a third time. Representative Taylor considered the bill “as so important in its character, and as being such a violation of the Constitution,” that he called for the yeas and nays on it.

Before the vote, Representative Philip Reed of Maryland moved to recommit the bill to allow for removal of the provision calling on the President to increase or lessen the toll rates. “That was an act of legislation, he said, which it was not competent for the President of the United States to exercise.” The House rejected the motion, 41 to 115.

The question was then put to the House, “Shall the bill pass?” The question was decided in the affirmative, 87 to 68. “So the bill was passed, and sent to the Senate for concurrence.”

The Senate took up the bill on May 3, 1822. Senator Barbour, acknowledging that the motion “extended to the utmost confines of the Constitution,” offered his comments before the vote. He recalled that the Bonus Bill, which asserted the right of Congress to advance internal improvements, had been vetoed by President Madison:

In consequence of the great diversity of sentiment prevailing at that time, Mr. B. who was indisposed to extend the powers of the General Government beyond the just Constitutional limit, and esteeming it correct, in all cases of doubt, to recur to the only legitimate source of authority, the people, proposed an amendment to the Constitution. He was doomed to realize the truth of the aphorism, that a man between two stools is sure to fall. It so happened, that a majority of the Senate thought that Congress had already full power on this subject, and fearful that the people might withhold it, they voted against his proposition; some few, who thought that Congress ought not to possess this authority, also voted against it; and hence, instead of the Constitutional majority in favor of the amendment, there was a majority of two-thirds against it.

With that experience behind him, he determined that he would not “give his vote in favor of the exercise of this authority by the National Legislature; and his purpose remained now unchanged.”

Nevertheless, he was in favor of the toll-gates bill. Their predecessors – “another generation” – in government had decided on bills for construction of the Cumberland Road. He summarized the Enabling Act for Ohio statehood and the Cumberland Road bill, both signed by President Jefferson, that brought them to this point. At a cost of nearly \$2 million, “this noble monument of our enterprise and industry, this great artery of communication between the East and West, so essential to our intercourse and our prosperity, has been completed”:

The only question is, Shall we enjoy it, or, from the fastidious technicality, refuse it? If your agent, in private transactions, said Mr. B., should ever exceed his powers – if the act he has performed be irrevocable, will you refuse the benefit of the act completed, although at your expense, in consequence of the doubtful propriety of the agent’s conduct?

The road is rapidly dilapidating – the mischievous are destroying it. It is necessary to act. To appropriate money out of the public Treasury to keep it in repair, is unjust, and involves as strongly the Constitutional question. Let those who use it pay a little pittance to keep it in repair. This is the only question.

He would vote for the bill.

New York Senator King said he had never entertained any doubt about the constitutionality of the general government to appropriate funds for roads and canals:

. . . and therefore he did not rely for the authority to pass this bill on the consent of any one or more States; nor did he hold that this Government could, according to the Constitution, enlarge its powers by the consent of any number of States,

except in the mode constitutionally pointed out, and that was by an amendment of the Constitution itself.

The Senate voted 29 to 7 to approve the bill.

“An Act for the preservation and repair of the Cumberland Road” contained 10 sections. The first authorized the President “to cause to be erected, on the national road leading from Cumberland, in the State of Maryland, to the river Ohio, so many toll houses, gates, and turnpikes, as, in his opinion, will be necessary and sufficient to collect the duties and tolls hereinafter mentioned.” The number of gates, placed not fewer than 10 miles apart, could total between 6 and 12.

Section 2 – After the toll facilities were erected, the President was to appoint or cause to be appointed toll gatherers “who may stop any person riding, leading, or driving, any horses, cattle, hogs, sheep, sulkey, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure” to pay the toll:

For every space of twenty miles in length of the said road, the following sums of money, and so in proportion for any greater or lesser distance, to wit: For every score of sheep or hogs, six and a quarter cents; for every score of cattle, twelve and a half cents; for every led or drove horse, one cent; for every horse and rider, six and a quarter cents; for every sleigh or sled, for each horse or ox drawing the same, three cents; for every dearborn, sulkey, chair, or chaise, with one horse, twelve and a half cents; for every chariot, coach, coachee, stage wagon, phaeton, chaise, or dearborn, with two horses and four wheels, eighteen and three-quarter cents; for either of the carriages last mentioned, with four horses, twenty-five cents. For every other carriage of pleasure, under whatever name it may go, the like sum, according to the number of wheels and horses drawing the same. For every cart or wagon, whose wheels do not exceed the breadth of four inches, six and one fourth cents for each horse or ox drawing the same. For every cart or wagon, whose wheels shall exceed in breadth four inches, and not exceeding six inches, three cents for every horse or ox drawing the same; and every other cart or wagon, whose wheels shall exceed six inches, shall pass the said gates free and clear of toll.

At the discretion of the superintendent, travelers could pay a flat fee for a year’s worth of tolls, instead of paying them at each toll-gate. (This feature was intended to benefit stagecoach companies and other businesses that would use the road frequently.)

The section also exempted from toll those who were going to or from worship, as well as those traveling to or from common business on his farm or woodland, a funeral, or a mill. Wagons or carriages laden with the property of the U.S. government and military equipment or stores, also were exempted, as were people in the military or militia.

Under Section 3, toll gatherers were to settle accounts with the superintendent quarterly, or at any other time he required, by paying to him the tolls collected. The superintendent was responsible for accounting to the Secretary of the Treasury on an annual basis or quarterly if required. “And the said superintendent and toll gatherers shall govern

themselves by the rules and regulations which the President of the United States may from time to time prescribe.”

Section 4 required that after deducting expenses and the cost of toll collection, all revenue was to be applied, at the direction of the President, “to the repairs and preservation of said road, in such manner, and under such regulations, as he may from time to time prescribe, and to no other purpose whatever.” The provision included in the original version of the bill requiring the Treasury Department to keep the toll revenue in a separate account was dropped.

Section 5 contained an operations directive:

That directors [signs] shall be erected at proper and convenient situations, to caution all conductors or drivers of carriages on the road aforesaid, that they shall at all times pass on the left of each other, under the penalty of three dollars for every offence.

Although right-hand travel was common in the United States, the Cumberland Road was an exception. Left-hand travel on the road was common through the early 1850s.

The President, under Section 6, could raise or lower the tolls for any type of traveler or transportation, but “the items of tolls shall not, at any time, be increased to more than double the rates herein established and allowed.”

Sections 7 and 8 involved penalties for certain acts. Under Section 7, the toll gatherer would have to pay \$10 to any one he delayed or hindered unreasonably or charged more than the established toll. Section 8 called for a \$12 fine for anyone who evaded toll payment by leaving the road or going around the toll-gate.

Section 9 covered the pay of the toll gatherers. They would receive 12 percent of toll revenue collected, not to exceed an annual sum of \$350 or less than \$120:

[In] case of any deficiency in the amount collected by any toll gatherer, below the sum of one hundred and twenty dollars, the residue shall be paid out of the tolls collected at the other gates on the said road.

Section 10 applied \$9,194.25, “being an unexpended balance of money appropriated by act of third March, one thousand eight hundred and nineteen, for completing the same,” for repair of the Cumberland Road:

*Provided, however,* That all expenditures arising under this act, or connected with the support or repair of said road, beyond the sum herein appropriated, shall be defrayed out of the tolls collected under said acts, and from no other fund.

Sky discussed the brief Senate discussion of the toll-gates bill:

Senator Barbour saw the Gates Bill as a chance to solve the problem by providing for tolls that would generate specific and dedicated revenue to pay for the repairs, rather than making repairs dependent on federal appropriations. This, he reasoned, would avoid the constitutional problems that had been raised by Madison and Monroe about federal appropriations.

Senator King shared another perspective. He declared that he had always believed that Congress had the authority to appropriate for roads and canals and that the consent of the States was not necessary. This contrasted with the 1806 National Road authorization legislation, which called for the president to obtain the consent of the states through which the road would pass when he accepted a report of the road commissioners regarding the route of the road. King was apparently looking to the Gates Bill not as a means of avoiding constitutional controversy but as a source of revenue to relieve the pressure on federal appropriations as a fiscal matter. King spoke on the subject with a certain degree of expertise. Earlier in life, he had been a delegate from Massachusetts at the Constitutional Convention in 1787 and had participated frequently in its debates. He had served in the U.S. Senate in 1789, and in 1813 he was elected against, as a member of the Federalist Party, serving until March 3, 1825. King, it appears, was expressing a view flatly contrary to that of Madison in the Bonus Bill veto: Congress had authority to appropriate for and/or construct internal improvements and did not need the consent of the states to achieve this authority.

### **President Monroe's Veto**

President Monroe vetoed the bill on May 4, 1822, "with deep regret . . . under a conviction that Congress do not possess the power under the Constitution to pass such a law." His concern was that the power to establish turnpikes and enforce toll collection by penalties "implies a power to adopt and execute a complete system of internal improvement." It also implied "a complete right of jurisdiction and sovereignty for all the purposes of internal improvement," not merely the right to make appropriations that permitted, with State consent, construction of the road. He continued:

I am of opinion that Congress do not possess this power; that the States individually can not grant it, for although they may assent to the appropriation of money within their limits for such purposes, they can grant no power of jurisdiction or sovereignty by special compacts with the United States.

If the power did exist, it would have been granted specifically by the Constitution or been incidental to some other power specifically granted:

It has never been contended that the power was specifically granted. It is claimed only as being incidental to some one or more of the powers which are specifically granted. The following are the powers from which it is said to be derived: First, from the right to establish post-offices and post-roads; second, from the right to declare war; third, to regulate commerce; fourth, to pay the debts and provide for the common defense and general welfare; fifth, from the power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States or in any department or officer thereof; sixth and lastly, from the power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States. According to my judgment it can not be derived from either of those powers, nor from all of them united, and in consequence it does not exist.

Having stated the objections that prompted his veto of the bill, he wrote, "I should now cheerfully communicate at large the reasons on which they are founded if I had time to reduce them to such form as to include them in this paper. The advanced stage of the session renders that impossible." Because of his interest in the issue, he had periodically put his thoughts in writing. On the day of his relatively brief veto, therefore, President Monroe submitted a lengthy separate discussion of internal improvements issues.

As Professor Baxter noted, President Monroe had been waiting for this opportunity:

Ever since becoming president, Monroe had kept in his possession a long paper he had written on the question, and now he enclosed it with his message vetoing the bill. He defined the power to appropriate funds as virtually unlimited, but he categorically rejected any additional power to administer a road, including plans, acquisition of land by eminent domain, enforcement of a criminal code, and in this instance maintenance supported by tolls. These were functions, he said, belonging to the states. His reasoning ranged across constitutional history from colonial days to the present, as he examined various parts of the Constitution, notably postal, military commercial, and financial clauses.

President Monroe's paper is a lengthy history of the evolution of power distribution among the States and the general government, from colonial days, through the Revolutionary War, under the Articles of Confederation, and finally the Constitution.

Through this history, he debunked each item cited as authority for Congress to authorize roads and canals.

First, he provided a hypothetical description of the nature and extent of the power under discussion:

If the power existed it would, it is presumed, be executed by a board of skillful engineers, on a view of the whole Union, on a plan which would secure complete effect to all the great purposes of our Constitution . . . . I shall state a case for the purpose of illustration only.

Let it be supposed that Congress intended to run a road from the city of Washington to Baltimore and to connect the Chesapeake Bay with the Delaware and the Delaware with the Raritan by a canal, what must be done to carry the project into effect? I make here no question of the existing power. I speak only of the power necessary for the purpose.

Commissioners would be appointed to trace a route in the most direct line, paying due regard to heights, water courses, and other obstacles, and to acquire the right to the ground over which the road and canal would pass, with sufficient breadth for each. This must be done by voluntary grants, or by purchases from individuals, or, in case they would not sell or should ask an exorbitant price, by condemning the property and fixing its value by a jury of the vicinage.

The next object to be attended to after the road and canal are laid out and made is to keep them in repair. We know that there are people in every community capable of committing voluntary injuries, of pulling down walls that are made to sustain the road, of breaking the bridges over water courses, and breaking the road itself. Some living near it might be disappointed that it did not pass through their lands and commit these acts of violence and waste from revenge or in the hope of giving it that direction, though for a short time. Injuries of this kind have been committed, and are still complained of on the road from Cumberland to the Ohio.

To accomplish this object Congress should have a right to pass laws to punish offenders wherever they may be found. Jurisdiction over the road would not be sufficient, though it were exclusive. It would seldom happen that the parties would be detected in the act. They would generally commit it in the night and fly far off before the sun appeared. The power to punish these culprits must therefore reach them wherever they go. They must also be amenable to competent tribunals, Federal or State.

The power must likewise extend to another object not less essential or important than those already mentioned. Experience has shown that the establishment of turnpikes, with gates and tolls and persons to collect the tolls, is the best expedient that can be adopted to defray the expense of these improvements and the repairs which they necessarily require. Congress must therefore have power to make such an establishment and to support it by such regulations, with fines and penalties in the case of injuries, as may be competent to the purpose. The right must extend to all those objects, or it will be utterly incompetent. It is possessed and exercised by the States individually, and it must be possessed by the United States or the pretension must be abandoned. [Paraphrasing added for ease of reading.]

Having stated his hypothetical situation, he turned to the Constitution. "If the United States possess this power, it must be either because it has been specifically granted or that it is incidental and necessary to carry into effect some specific grant." Proponents of internal improvements cited several provisions that granted the desired authority. He began with the power "to establish Post Offices and post Roads," pointing out that "establish" was the ruling term. "The sense in which words are commonly used is that in which they are to be understood in all transactions between public bodies and individuals." If "our most enlightened citizens" who did not have a prejudice on the subject were asked what "establish" meant," he said:

We are satisfied that all of them would answer that a power was thereby given to Congress to fix on the towns, court-houses, and other places throughout our Union at which there should be post-offices, the routes by which the mails should be carried from one post-office to another, so as to diffuse intelligence as extensively and to make the institution as useful as possible, to fix the postage to be paid on every letter and packet thus carried, to support the establishment, and to protect the post-office and mails from robbery by punishing those who should commit the offence.

The idea of a right to lay off the roads of the United States on a general scale of improvement, to take the soil from the proprietor by force, to establish turnpikes and tolls, and to punish offenders in the manner stated above would never occur to any such person. The use of the existing road by the stage, mail carrier, or postboy in passing over it as others do is all that would be thought of, the jurisdiction and soil remaining to the State, with a right in the State or those authorized by its legislature to change the road at pleasure.

The President pointed out that a similar phrase had been used in the Articles of Confederation giving the States in Congress assembled “the sole and exclusive right and power of establishing and regulating post-offices from one State to another throughout all the United States . . . .” After quoting the provision, President Monroe explained:

The term “establish” was likewise the ruling one in that instrument, and was evidently intended and understood to give a power simply and solely to fix where there should be post-offices. By transferring this term from the Confederation into the Constitution it was doubtless intended that it should be understood in the same sense in the latter that it was in the former instrument, and to be applied alike to post-roads . . . . Had it been intended to convey a more enlarged power in the constitution than had been granted in the Confederation, surely the same controlling term would not have been used, or other words would have been added, to show such intention and to mark the extent to which the power should be carried.

President Monroe considered it “absurd” to argue that even though the Constitution used the same word as the Articles of Confederation, the term was “enlarged, and with it the powers of the Constitution, in a proportional degree, beyond what they were in the Confederation.”

He added a practical consideration in support of his point:

It is believed that not one example can be given, from the first settlement of our country to the adoption of this Constitution, of a post-office being established without a view to existing roads or of a single road having been made by pavement, turnpike, etc., for the sole purpose of accommodating a post-office. Such, too, is the uniform progress of all societies. In granting, then, this power to the United States it was undoubtedly intended by the framers and ratifiers of the Constitution to convey it in the sense and extent only in which it had been understood and exercised by the previous authorities of the country.

The point of the power was the “transportation of the mail throughout the United States”:

This conclusion is confirmed by the object of the grant and the manner of its execution. The object is the transportation of the mail throughout the United States, which may be done on horseback, and was so done until lately, since the establishment of stages. Between the great towns and in other places where the population is dense stages are preferred because they afford an additional

opportunity to make a profit from passengers; but where the population is sparse and on crossroads it is generally carried on horseback. Unconnected with passengers and other objects, it can not be doubted that the mail itself may be carried in every part of our Union with nearly as much economy and greater dispatch on horseback than in a stage, and in many parts with much greater. In every part of the Union in which stages can be preferred the roads are sufficiently good provided those which serve for every other purpose will accommodate them. In every other part where horses alone are used if other people pass them on horseback surely the mail carrier can.

For an object so simple and so easy in its execution it would doubtless excite surprise if it should be thought proper to appoint commissioners to lay off the country on a great scheme of improvement, with the power to shorten distances, reduce heights, level mountains, and pave surfaces.

On the subject of establishing post roads, he concluded:

If the United States possessed the power contended for under this grant, might they not in adopting the roads of the individual States for the carriage of the mail, as has been done, assume jurisdiction over them and preclude a right to interfere with or alter them? Might they not establish turnpikes and exercise all the other acts of sovereignty above stated over such roads necessary to protect them from injury and defray the expense of repairing them? Surely if the right exists these consequences necessarily followed as soon as the road was established. The absurdity of such a pretension must be apparent to all who examine it. In this way a large portion of the territory of every State might be taken from it, for there is scarcely a road in any State which will not be used for the transportation of the mail. A new field for legislation and internal government would thus be opened.

From this view of the subject I think we may fairly conclude that the right to adopt and execute a system of internal improvement, or any part of it, has not been granted to Congress under the power to establish post-offices and post-roads; that the common roads of the country only were contemplated by that grant and are fully competent to all its purposes.

As authority for internal improvements, President Monroe similarly dismissed the right to declare war, a power the Constitution took from the States and gave to Congress. Because a threat to the Nation could come from any direction, if such a power existed, it "must apply to all the roads of the Union, there being no limitation to it." The authority over roads, therefore, would be incidental to a power given to Congress along with all other specified powers to conduct war, such as raising money to support the army and navy:

By specifically granting, then, these powers it is manifest that every power was thus granted which it was intended to grant for military purposes, and that it was also intended that no important power should be included in this grant by way of incident, however useful it might be for some of the purposes of the grant.

Further, the Constitution gave Congress exclusive authority over a district, no more than 10 miles square, that would serve as the Nation's capital and similar authority over forts, magazines, arsenals, dockyards, and other needful buildings erected in the States with the consent of the State legislature. The list of authorities in the Constitution for military purposes was specific and limited; it cannot be extended to other purposes, such as internal improvements, that might have been listed but were not. "That right does not exist."

Next he addressed a source often cited as authority for internal improvements:

Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

The intent, he said, was to transfer the authority to regulate commerce, previously exercised by the individual States, to the central government. "The sense in which the power was understood and exercised by the States was doubtless that in which it was transferred to the United States." Commerce among nations or communities "is universally regulated by duties and imposts." That was how the States regulated commerce before the Constitution. "The goods and vessels employed in the trade are the only subjects of regulation. It can act on none other."

In fact, the President pointed out, the way the States implemented this authority to seek advantage over other States was one of the main reasons for the Constitutional Convention. Prior to the Constitution, Congress had on several occasions attempted to impose duties and imposts on imports, but the Articles of Confederation required State consent for such actions. The States did not consent:

In 1786 a meeting took place at Annapolis of delegates from several of the States on this subject, and on their report a convention was formed at Philadelphia the ensuing year from all the States, to whose deliberations we are indebted for the present Constitution.

The President added:

In none of the measures was the subject of internal improvement mentioned or even glanced at.

The original goal of the Annapolis report was to amend the Articles of Confederation to give the central government the authority to regulate commerce by imposing duties and imposts on foreign trade without State consent. Instead, the Constitutional Convention created an entirely new instrument of government, but the participants had not forgotten the original concern:

Among the first and most important effects of this great Revolution was the complete abolition of this pernicious policy. The States were brought together by the Constitution as to commerce into one community equally in regard to foreign nations and each other. The regulations that were adopted regarded us in both respects as one people.

The Constitutional Convention added the authority to regulate commerce among States and Indian Tribes. If the power to authorize internal improvements were incidental either to imposing duties and imposts or regulating commerce, "I should suppose that it was the first rather than the second." He added, however, that the "pretension to it . . . under that branch has never been set up," and as for the latter, "no reason has been assigned which appears to have the least weight."

President Monroe also rejected the idea that the authority for internal improvements derived from the power given to Congress to "provide for the common defense and general welfare of the United States." He pointed out that this phrase was part of a larger enumerated power and had to be considered in the context of the entire grant, not as an isolated phrase:

Congress shall have power to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

This authority granted to Congress under the Constitution, but not under the Articles of Confederation, was "one of the principal inducements to the adoption of this Constitution." The entire clause specified that Congress could raise funds and for what purpose those funds could be used. The phrase "general welfare of the United States" cannot be understood outside of this context:

An unqualified power to pay the debts and provide for common defense and general welfare, as the second part of this clause would be if considered as a distinct and separate grant, would extend to every object in which the public could be interested. A power to provide for the common defense would give to Congress the command of the whole force and of all the resources of the Union; but a right to provide for the general welfare would go much further. It would, in effect, break down all the barriers between the States and the General Government and consolidate the whole under the latter.

Interpreting "general welfare" in this broad context meant that "all the other grants in the Constitution, being completely absorbed in the transcendent power granted in the latter part" are entirely done away with.

Clearly, he indicated, the power of Congress is limited, with all other authority allowed to the States. The power of the central government was "instituted for great national purposes, and for those only." Just as the States would not undertake national enterprises, Congress should not provide funds for strictly local purposes, even if a State should desire it.

While President Monroe argued that the constitutional authority did not exist, he understood the value of internal improvements and saw a way for the general government to assist in providing them:

Good roads and canals will promote many very important national purposes. They will facilitate the operations of war, the movement of troops, the transportation of cannon, of provisions, and every warlike store, much to our advantage and to the disadvantage of the enemy in time of war. Good roads will facilitate the transportation of the mail, and thereby promote the purposes of commerce and political intelligence among the people. They will by being properly directed to these objects enhance the value of our vacant lands, a treasure of vast resource to the nation. To the appropriation of the public money to improvements having these objects in view and carried to a certain extent I do not see any well-founded constitutional objection.

The right of appropriation granted by the enumerated power “is nothing more than a right to apply the public money to this or that purpose.” It did not grant incidental power:

All that Congress could do under it in the case of internal improvements would be to appropriate the money necessary to make them. For every act requiring legislative sanction or support the State authority must be relied on. The condemnation of the land, if the proprietors should refuse to sell it, the establishment of turnpikes and tolls, and the protection of the work when finished must be done by the State. To these purposes the powers of the General Government are believed to be utterly incompetent.

Any corporation has discretion to ensure its funds are used for the intended purpose. “It would be strange if the Government of the United States, which was instituted for such important purposes and endowed with such extensive powers, should not be allowed at least equal discretion and authority.” The key was to avoid violation of States’ rights.

To further his view on the roles of the general and State governments, President Monroe discussed a compromise way of thinking about the congressional role in internal improvements under the Constitution:

Shunning that, it seems to be reasonable and proper that the powers of Congress should be so construed as that the General Government in its intercourse with other nations and in our internal concerns should be able to adopt all such measures lying within the fair scope and intended to facilitate the direct objects of its powers as the public welfare may require and a sound and provident policy dictate.

The measures of Congress have been in strict accord with the view taken of the right of appropriation both as to its extent and limitation, as will be shown by a reference to the laws, commencing at a very early period. Many roads have been opened, of which the following are the principal:

The first from Cumberland, at the head waters of the Potomac, in the State of Maryland, through Pennsylvania and Virginia, to the State of Ohio (March 29, 1806; see vol. 4, p. 13, of the late edition of the laws).

The second from the frontiers of Georgia, on the route from Athens to New Orleans, to its intersection with the thirty-first degree of north latitude (April 31, 1806, p. 58).

The third from the Mississippi at a point and by a route described to the Ohio (same act).

The fourth from Nashville, in Tennessee, to Natchez (same act).

The fifth from the thirty-first degree of north latitude, on the route from Athens to New Orleans, under such regulations as might be agreed on between the Executive and the Spanish Government (March 3, 1807, p. 117).

The sixth from the foot of the rapids of the river Miami, of Lake Erie, to the western line of the Connecticut Reserve (December 12, 1811, p. 364).

The seventh from the Lower Sandusky to the boundary line established by the treaty of Greenville (same act).

The eighth from a point where the United States road leading from Vincennes to the Indian boundary line, established by the treaty of Greenville, strikes the said line, to the North Bend, in the State of Ohio (January 8, 1812, p. 367).

The ninth for repairing and keeping in repair the road between Columbia, on Duck River, in Tennessee, and Madisonville, in Louisiana, and also the road between Fort Hawkins, in Georgia, and Fort Stoddard (April 27, 1816, p. 104 of the acts of that year).

The tenth from the Shawneetown, on the Ohio River, to the Sabine, and to Kaskaskias, in Illinois (April 27, 1816, p. 112).

The eleventh from Reynoldsburg, on Tennessee River, in the State of Tennessee, through the Chickasaw Nation, to intersect the Natchez road near the Chickasaw old town (March 3, 1817, p. 252).

The twelfth: By this act authority was given to the President to appoint three commissioners for the purpose of examining the country and laying out a road from the termination of the Cumberland road, at Wheeling, on the Ohio, through the States of Ohio, Indiana, and Illinois, to a point to be chosen by them, on the left bank of the Mississippi, between St. Louis and the mouth of the Illinois River, and to report an accurate plan of the said road, with an estimate of the expense of making it. It is, however, declared by the act that nothing was thereby intended to imply an obligation on the part of the United States to make or defray the expense

of making the said road or any part thereof. [Citation not provided, but it refers to the Act of May 15, 1820. Paragraphing of list added for readability.]

In the late war two other roads were made by the troops for military purposes – one from the Upper Sandusky, in the State of Ohio, through the Black swamp, toward Detroit, and another from Plattsburg, on Lake Champlain, through the Chatauga woods toward Sacketts Harbor, which have since been repaired and improved by the troops. Of these latter there is no notice in the laws. The extra pay to the soldiers for repairing and improving those roads was advanced in the first instance from the appropriation to the Quartermaster's Department and afterwards provided for by a specific appropriation by Congress. The necessity of keeping those roads open and in good repair, being on the frontier, to facilitate a communication between our posts, is apparent.

The President noted a difference among these roads, citing the Cumberland Road in particular:

All of these roads except the first were formed merely by cutting down the trees and throwing logs across, so as to make causeways over such parts as were otherwise impassable. The execution was of the coarsest kind.

The Cumberland road is the only regular work which has been undertaken by the General Government or which could give rise to any question between the two Governments respecting its powers. It is a great work, over the highest mountains in our Union, connecting from the seat of the General Government the Eastern with the Western waters, and more intimately the Atlantic with the Western States, in the formation of which \$1,800,000 have been expended. The measures pursued in this case require to be particularly noticed as fixing the opinion of the parties, and particularly of Congress, on the important question of the right.

Passing through Maryland, Pennsylvania, and Virginia, it was thought necessary and proper to bring the subject before their respective legislatures to obtain their sanction, which was granted by each State by a legislative act, approving the route and providing for the purchase and condemnation of the land. This road was rounded on an article of compact between the United States and the State of Ohio, under which that State came into the Union, and by which the expense attending it was to be defrayed by the application of a certain portion of the money arising from the sale of the public lands within that State.

In this instance, which is by far the strongest in respect to the expense, extent, and nature of the work done, the United States have exercised no act of jurisdiction or sovereignty within either of the States by taking the land from the proprietors by force, by passing acts for the protection of the road, or to raise a revenue from it by the establishment of turnpikes and tolls, or any other act founded on the principle of jurisdiction or right. Whatever they have done has, on the contrary,

been founded on the opposite principle, on the voluntary and unqualified admission that the sovereignty belonged to the State and not to the United States, and that they could perform no act which should tend to weaken the power of the State or to assume any to themselves.

All that they have done has been to appropriate the public money to the construction of this road and to cause it to be constructed, for I presume that no distinction can be taken between the appropriation of money raised by the sale of the public lands and of that which arises from taxes, duties, imposts, and excises; nor can I believe that the power to appropriate derives any sanction from a provision to that effect having been made by an article of compact between the United States and the people of the then Territory of Ohio. This point may, however, be placed in a clearer light by a more particular notice of the article itself.

By an act of April 30, 1802, entitled "An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," after describing the limits of the proposed new State and authorizing the people thereof to elect a convention to form a constitution, the three following propositions were made to the convention, to be obligatory on the United States if accepted by it: First, that section No. 16 of every township, or, where such section had been sold, other lands equivalent thereto, should be granted to the inhabitants of such township for the use of free schools. Second, that the 6 miles' reservation, including the salt springs commonly called the Sciota Salt Springs, the salt springs near the Muskingum River and in the military tract, with the sections which include the same, should be granted to the said State for the use of the people thereof, under such regulations as the legislature of the State should prescribe: *Provided*, That it should never sell or lease the same for more than ten years. Third, that one-twentieth part of the proceeds of the public lands lying within the said State which might be sold by Congress from and after the 30th June ensuing should be applied to the laying out and making public roads from the navigable waters emptying into the Atlantic, to the Ohio, and through the State of Ohio, such roads to be laid out under the authority of Congress, with the consent of the several States through which they should pass.

These three propositions were made on the condition that the convention of the State should provide by an ordinance, irrevocable without the consent of the United States, that every tract of land sold by Congress after the 30th of June ensuing should remain for the term of five years after sale exempt from every species of tax whatsoever.

It is impossible to read the ordinance of the 23d of April, 1784, or the provisions of the act of April 30, 1802, which are rounded on it, without being profoundly impressed with the enlightened and magnanimous policy which dictated them.

Anticipating that the new States would be settled by the inhabitants of the original States and their offspring, no narrow or contracted jealousy was entertained of their admission into the Union in equal participation in the national sovereignty with the original States. It was foreseen at the early period at which that ordinance passed that the expansion of our Union to the Lakes and to the Mississippi and all its waters would not only make us a greater power, but cement the Union itself. These three propositions were well calculated to promote these great results. A grant of land to each township for free schools, and of the salt springs to the State, which were within its limits, for the use of its citizens, with 5 per cent of the money to be raised from the sale of lands within the State for the construction of roads between the original States and the new State, and of other roads within the State, indicated a spirit not to be mistaken, nor could it fail to produce a corresponding effect in the bosoms of those to whom it was addressed.

For these considerations the sole return required of the convention was that the new State should not tax the public lands which might be sold by the United States within it for the term of five years after they should be sold. As the value of these lands would be enhanced by this exemption from taxes for that term, and from which the new State would derive its proportionable benefit, and as it would also promote the rapid sale of those lands, and with it the augmentation of its own population, it can not be doubted, had this exemption been suggested unaccompanied by any propositions of particular advantage, that the convention would, in consideration of the relation which had before existed between the parties, and was about to be so much improved, most willingly have acceded to it and without regarding it as an onerous condition.

Since, then, it appears that the whole of the money to be employed in making this road was to be raised from the sale of the public lands, and which would still belong to the United States, although no mention had been made of them in the compact, it follows that the application of the money to that purpose stands upon the same ground as if such compact had not been made, and in consequence that the example in favor of the right of appropriation is in no manner affected by it.

The other new States of the Northwest Territory were enabled by the same provisions, "with certain modifications adapted to the situation of each." He did not need to recount the requirements for each new State:

It is proper to observe that the money which was employed in the construction of all the other roads was taken directly from the Treasury. This fact affords an additional proof that in the contemplation of Congress no difference existed in the application of money to those roads between that which was raised by the sale of lands and that which was derived from taxes, duties, imposts, and excises.

Aside from these examples of congressional action on roads within the country, President Monroe cite two examples of funding for foreign activities:

These were gratuitous grants of money for the relief of foreigners in distress – the first in 1794 to the inhabitants of St. Domingo, who sought an asylum on our coast from the convulsions and calamities of the island; the second in 1812 to the people of Caracas, reduced to misery by an earthquake.

In this examination of the right of appropriation I thought it proper to present to view also the practice of the Government under it, and to explore the ground on which each example rested, that the precise nature and extent of the construction thereby given of the right might be clearly understood. The right to raise money would have given, as is presumed, the right to use it, although nothing had been said to that effect in the Constitution; and where the right to raise it is granted without special limitation, we must look for such limitation to other causes.

Our attention is first drawn to the right to appropriate, and not finding it there we must then look to the general powers of the Government as designated by the specific grants and to the purposes contemplated by them, allowing to this (the right to raise money), the first and most important of the enumerated powers, a scope which will be competent to those purposes. The practice of the Government, as illustrated by numerous and strong examples directly applicable, ought surely to have great weight in fixing the construction of each grant. It ought, I presume, to settle it, especially where it is acquiesced in by the nation and produces a manifest and positive good. A practical construction, thus supported, shows that it has reason on its side and is called for by the interests of the Union. Hence, too, the presumption that it will be persevered in. It will surely be better to admit that the construction given by these examples has been just and proper than to deny that construction and still to practice on it – to say one thing and to do another.

The danger of a liberal construction of the congressional right to raise and appropriate the public money was a possible encroachment on the rights of the States. At the same time, such a construction “enlarges to a certain extent in the most harmless way the useful agency of the General Government for all the purposes of its institution”:

The history of the General Government in all its measures fully demonstrates that Congress will never venture to impose unnecessary burdens on the people or any that can be avoided. Duties and imposts have always been light, not greater, perhaps, than would have been imposed for the encouragement of our manufactures had there been no occasion for the revenue arising from them; and taxes and excises have never been laid except in cases of necessity, and repealed as soon as the necessity ceased.

The sale of public land will result in money that “may be applied with great advantage to national purposes.” Fortunately, examples such as St. Domingo and Caracas will not often occur, leaving the general government to use its funds to benefit the States and other “useful purposes,” such as completing fortifications and maintaining the navy.

He said that examples of other countries violating their own constitutions were common. "How different is the situation of the United States!" This was demonstrated by complaints against the general government. The complaints did not involve oppression of individuals or communities or that funds were raised under doubtful circumstances:

The principal charges are that a work of great utility to the Union and affecting immediately and with like advantage many of the States has been constructed; that pensions to the surviving patriots of our Revolution, to patriots who fought the battles and promoted the independence of their country, have been granted, by money, too, raised not only without oppression, but almost without being felt, and under an acknowledged constitutional power.

From this view of the right to appropriate and of the practice under it I think that I am authorized to conclude that the right to make internal improvements has not been granted by the power "to pay the debts and provide for the common defense and general welfare," included in the first of the enumerated powers; that that grant conveys nothing more than a right to appropriate the public money, and stands on the same ground with the right to lay and collect taxes, duties, imposts, and excises, conveyed by the first branch of that power; that the Government itself being limited, both branches of the power to raise and appropriate the public money are also limited, the extent of the Government as designated by the specific grants marking the extent of the power in both branches, extending, however, to every object embraced by the fair scope of those grants and not confined to a strict construction of their respective powers, it being safer to aid the purposes of those grants by the appropriation of money than to extend by a forced construction the grant itself; that although the right to appropriate the public money to such improvements affords a resource indispensably necessary to such a scheme, it is nevertheless deficient as a power in the great characteristics on which its execution depends.

The substance of what has been urged on this subject may be expressed in a few words. My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, national, not State, benefit.

Having granted that Congress had the discretionary power to appropriate funds for common defense and general benefit, President Monroe examined the enumerated power to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution . . . ." This power, he argued, did not convey any specific power not expressly enumerated:

My impression has been invariably that this power would have existed substantially if this grant had not been made; for why is any power granted unless it be to be executed when required, and how can it be executed under our

Government unless it be by laws necessary and proper for the purpose – that is, well adopted to the end.

He considered it to have been “granted on a principle of greater caution . . . leave nothing to implication” that might “be reduced to certainty” by those who dispute the split of sovereignty among a general and local authority.

The phrase “necessary and proper” conveyed only the authority to implement the powers granted elsewhere in the Constitution:

In examining the right of the General Government to adopt and execute under this grant a system of internal improvement the sole question to be decided is whether the power has been granted under any of the other grants. If it has, this power is applicable to it to the extent stated. If it has not, it does not exist at all, for it has not been hereby granted. I have already examined all the other grants (one only excepted, which will next claim attention) and shown, as I presume, on the most liberal construction of their powers that the right has not been granted by any of them; hence it follows that in regard to them it has not been granted by this [provision].

Finally, he examined whether the power granted in the second clause of Article IV, Section 3, to “make all needful rules and regulations” for U.S. territories and property provided authority for internal improvements:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

President Monroe explained that this provision grew out of State claims to western territory. The original charters for the colonies were sometimes vague as to western extent, leaving claims for unpopulated land that, following the Declaration of Independence, resulted in the States giving the vacant land to the general government that would take charge of creating new States from them, with the land to be sold off for the benefit of the United States. For the most part, the States had ceded the territory to the central government before the Constitutional Convention.

Section 3 related to creation of States out of this territory. The first clause described restrictions on admission of new States to the Union; they could not be formed within the jurisdiction of any other State, or formed by the junction of two or more States, or parts of States, except with the consent of the concerned State Legislatures and Congress. The power derived from the second clause followed from the first clause:

Thus the power of Congress over ceded territory was not only limited to these special objects, but was also temporary. As soon as the territory became a State the jurisdiction over it as it had before existed ceased. It extended afterwards only to

the unsold lands, and as soon as the whole were sold it ceased in that sense also altogether.

Since the authority of Section 3 applied only in the territories, “it follows that this power gives no authority, and has even no bearing on the question of internal improvement” in the States.

President Monroe concluded that based on his examination of the Constitution regarding the right to adopt and execute a system of internal improvements, “it may be fairly concluded that such a right has not been granted.” But he continued:

It appears and is admitted that much may be done in aid of such a system by the right which is derived from several of the existing grants, and more especially from that to appropriate the public money. But still it is manifest that as a system for the United States it can never be carried into effect under that grant nor under all of them united, the great and essential power being deficient, consisting of a right to take up the subject on principle; to cause our Union to be examined by men of science, with a view to such improvements; to authorize commissioners to lay off the roads and canals in all proper directions; to take the land at a valuation if necessary, and to construct the works; to pass laws with suitable penalties for their protection; and to raise a revenue from them, to keep them in repair, and make further improvement by the establishment of turnpikes and tolls, with gates to be placed at the proper distances.

It need scarcely be remarked that this power will operate, like many others now existing, without affecting the sovereignty of the States except in the particular offices to be performed. The jurisdiction of the several States may still exist over the roads and canals within their respective limits, extending alike to persons and property, as if the right to make and protect such improvements had not been vested in Congress. The right, being made commensurate simply with the purposes indispensable to the system, may be strictly confined to them. The right of Congress to protect the works by laws imposing penalties would operate on the same principles as the right to protect the mail. The act being punishable only, a jurisdiction over the place would be altogether unnecessary and even absurd.

Although President Monroe qualified the constitutional authority of the Congress on internal improvements, he returned to what he called the “almost incalculable” value of roads and canals:

It appears by the light already before the public that it is practicable and easy to connect by canals the whole coast from its southern to its northern extremity in one continued inland navigation, and to connect in like manner in many parts the Western lakes and rivers with each other. It is equally practicable and easy to facilitate the intercourse between the Atlantic and West Country by improving the navigation of many of the rivers which have their sources near to each other in the

mountains on each side, and by good roads across the mountains between the highest navigable points of those rivers . . . .

Great improvements may also be made by good roads in proper directions through the interior of the country. As these roads would be laid out on principle on a full view of the country, its mountains, rivers, etc., it would be useless, if I have the knowledge, to go into detail respecting them. Much has been done by some of the States, but yet much remains to be done with a view to the Union.

Such improvements would benefit commerce, defense, transport of the mail, and the bond of union. President Monroe emphasized this latter benefit:

Our union is not held together by standing armies or by any ties other than the positive interests and powerful attractions of its parts toward each other.

With a strong transportation network, the diverse parts of the country “would soon become so compacted and bound together that nothing could break it.”

Citing the way the States had abused their authority to regulate commerce, President Monroe saw a very important role for the general government:

It can not be doubted that improvements for great national purposes would be better made by the National Government than by the governments of the several States. Our experience prior to the adoption of the Constitution demonstrated that in the exercise by the individual States of most of the powers granted to the United States a contracted rivalry of interest and misapplied jealousy of each other had an important influence on all their measures to the great injury of the whole . . . . The members composing their respective legislatures represent the people of each State only, and might not feel themselves at liberty to look to objects in these respects beyond that limit. If the resources of the Union were to be brought into operation under the direction of the State assemblies, or in concert with them, it may be apprehended that every measure would become the object of negotiation, or bargain and barter, much to the disadvantage of the system, as well as discredit to both governments. But Congress would look to the whole and make improvements to promote the welfare of the whole.

For Congress to have such power, an amendment to the Constitution would be needed. The States could not transfer that authority to Congress except in the form of an amendment.

Moreover, if Congress gains that authority, it must exercise it for the benefit of all the States. Having shown the need for an amendment, he offered his opinion “that the power should be confined to great national works only, since if it were unlimited it would be liable to abuse and might be productive of evil.” He added:

For all minor improvements the resources of the States individually would be fully adequate, and by the States such improvements might be made with greater advantage than by the Union, as they would understand better such as their more immediate and local interests required.

President Monroe concluded his paper with a discussion of the Revolutionary War. With the successful separation of the colonies from England, the newly independent States adopted the Articles of Confederation to preserve and augment the sense of union:

To the same cause the greater change which has since occurred by the adoption of the Constitution is to be traced. The establishment of our institutions forms the most important epoch that history hath recorded. They extend unexampled felicity to the whole body of our fellow-citizens, and are the admiration of other nations. To preserve and hand them down in their utmost purity to the remotest ages will require the existence and practice of virtues and talents equal to those which were displayed in acquiring them. It is ardently hoped and confidently believed that these will not be wanting.

The veto of the toll-gate bill for repair of the Cumberland Road was the only veto President Monroe issued during his 8 years in office.

According to Professor Noble E. Cunningham, Jr.:

Monroe sent copies of the printed document containing his views on internal improvements to friends throughout the country, among them Justice Joseph Story and Chief Justice John Marshall. In thanking him for the favor, Story replied that he did not feel at liberty to express any opinion on the constitutional question because it might come before the Supreme Court. Marshall, on the other hand, asserted that though intelligent men would differ on the issue, all would admit that the president's views were profound and that he had thought deeply on the subject. "To me they appear to be most generally just." He closed his note by observing: "A general power over internal improvement, if to be exercised by the Union, would certainly be cumbersome to the government, and of no utility to the people. But, to the extent you recommend, it would be productive of no mischief, and of great good. I despair however of the adoption of such a measure." [Cunningham, Jr., Noble E., *The Presidency of James Monroe*, American Presidency Series, University Press of Kansas, 1996]

President Monroe's veto was controversial at the time, but he spelled out a policy that would be the foundation of the Federal-aid highway program in the 20<sup>th</sup> century as explained in *America's Highways 1776-1976*:

It was one thing to make appropriations for public improvements, but an entirely different thing to assume jurisdiction and sovereignty over the land whereon those improvements were made. This has been the Federal position on highway grants to States down to the present day.

In this lengthy memorandum, President Monroe outlined a distinction that was essentially a compromise. None of the provisions of the Constitution that were usually cited gave Congress the authority to assume jurisdiction over a road in a State or charge tolls on it. Congress could, however, appropriate funds for activities serving the general welfare, including internal improvements of national significance. Sky summarized the compromise:

Monroe's interpretation of the federal spending power in the Constitution in his 1822 memorandum represented an important departure from the thinking of his predecessors in the White House, Jefferson and Madison. It also represented an important change of heart in Monroe's own views on the matter. This he frankly conceded in the memorandum. In short, it meant that Congress could provide financial assistance to internal improvements, like the National Road, as long as Congress did not at the same time assume "jurisdiction" over the internal improvement by, for example, setting up federal tollgates . . . .

Furthermore, Monroe pointed to the long list of appropriations for the National Road (which both Jefferson and Madison had signed) as providing precedent for his position.

President Monroe found this power in the general welfare clause, as Young explained in his constitutional history of the Cumberland Road:

In this veto message Monroe took a position different from that of Madison in 1817 and his own position in 1817-1818. Madison was opposed to internal-improvements without a constitutional amendment, although he signed Cumberland Road bills because of the Ohio compact. In 1817-18 Monroe was opposed to internal-improvement without an amendment; in 1822 he was opposed to the exercising of administrative powers by the United States in either construction or jurisdiction, but he did favor the *appropriation* by the United States for such improvements under the head of the "general welfare." Here he seemed in a measure to obviate the difficulty raised by Madison. This brought the President into harmony with the vote of Congress in 1818, and the people generally, on the power to tax and appropriate for internal-improvements.

Sky summarized the compromise:

Monroe had shared the vision of his predecessors in support of national investment by seeking a constitutional means for keeping the National Road in repair. In the absence of the constitutional amendment he and Madison had sought, Monroe proposed a compromise constitutional theory that would sustain a federal role in funding the road at least for a time: Congress could appropriate funds for its construction but it could not assume jurisdiction over the road. On this basis, the road became a sustainable national investment for the better part of the next two decades and until it reached central Illinois. However, in the long run, it would become unsustainable for a combination of constitutional and fiscal reasons.

## Moving On Post-Veto

On May 6, 1822, at the request of Representative Trimble, several orders of the day were postponed in favor of House consideration of President Monroe's veto message.

Discussion was brief, as reported in the *Annals*:

Mr. Bassett, with a view to such a consideration of the subject as its importance appeared to him to require, moved to refer the bill and objections to a Committee of the Whole; but the House refused to commit the bill.

Mr. Wright expressed in strong terms his approbation of the Message of the President, particularly on the ground that, to impose a toll on this particular road, while other roads were free, would be an unequal and oppressive tax, &c. He was, however, in favor of keeping this road in repair at the expense of the United States.

The House then voted on the question: "Shall this bill pass, notwithstanding the objections of the President of the United States?" The vote was 68 yeas and 72 nays:

Two-thirds of all the members being required to carry this question, and a majority having voted against it, it was of course not carried; and the bill was rejected.

With the House having failed by a wide margin to override the veto, the Senate did not consider the matter. The Cumberland Road toll-gate bill was dead.

Two days later, on May 8, the first session of the 17<sup>th</sup> Congress ended.

President Monroe addressed the subject on December 3, 1822, in his sixth annual message to Congress:

It is understood that the Cumberland road, which was constructed at great expense, has already suffered from the want of that regular superintendence, and of those repairs, which are indispensable to the preservation of such a work. This road is of incalculable advantage, in facilitating the intercourse between the Western and the Atlantic States. Through it, the whole country from the northern extremity of Lake Erie to the Mississippi, and from all the waters which empty into each, finds an easy and direct communication to the seat of Government, and thence to the Atlantic. The facility which it affords to all military and commercial operations, and also to those of the Post Office Department, cannot be estimated too highly. This great work is likewise an ornament and an honor to the nation.

Believing that a competent power to adopt and execute a system of internal improvement has not been granted to Congress, but that such a power, confined to great national purposes, and with proper limitations, would be productive of eminent advantage to our Union, I have thought it advisable that an amendment of the Constitution, to that effect, should be recommended to the several States.

A bill which assumed the right to adopt and execute such a system having been presented for my signature, at the last session, I was compelled, from the view which I had taken of the powers of the General Government, to negative it, on which occasion I thought it proper to communicate the sentiments which I had formed, on mature consideration, on the whole subject. To that communication, in all the views in which the great interest to which it relates, may be supposed to merit your attention, I have now to refer. Should Congress, however, deem it improper to recommend such an amendment, they have, according to my judgment, the right to keep the road in repair, by providing for the superintendence of it, and appropriating the money necessary for repairs. Surely, if they had the right to appropriate money to make the road, they have a right to appropriate it to preserve the road from ruin. From the exercise of this power no danger is to be apprehended.

Under our happy system, the people are the sole and exclusive fountain of power. Each government originates from them, and to them alone, each to its proper constituents, are they respectively and solely responsible, for the faithful discharge of their duties, within their constitutional limits. And that the people will confine their public agents, of every station, to the strict line of their constitutional duties, there is no cause of doubt.

Having, however, communicated my sentiments to Congress, at the last session, fully, in the document to which I have referred, respecting the right of appropriation, as distinct from the right of jurisdiction and sovereignty over the territory in question, I deem it improper to enlarge on the subject here.

In this way, President Monroe invited Congress to enact legislation to repair the Cumberland Road – minus toll-gates or any other measure implying sovereignty.

Despite this presidential endorsement of action, supporters of the Cumberland Road encountered the first round of post-veto recalcitrance when they tried, again, to address the deteriorating condition of the road.

On December 11, Kentucky Senator Talbot introduced two motions:

*Resolved*, That so much of the President's Message as related to the repairs, preservation, and superintendence of the national road from Cumberland to Wheeling, be referred to a select committee, with leave to report by bill or otherwise.

*Resolved*, That that part of the President's Message which recommends the adoption of an amendment to the Constitution of the United States, which shall vest in the Congress thereof, powers adequate in the adoption and carrying into effect a system of internal improvements throughout the Union, be referred to a select committee to consider and report thereon.

The Senate agreed to the two resolutions on December 12.

On December 20, Senator Talbot's select committee reported a bill for repairing the Cumberland Road. The amount of appropriation was left blank to be filled in later.

The Senate took up the bill on December 31. Senator Talbot said that based on his own observation, he was not certain what amount of appropriation was needed:

At the last session the sum of nine thousand dollars would have been sufficient; but such had been the injuries and dilapidations suffered subsequently by the neglect to make the repairs in time, that he was induced to believe it would now require not less than thirty thousand dollars to put the road in good condition on its whole extent.

His estimate was based not only on his own observation of the road but “the information of gentlemen of judgment and veracity who had recently travelled the road.”

Senator Macon suggested that instead of guessing the amount, the Senate should obtain information from the Department of the Treasury to guide them.

Senator Talbot did not object to postponement, but doubted they would obtain more precise information than was already available, based as it was on “the information of intelligent men, who had just passed over the road.”

Senator Smith of Maryland thought \$30,000 seemed too high a figure, and that better information from the Treasury Department would be helpful in settling on an amount.

Kentucky Senator Johnson doubted that additional information would allow for anything more than conjecture about the amount. He wanted to vote immediately on the bill, inserting \$20,000, \$25,000, or \$30,000 in the blank. After all, Senator Talbot “had conversed with intelligent gentlemen well acquainted with the road.” He doubted the likelihood of obtaining more precise information. He favored \$30,000, but he would rather appropriate \$20,000 than postpone consideration of the bill.

Senator Benjamin Ruggles of Ohio suggested that the provisions of the bill relating to appointment of a superintendent were unnecessary “as he believed the superintendent who heretofore filled the appointment, (Mr. Shriver,) was still in office; for he, although the road had been completed for some time, had been retained for the purpose of closing the accounts, and a better or more faithful agent, Mr. R presumed could not be obtained.”

The Senate postponed consideration until January 6, 1823. By then, Senator Talbot had communicated with Secretary Crawford. The *Annals* summarized the Secretary’s letter:

. . . stating, first, that David Shriver, Esq., was, at the commencement of the Cumberland road, appointed superintendent thereof, by the President of the United States, with a salary of \$1,800, which was, in 1816, increased to \$2,500. That he is not now considered the superintendent, and is not in the pay of the Government.

Secondly, that the Secretary had examined the correspondence of Mr. Shriver with the department, relative to repairs, but it contains no estimate of the sum necessary to effect that object; but the Secretary presumed that a sum less than \$30,000 would not be sufficient for that purpose.

Based on that letter and the intelligence of the gentlemen referred to earlier, Senator Talbot thought \$30,000 was necessary, but would settle on \$25,000 to “satisfy those who

might object to the larger sum.” Anything less would be insufficient, “and, to appropriate too little, would be throwing it away, as the repairs, if left unfinished, would be of no use.” On a vote of 19 to 11, the Senate agreed to insert \$25,000.

The next question involved the per diem for the superintendent. Senator Talbot suggested \$3, “because the work would occupy only a part of the year – the Summer and Autumn – and nothing could be done on it in the Winter and Spring.” As a result, an annual salary was not needed. Senator Ruggles questioned whether \$3 a day was sufficient “considering the extent of the road, and the personal expenses of the agency; but he would not move a higher sum if that were thought adequate.” The blank was filled with \$3, and “then the bill was, without debate or division, ordered to be engrossed, and read a third time.”

Debate on the engrossed bill began the following day, January 7. The bill was read a third time, and a vote ordered. But before the vote could take place, Senator John Taylor of Virginia, interrupted. Known as “John Taylor of Caroline” to distinguish him from other Senators of the same name, he had served in the Senate briefly in 1803 to fill a seat vacated by the death of the occupant and was appointed again to fill a vacancy in 1822, taking office on December 18, 1822 (he served until his death in 1824):

Mr. Taylor, of Virginia, then rose, and in an argument of about an hour, submitted his views of the inexpediency and unconstitutionality, not only of this bill, but also of the exercise by the General Government of the power to make internal improvements at all in the States; of the impolicy and unconstitutionality of departing from the exercise of express and rightful powers, to exercise concurrent powers; the advantage and necessity of adhering to the true line of demarcation between the powers of the Federal and State Governments; his opinions as to the manner by which that line was to be ascertained, and where it exists, &c.

In response, Senator Talbot admitted he was surprised by this long speech. This was the first time any objection to the bill had been expressed, and was not at this stage expected. Moreover, Senator Taylor, who had just returned to the Senate, “had afforded no previous intimation” on his objections.

As chairman of the committee that reported the bill, Senator Talbot felt obligated to respond. In a response that occupied the columned pages 85 to 92 of the *Annals*, the Senator addressed the constitutional authority of the Congress to appropriate funds for the road; the value of the appropriation if constitutionality were granted; and the specific provisions of the bill, especially the designation of the road as a national one.

After discussing the initial objections, Senator Talbot addressed the “national” issue:

I must confess, Mr. President, whatever may be the feelings or sentiments excited in the gentleman by this designation, to me it seems entirely appropriate, not only as descriptive of the road thus indicated, but as an attribute to which this highway has the fairest and most unquestioned claim. And that to me it is a subject of pride as well as pleasure, to use a word so truly characteristic of this road as regards its origin, its construction, and its designation. Projected by the wisdom of its counsels, executed with the nation’s means, and destined, in all times to

come, for the nation's use, and constituting one of its proudest monuments, it is in every sense truly and emphatically national, and one every way entitled to that proud denomination. And I can assure you, Mr. President, that often as it has been my destiny to travel on this highway from the region beyond the mountains, to attend my humble duties in this place, that I never do so without feeling a swell of generous and proud emotion at the reflection that the road I pass on is, in its design and construction, worthy [of] the character of the nation to whom it appertains; was the work of the nation amongst whose citizens I am proud to count myself; and that such a work is not the work or property of any one State, however great, or rich, or powerful, of our immense Confederacy, but of the nation.

This road, Mr. President, is, indeed, a work worthy [of] the nation by whom it was made, and to whom it appertains, and, after enormous sums which have been expended from its coffers in the construction of such a monument to its wisdom and its glory, I can never persuade myself that the Congress of the United States will incur the reproach of permitting such a work to go to decay and ruin, for want of the small sum required by the bill to place it once more in complete repair, and make it what it was intended to be by those to whom we owe its origin and completion.

Senator Smith responded to Senator Taylor as well:

He urged particularly the breach of faith which, if the Cumberland road were allowed to fall into decay, would ensue with the State of Maryland, which had given her consent to make the road through that State, and had subsequently taxed her citizens to make connecting roads. He also contended for the constitutionality and the expediency of internal improvements by the General Government . . . .

Senator Macon remarked that "as this road was authorized originally to be made through the respective States, with their consent, there had not been, so far as the Constitutional question went, any broad Constitutional question settled by the making of the road."

Senator Martin Van Buren of New York, the future President (1837-1841) in his first term in the Senate, commented on several points Senator Taylor had made (not reported in the *Annals*), "adding the opinion, that the large expenditure in making this road will have been worse than useless, if it were now suffered to go to decay, and his desire to see it preserved."

With that, the Senate voted, 26 to 9, in favor of the bill. Senator Van Buren voted yea. It was then sent to the House of Representatives.

The House already had begun consideration of the Cumberland Road. On December 13, 1822, the *Annals* reported:

Mr. Hemphill, from the committee appointed on that part of the President's Message which related to the Cumberland Road, reported a bill for the preservation and repair of the Cumberland Road; which bill was read twice, and committed to a Committee of the Whole.

Mr. Hemphill, from the same committee, also reported a bill making appropriations for the Cumberland Road; which was read twice, and committed to a Committee of the Whole.

On December 31, the House adopted a resolution introduced by Representative Stewart:

*Resolved, by unanimous consent,* That the Postmaster General be directed to communicate to this House such information as may be in his possession, showing the state and condition of the Cumberland road, and that he state whether any obstacles exist to the safe and speedy transportation of the United States Mail upon said road; and what effect they may have, if not removed, on the expenditures of the Post Office Department.

On December 31, Representative Stewart introduced a resolution that the House adopted:

*Resolved, by unanimous consent,* That the Postmaster General be directed to communicate to this House such information as may be in his possession showing the state and condition of the Cumberland road, and that he state whether any obstacles exist to the safe and speedy transportation of the United States Mail upon said road; and what effect they may have, if not removed, on the expenditures of the Post Office Department.

Postmaster General Return J. Meigs, Jr., who lived in Marietta, Ohio, had taken office on March 17, 1814 (and served until June 26, 1823). The Cumberland Road was his normal route between Washington and Marietta. On January 7, 1823, he responded to the resolution. He began by stating that in November 1822, "I passed over the whole of that road, and, travelling only by daylight, was enabled to observe its state and condition, which I attentively did":

The western (being the newest) part of the road, is in a ruinous state, and becoming rapidly impaired.

In some places the bed of the road is cut through by wheels, making cavities which continually increase and retain water, which, by softening the road, contribute to the enlargement of the cavities; in others, the road is much injured, by the sliding down of earth and rocks from the elevated hills, and by the falling off of parts of the road down steep and precipitous declivities of several hundred feet; so much abridging the width of the road, that two carriages cannot pass each other.

Obstacles do really exist to the safe and speedy transportation of the United States mail upon that road. The mail contractors have sometimes been necessitated to remove them [the obstacles] before the mail could pass on; and such delay produced, that the mail stages have in some instances been unable to reach their point of arrival in due season to deliver over the mail, and consequently producing failures.

If these obstacles are suffered to exist and increase, the great Western mail must be transported on lengthier, oblique, and circuitous roads, which will retard the

expedition of the mail, and considerably enhance the expenditure of the Post Office Department.

The Cumberland Road, so interesting to the nation, will, in my opinion, formed by observations when upon it, cease to be useful unless repaired. That part of the road contiguous to Cumberland, and the oldest, is in a tolerably good condition, because it has been seasonably and judiciously repaired; which repair was true economy in the preservation of the road.

Meigs enclosed two letters from intelligent gentlemen on the same subject (not reproduced in the *Annals*).

On January 23, 1823, the House resolved itself into a Committee of the Whole to consider the bill the Senate had passed authorizing \$25,000 for repair of the Cumberland Road. Representative Trimble moved to amend the section on compensation of the superintendent to read "such sum as may be fixed by the President, from time to time, not exceeding two thousand dollars per annum." The House rejected the motion.

Representative Buchanan proposed three amendments:

Mr. B., wishing to assign his reasons at large on the bill and amendments, and to give gentlemen an opportunity of examining the proposed additional sections, the hour being now too late for him to do so, moved that the Committee rise.

The Committee then rose, and the amendment moved by Mr. Buchanan was, on motion of Mr. Farrelly, ordered to be printed.

Representative Trimble moved on February 13 in the Committee of the Whole to amend the general appropriation bill to include a clause reading "For the repair and preservation of the Cumberland road, \$25,000." After brief discussion of the wisdom of including the amendment in the general appropriation bill, Representative Hardin suggested an amendment to the Trimble Amendment addressing concerns about how the funds would be used: "That the Secretary of the Treasury be authorized to employ a suitable person or agency to superintend the repair of the said road." Several members discussed the amendment before Representative Buchanan offered his thoughts. (The remarks during this discussion were not spelled out in the *Annals*.) He proposed an amendment to Representative Trimble's amendment. The *Annals* described the Buchanan amendment:

The amendment, of three sections in length, proposed a recession to the States of Maryland, Pennsylvania, and Virginia, of those parts of the road which fall within their jurisdiction, on condition that they will, respectively, forever keep such portion of the road in good repair, and shall collect no more toll than is necessary for that purpose, and to defray the expense of collection, imposing upon them, also, the obligation of annually accounting for the tolls received, and the manner in which the tolls are expended.

Mr. Stewart, Mr. Farrelly, and Mr. Alexander, joined in the discussion, the course of which involved the Constitutional powers of Congress, and the principles on which it should act in relation to the general system of internal improvements.

The House then adjourned for the day.

On February 14, the House again considered Representative Trimble's amendment to the general appropriation bill, as well as Representative Buchanan's amendment to the amendment. After some initial discussion "as to the propriety of urging the connexion of this question with the discussion of the principle of the bill," Representative Trimble refused to withdraw his amendment.

Representative Henry R. Warfield of Maryland spoke "at considerable length" in support of the Trimble Amendment and against the Buchanan Amendment. Representative Thomas R. Ross of Ohio took the same views, "adverting particularly to the origin of the fund which is pledged to refund the money which the road cost, making the consent of the State of Ohio necessary to the proposed recession." Representative John Nelson of Maryland also opposed the Buchanan Amendment:

One argument particularly he used with considerable effect, viz: that the power to cede the road must be coincident to the power to put gates upon it, the right to exercise which was at the last session denied by the Executive to exist in Congress. To agree to the measure proposed by the gentleman from Pennsylvania, therefore, would be to present to the President a proposition to which it is known beforehand he will not assent.

Next, "Mr. [John] Phillips, of Pennsylvania, briefly expressed his views of the question. He was in favor of the amendment proposed by his colleague."

Representative Phineas White of Vermont also supported the Buchanan Amendment. Considering the great expense already appropriated to build the road, he supported an appropriation to put the road in "full and complete repair," provided the future repairs be made without expense to the general government. "In my estimation it would be just and right that, in future, the road should keep itself in repair by the collection of tolls for that purpose."

He regretted, however, that Representative Trimble had introduced his motion as an amendment to the general appropriation bill. "It would have been a fairer mode of legislation, and, in my estimation, more parliamentary, to have presented this subject for consideration in the bill reported from the Senate especially for that purpose, which stands referred to this committee." But since Representative Trimble had introduced the amendment, "I do not consider it very important in this use to be over nice about modes and forms."

He did not understand why some gentlemen objected to the Buchanan Amendment on the grounds that "it would be placing the road under the guardianship of 'its own worst enemies,' who would destroy it, or, by neglect, would leave it to dilapidate and be destroyed." The conditions of the Buchanan Amendment were "sufficiently guarded." If the State did not comply with the conditions in the amendment, "the cession would be void, and the road remain as much under the control of Congress as it now is – and this

Government could then, if they please, continue to make repairs, the same as they can now.” He wondered how any gentleman could be serious about this concern; “no honorable gentleman would be guilty of so foul a slander.”

Still, after all the expense of building the road, Representative White thought it only fair that the road “should in future maintain itself,” something his home State of Vermont understood:

The people who inhabit the cold and inhospitable regions of the North labor under as great inconveniences, with respect to roads, as the people of the West possibly can.

A high and rugged chain of mountains extends through the centre almost the whole length of the State of Vermont; across which several roads have been made, at great expense, by the enterprise and liberality of individuals; for travelling on which the citizens are obliged to pay toll; and yet, the proprietors of those roads do not, after defraying the expense of repairs, receive more than from one to three per cent. on the sums actually expended in making the roads.

As an example, he pointed out his Vermont colleague, Representative Elias Keyes, who built a turnpike road across the Green Mountains that cost \$40,000, “and though the traveler pays a high toll for passing thereon, for nearly twenty years past, this road had not yielded the proprietor one cent more than sufficient to make the necessary repairs.”

As an inland State, Vermont is remote from markets:

The farmers are obliged to transport their produce by land, at great expense; and go which way they will, they meet a turnpike gate, and are subject to the payment of tolls. Now, sir, permit me to appeal to the candor, liberality, justice, and good sense of gentlemen, whether it be just and equitable that the people of Vermont, since the Cumberland road has been made at so great expense by the National Government, should be annually taxed to keep it in repair? To keep a free road? And for whom? The people who possess and enjoy the luxuriant and fertile regions of the West. No, sir, it cannot be just.

Vermont, which defended itself during the Revolutionary War, was far from rich, but accepted their “just proportion of public burdens without a murmur”:

But, sir, if you tax them annually to keep in repair the Cumberland road, they will feel themselves aggrieved, and will consider it unequal and unjust . . . .

If the House voted for the Buchanan Amendment, Representative White said he would support the Trimble Amendment “to put the road in repair, hoping and trusting that hereafter the Cumberland road, of which we have heard so much, will be made to keep itself in repair, or be repaired by the State authorities, as are roads

in other sections of this country, and thereby relieve the National Government from any further trouble or expense.”

If supporters of the road felt as strongly about it as they claimed, he urged them to support the Buchanan Amendment:

But if their zeal arises from another cause; if they wish to retain the road as a bone of contention, whereby National and State rights may constantly be brought in collision, then they will vote against it.

Mr. W. concluded by hoping that the amendment to the amendment might be adopted.

Representatives Cook of Illinois and Wright of Maryland spoke against the Buchanan Amendment, but the *Annals* did not summarize their comments.

Next, Representative Keyes, the Vermont turnpike builder whom Representative Wright had cited, argued that Congress has appropriated funds to build ships, fortifications, and lighthouses. “Have not Congress appropriated money to repair those ships, fortifications, and lighthouses, when they have been out of repair?” By analogy, Congress had appropriated nearly \$2 million to build the Cumberland Road, which was now out of repair. He said, “we ought not to let it go to ruin for want of a little repairing.”

As for erecting toll-gates, his views differed from his Vermont colleague:

Sir, I think toll-gates are a curse to their owners, and to their customers also; for the owners of turnpikes do not generally get enough toll to keep their roads in repair; and the traveler, when he comes to the gate, must make the change; but, if he cannot, then he must go back to the city or town, to get his money changed, before he is permitted to pass the gate.

Sir, this road is one hundred and thirty miles in length; and, if you set up a gate for every ten miles, you will have thirteen gates: you must also build toll-houses near each gate; and you must provide for each gate a toll-gatherer, or money-catcher – call him what you please. And, Mr. Chairman, I ask, what will all this cost. Sir, it will cost ten to fifteen thousand dollars, at least, for the first year, or more; for you will give your toll-gatherers from five hundred to one thousand dollars each year, or perhaps much more.

He favored repairing the Cumberland Road, but not in favor of giving the road to the States to erect toll-gates:

Sir, if this road is ceded to the aforesaid States, it is uncertain whether they will take it or not. And, further, if once ceded away, it never again will be a free road; or, if ever, not short of one hundred years. Sir, if you take this mode of getting rid of the National road, you will adopt a sure way to lessen the value of your Western

lands, and incense your Western brethren. Mr. Chairman, I have no doubt but people will soon settle on this road, and be sufficient to keep it in good repair with their common highway taxes, and not be burdened with higher taxes than other people are on other roads – for people always like to settle on good roads.

(In the 19<sup>th</sup> century into the early 20<sup>th</sup> century, the road tax, known as a *corvéé*, usually consisted of requiring farmers to spend a certain number of days repairing the road near their property. Often, they could pay the tax instead of working on the road, but their labor was usually the better option.)

Representative Keyes turned to the road he had financed:

Mr. Chairman, it is true, as my colleague has stated, I have spent large sums of money making roads. In that part of the country where I live when I am at home, when I first went into it, we had to travel the roads, with a cart or wagon loaded with six or eight hundred weight, we had to employ half a dozen men, to hang on one side or the other, to keep the cart from turning over; but, since we have constructed our turnpike roads, one man can drive his team with a load of two or three tons on his wagon. And, sir, although these roads give no dividends to their owners or proprietors, yet the money expended in making them is not wholly lost; for the farms and wild lands which they go through, or lead to, is worth double as much as it ever would have been without having these roads made to travel upon. Mr. Chairman, I know not how other gentlemen feel about giving away this road; but, sir, if I should, by my vote, give away two millions of the United States property, I should not dare to return home.

Some, he said, thought the House should consider the matter in the Senate bill. But since the matter was then before them during consideration of the general appropriation bill, “I think it would be a saving of time to decide upon it at this time. Sir, this road is the property of the nation, and I think it the duty of Congress to take care of it.”

After Representative Keyes finished his remarks, the House adjourned for the day.

The next day, February 15, the House once again resolved into the Committee of the Whole to consider the general appropriation bill, with the first order of business being the pending issue of the Trimble Amendment.

Representative Louis McLane of Delaware suggested that Representative Trimble withdraw his amendment so the Congress could go through other provisions in the general appropriation bill, then take up the issue of the Cumberland Road with the Senate bill. “Mr. McL. was an advocate of this appropriation, and he would afford every facility to the prompt passage of the bill from the Senate. He thought this course would accomplish the object in view more readily than to persevere in the attempt to engraft the appropriation on the present bill with which it had no natural connexion.”

Representative Trimble agreed to withdraw his amendment, but “Mr. Wright thereupon

renewed the motion which Mr. Trimble had withdrawn, and followed it with some remarks in favor of the appropriation for the road.”

Representative McLane thought that perhaps Representative Wright misunderstood that in asking for withdrawal of the amendment, he actually favored the expenditure, but in the Senate bill.

Representative Smyth of Virginia, who had spoken at length in the 15<sup>th</sup> Congress against a constitutional amendment giving Congress authority to appropriate funds for internal improvements, “rose, and proceeded to submit at large his sentiments in opposition to the constitutionality of the appropriation.” At one point, Representative Wright “rose, and intimated a wish to withdraw the motion he had made; but Mr. Smyth refused to yield the floor, and proceeded with his remarks.” According to the Annals, Representative Smyth “continued to speak about an hour against the appropriation as unconstitutional.” Had he allowed Representative Wright to withdraw his motion, there would have been no cause for the speech.

Representative Smyth began by describing the Trimble Amendment as an appropriation to keep a road in repair:

No appropriation has yet been made for such a purpose; and, it is incumbent on the House to consider maturely the consequences which are to follow. This appropriation should not be made, unless it is the intention of Congress to keep this road in repair, forever, at the public expense; and not only this road, but the roads which may be made to Indiana, Illinois, Missouri, Arkansas, and Michigan. Congress are under no obligation whatever to repair this road; and it is no more expedient to do so, than it is to repair other roads within the United States.

Those who thought Congress had the power to execute a system of internal improvements and those who think Congress has no such power, but may appropriate funds for this purpose, may vote for the bill. But Representative Smyth thought his role was to show Congress that it had no such power.

He recalled the recent history of President Madison vetoing the Bonus Bill. The issue of constitutionality was debated for 8 days in March 1818, with Representative Smyth among those arguing in the negative, “and this claim of power was advocated with a degree of ability perhaps seldom exceeded; when the resolutions were severally rejected” – that had power to construct post-roads and military roads (82 to 84); that Congress had power to construction road and canals between the States (71 to 95); and had power to construct canals for military purposes (81 to 83). “And so it was determined, on great deliberation, that Congress do not possess power to make internal improvements.”

(Representative Smyth did not mention the remaining motion, which, as noted earlier, the House had voted to support, 89 to 75:

*Resolved*, that Congress has power, under the Constitution, to appropriate money for the construction of post roads, military, and other roads, and of canals, and for the improvement of water-courses.)

Next came the toll-gate bill, which President Monroe vetoed. When the House was asked whether to overturn the veto, “a majority of this House voted against it; and thus showing that the reason why the bill at first passed the House was, it had not received due consideration”:

The question whether Congress have power to make internal improvements, or not, is not only an unsettled question, but one of the greatest importance, and deserves the most patient attention and deliberation.

He went through the provisions in the Constitution that internal improvements advocates usually cited as justification.

He disagreed that the power to regulate commerce among the States implied the power to construct roads and canals:

The commerce between the States which Congress have power to regulate is the coasting trade, and duties on goods passing from one State into another. It was so understood by those who adopted the Constitution, and by those who recommended that adoption.

He also argued against the idea that because roads and canals would facilitate the military in times of war, and Congress had the power to make war, it may, in time of peace, make roads and canals. “Sir, if it is sufficient to authorize Congress to exercise a power, that it will *facilitate* the exercise of some one of the granted powers, I know not what subject will escape the powers of Congress.” It also would facilitate the war power to regulate the country’s agriculture, to prescribe how much wheat or potatoes a farmer may grow, and what price should be paid:

It is said that roads and canals will facilitate and give security to commerce. If giving such facility and security is sufficient to authorize the assumption of power by Congress, we may take upon us to regulate the police, as well of the cities as the country, as this will facilitate and give security to commerce; we may even take upon us the administration of justice, and make void the State laws imposing taxes on mercantile licenses.

But I contend that we have nothing to do with roads and canals; this power is not only not given to us, but was expressly withheld. It was proposed in the Convention that there should be a Secretary of Domestic Affairs, whose duty it should be “to attend to matters of ‘a general police, the state of agriculture, and manufactures, *the opening of roads and navigations*, and the *facilitating* communications through the United States,” who should recommend such measures and establishments as might tend to promote those objects. This

proposition was rejected; and I have a high authority for maintaining that powers thus refused are to be considered as withheld.

The high authority involved appropriations for carrying out the British Treaty. President Washington refused the House's request for documents related to the treaty because during the Constitutional Convention, delegates had considered House participation in the formation of treaties, but had rejected the idea. Based on this example, he said:

That the rejection by the Convention of a proposition to give power to this Government over the general police, roads, and navigation, is evidence that this Government does not possess such power.

(During the Constitutional Convention, members considered whether the new Constitution should list departments of a council to aid the President in carrying out his duties. On August 18, 1787, Delegate Oliver Ellsworth of Connecticut suggested several departments, including departments of foreign and domestic affairs, war, finance, and marine, "who should advise but not conclude the President." Two days later, Gouverneur Morris of New York offered language establishing a council of state, essentially what we call the Cabinet, composed of several officers appointed by the President ("and hold his office during pleasure"), including a secretary of domestic affairs with the duties Representative Smyth quoted. In the end, however, the delegates decided against such specificity.

(The first Congress created three departments: Treasury, State, and War. To head the departments, President Washington nominated Alexander Hamilton (Treasury), Thomas Jefferson (State), and General Henry Knox (War), who had been Secretary of War under the Articles of Confederation.)

Next, Representative Smyth turned to the power to establish post offices and post roads. "It is said that we have power to establish post roads; that to establish, signifies to create; and therefore we may construct roads." However, because the Constitution referred only to "post roads," Congress had no power in relation to other roads:

If it was even conceded that *establish* signifies *construction*, you would only have power to construct post roads; and a special power to construct post roads would destroy your claim to a general power to construct commercial and military roads. For here would be a special power in relation to roads delegated, and others not delegated would be considered to be retained. And if in this clause "establish" signifies "construction," you have no claim to the use of any roads as post roads, except those which you construct.

But, he asked, does "establish" really mean "construct"? He thought "establish" should be considered as it was used by the framers:

We read therein, of establishing justice; establishing this Constitution; establishing an uniform rule; establishing post offices and post roads; establishing courts;

establishing offices; an establishment of religion; the establishment of this Constitution. *Establish*, as used by the Convention, uniformly signifies to give legal existence; it never signifies to build or construct by labor . . . .

A road exists, having been constructed for all who choose to pass thereon; it is a law which establishes it a post road. A port exists; it is a law that establishes it a port of entry.

The first Congress and its successors had regularly passed laws stating, “*And be it further enacted*, that the following be *established* as post roads,” then listing the roads. This example proved “that they considered a legal designation as the establishment of a post road, and not its construction.”

The States built the post roads and keep them in repair with labor assigned by State laws or turnpike companies:

If you assume jurisdiction over those roads, what will become of the rights of those companies? If you have a right to the roads, will you not contend that the means of keeping them in repair follows, and that you therefore may command the service of neighboring laborers? If you do not assume the exclusive jurisdiction, there will be an interference of authority; and concurrent jurisdiction cannot exist of the same thing at the same time.

How was the Constitution understood, in this respect, by the people? It was understood that the States retained their internal police; and neither the friends nor the enemies of the Constitution ever alleged that the care of the roads devolved on the General Government. If the power of internal improvement is with congress, and they may assume jurisdiction over the State roads, they may also seize on the State canals; and the great canal of New York may (as an honorable member from that State, Mr. [Cadwalader D.] Colden, has suggested to me,) become the property of the United States, at a price to be fixed by a jury.

Taxation, he said, is always a concern of the people – one power they would most like to see limited:

Can it be that this cautious people, while they have carefully limited and prescribed the objects to which the powers of Congress shall extend, have granted an unlimited power to raise and appropriate money to objects to which the powers of Congress do not extend? Can they have granted to Congress power to take from their pockets, not only the money necessary to execute the Constitutional powers of the Government, but also as much more as Congress may please, for purposes which this Government has no Constitutional power to effect? I say, no.

Taxation, under the Constitution, was for the purpose of paying the debts and providing for the common defense and general welfare of the United States. Representative Smyth quoted one of former President Madison’s *Federalist* papers, as saying, “What color can

the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon?”

Representative Smyth contended that Congress was to raise money by taxes to provide for the general welfare by executing the granted powers. The phrase did not mean that Congress could do anything it decided would add to the general welfare. “Sir, I hold that, if Congress have not power to do what the money is to be expended in doing, they have no right to appropriate it to that purpose.”

Further, he did not see the phrase “to have power to make all laws which shall be necessary and proper to carry into execution” as granting additional power, such as the power to appropriate funds for roads. The phrase meant that Congress “shall pass no law even to carry into execution the powers granted to them, except such as is ‘necessary and proper’ for carrying them into execution.” In other words, Congress cannot pass a law to exercise a granted power if the law is not necessary and proper for executing that power – and certainly not a law that does not even relate to one of those powers.

Funds were to be drawn from the Treasury “only in consequence of appropriations made by law.” The law must be necessary and proper to carry out one of the powers granted by the Constitution. If Congress lacks the power to pass a law on a particular subject, “they cannot pass appropriation laws for effecting such object”:

If a law providing for the construction of a road is not necessary and proper to execute any power of the Government, a law to expend money on the construction of such road, is not necessary and proper to the execution of power.

Representative Smyth agreed that Congress could pass laws to build courthouses and appropriate funds for that purpose. Without a courthouse, court cannot be held. Similarly, custom houses were necessary:

But the President, who is charged with the execution of the laws, declares that a power to construct roads is not necessary to the execution of the power to establish post offices and post roads; and this evidence confirms our experience. Let the contracts be made conformable to the state of the roads in the country.

The danger was that if Congress was successful in appropriating funds for purposes not allowed by the Constitution, it would succumb to “indulgence of a wanton lust of power”:

Money is the means of executing power; this means is granted to Congress to enable them to carry into execution the powers delegated by the people. To grant the means without the power, seems to be preposterous.

He cited precedents that are sometimes offered as justification for future action:

Precedents have been produced to show that we have authority to make this

appropriation; money has been appropriated for the purpose of making roads through the Indian country; they were perhaps necessary; and there was no State authority to make them. The appropriation for making a road from Nashville to Natchez has been practically relied on; that appropriation was constitutionally made; that road was opened in pursuance of a treaty with the Chickasaws. We may pass laws to carry into execution any power of the Government; and consequently may make appropriations to carry a treaty into effect.

That reasoning brought him to the Cumberland Road:

We are told that, if Congress had power to make the road, they have power to keep it in repair. I must contend that that does not follow. The Cumberland road was made in pursuance of a compact with the State of Ohio . . . . Our engagement was to make the road; but we have not engaged to keep it in repair; and are under no more obligation, and have no more authority to keep this road in repair, than any other road.

He would concede that Congress had the power to make the road based on the concept of making “all needful rules and regulations respecting the territory and other property belonging to the United States,” namely the pre-State territories:

To make needful regulations respecting the public lands, is a granted power. Congress may pass the necessary laws to execute that power; and consequently may pass appropriation laws for executing this “needful regulation,” this compact with Ohio. Thus the appropriations for making the Cumberland road appear to have been Constitutional, and appropriations to keep it in repair would be equally so, if the compacts had so provided. But we have performed our part of that needful regulation, and it sanctions no further appropriation.

If it were constitutional to appropriate funds to repair the Cumberland Road, why not appropriate funds to repair other roads, such as the road from Richmond to Savannah or Knoxville to New Orleans? He continued:

Oh! It is said, we have expended \$1,800,000 on making this road, and therefore, we should repair it. Sir, if we have already expended near \$2,000,000 on a road for the benefit of the inhabitants of a particular section of the United States, I cannot perceive that that furnishes an argument why we should continue to expend money in this way, for their benefit exclusively. If we have done ten times more than our duty required, on this road, that furnishes no argument for our doing still more. An honorable member from Pennsylvania, (Mr. Stewart,) has told us of the immense quantity of produce carried along the road, for the city of Baltimore, and the great increase of the value of the crops of his constituents, in consequence thereof. Well, as this Government has made the road, it is not too much to expect the State of Ohio, the city of Baltimore, the constituents of the gentlemen, and all others particularly interested, to provide funds for keeping it in repair.

We have no property in, or jurisdiction over, the Cumberland road; we asked nothing of the States, but their consent to make it; and that was more than it was necessary to ask; for any one who has funds at command, may make a road from this place to Boston, without the consent of any States.

The Act of 1806 authorized the President to do certain things, such as developing a plan for the road, securing State consent for its construction, and taking “prompt and effectual measures to cause said road to be made”:

We engaged to make the road; we asked consent to make it; we obtained consent, and have made the road; and now we have nothing more to do with it. This road, like all others, should be kept in repair under the road laws of the States.

This road, although doubtless beneficial to a part of the people of the United States, is injurious to others. It diverts travelling and commerce from other routes, along which, were it not for this diversion of public money, they would pass. If it greatly benefits one city, it must, at the same time, injure others. To keep it in repair, at the expense of the Treasury, would be to impose a tax on all, for the exclusive benefit of some. He hoped that the appropriation would not be made.

At the end of Representative Smyth’s hour-long speech, Representative Wright withdrew his amendment. The *Annals* summarized the day’s remaining action:

The blanks in the items of appropriation which precede the paragraph making appropriation for continuing the location of the Western road, under the act of 15<sup>th</sup> May, 1820, being filled up –

Mr. Hardin moved to strike out that item.

After some remarks by Mr. McLane and Mr. Ross, Mr. Hardin withdrew his motion.

A debate arose involving the right and policy of the General Government to make any farther appropriation for roads leading to the States, respectively, to which roads are made under the two per cent. fund reserved from the sales of public lands, under the act of the fifteenth of May, 1820; in which Messrs McLane, Floyd, Rhea, Ross, Stewart, Whipple, Forward, McCoy, Rankin, Taylor, and Cook, engaged.

Before concluding the debate on this point, the Committee rose, and the House adjourned.

On February 17, the House agreed by general consent to a resolution offered by Representative Edward B. Jackson of Virginia:

*Resolved*, That the Secretary of the Treasury be instructed to communicate to Congress the amount of money appropriated for the road from Cumberland to Ohio, designating what proportion of the same was expended in the surveying and location, construction and repairs, of the road; also, what part of it was paid to superintendents and their assistants for miscellaneous and contingent purposes; and whether any part thereof is yet unaccounted for, remains due upon settlements, and have been carried to the surplus fund.

Later that day, the Committee of the Whole again took up the general appropriation bill. Representative Hardin's motion to strike out the appropriation of \$10,000 for continued location of the western extension of the Cumberland Road was the first order of business.

Representative Mark Alexander of Virginia, an attorney who first won election to the House in 1818, began the discussion by observing that the motion "raised a question of considerable importance to the nation, and should not be slightly passed over":

He confessed the surprise which he felt at finding in this bill a clause so obnoxious, when the gentleman from Kentucky (Mr. Hardin) rose in his place with a view to strike it out. However much disposed he was to grant the necessary appropriations for the support of Government, he could never sanction it with this provision, believing, as he did, that it was repugnant to the principles of the Constitution.

The provision had no more place in the bill than the Trimble Amendment for repair of the road. He agreed with his Virginia colleague, Representative Smyth, who had "so ably combatted" the amendment:

To say that the power to appropriate was equal to the power to raise money, was, to his mind, assuming the whole ground, and more alarming to the friends of State rights than any doctrine which the wildest politician could conceive. And such was the growing opinion of the day, against which he must claim the right of entering his most solemn protest. It was at war with the principles of '98 and '99, which produced a new order of things in this Government; it was at war with the best interests of the States, whose friends distinctly saw, under this broad construction of "common defence and general welfare," a total annihilation of their rights, and consolidation of Government with the enormous powers of unlimited control over the sword and the purse. Such is now the language of this new, or rather old doctrine, which was once repudiated, but has again been brought into review, and adopted as the only sound construction to give efficacy and coherence to every part of the Constitution.

He did not oppose appropriations that were "necessary to an incidental power in the execution of a principle one," as long as *necessary* was understood "in its common, actual signification, and not as convenience or circumstance may suit." He did not agree that when money was raised, it could be used for other objects because they benefited the people, "and no question as to power can ever afterwards arise between them and the Government":

The force of this reasoning, I confess, is beyond my comprehension, and, with great deference, I must be permitted to say, appears to be of the extraordinary character. If any greater latitude were to be claimed or desired, by the friends of power, I am at a loss to conceive where it could be more completely and satisfactorily sought for; and, for the proper use or application of money thus rightfully raised, we are told, there is no other responsibility than that which a representative owes to his constituents, in ordinary cases of legislation, for an abuse of his trust. On me there rests a much higher and a greater responsibility – that which I owe to the Constitution of my country.

He referred to the 10<sup>th</sup> Amendment to the Constitution. During the State ratification conventions, leaders such as Patrick Henry in Virginia raised “their voices to warn the people of the danger which they distinctly foresaw impended from the constructive powers that might be given to this clause, of ‘common defence and general welfare’”:

In vain did they declare to the world that but few rights were left to the States, those of their police, their poor, their schools, their roads and their rivers. And so conscious were they of the instability of all human institutions and human opinions – so devoted to the rights of the States, and the rights of the people, that they never ceased in their exertions till they saw it expressly declared in the grant, that “all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, were reserved to the States respectively, or to the people.”

And what do we now see? That even these few, secure as they might have been supposed, are about to go overboard, at one “fell swoop,” from the strained and latitudinous construction given to this clause of the Constitution. This, Mr. Chairman, is one side of the picture, which, however I am disposed to respect, I must respect the more the other, its counterpart, that I now hold up to your view. This was drawn by Mr. Madison, in 1799 [sic], at a time when the lineaments of party, and the powers of the two governments, were distinctly marked out – a period at which the mind naturally shrinks back upon itself with horror at the monstrosity of the alien and sedition laws, long ago condemned to infamy and shame, by the universal execrations of mankind; and no one now dares avow himself their advocate. It was this report that gave a republican character to the State which I in part represent, and Kentucky was then among the foremost to proclaim its truth – it was acknowledged by the nation, and a revolution succeeded in the history of this great Republic. It has been the manual of my earliest political life, and, I trust, will remain with me till the day of my death. As yet, I have not been convinced of its error, either from argument, experience, or from any other cause.

After quoting and discussing the Madison resolutions, Representative Alexander turned to Representative McLane’s comment that the \$10,000 was only to locate the Cumberland Road west of Wheeling, not to make it. Representative Alexander did not see the distinction:

It seems to him, that the power to enter on the lands, without the consent of the States, for the purpose of designating and laying out a road, was no less than a power to construct and do every thing in relation to that road; and he believed the gentleman himself, in his own view, did not see any marked difference between them. He would not say that non-resistance implied assent, or that consent could give a right in this case. But one thing he would say, that consent can confer no essential right upon this Government which is not recognized by the Constitution; and it was against the indiscriminate application of the money of the nation in this way, that he felt himself bound to protest.

After all, the only purpose of laying out the road was to eventually build it. Did the members “flatter themselves” to think that after laying out the road, “the business is to end here?” They would instead be called on for appropriations to “complete a work which had been emphatically styled a national one.” He recalled how Representative Clay had introduced the extension of the road west of Wheeling, saying it was “not intended to make a road, but to give a line of direction to the Cumberland road from Wheeling to the Mississippi, so as to prevent intruders and others from settling upon the land, which might throw difficulties in the way of an object that might, at some day, be deemed worthy of a national concern.” The bill, Representative Clay promised, contained nothing that committed the general government to build the road.

Representative Alexander would not be swayed by “the seductive influence of such arguments.” He believed then, as now, “that it was but a continuation of this great scheme of internal improvement – a hold upon the Executive to prove an inconsistency in rejecting one measure, while he approved the other – a precedent in fact, already claimed, to establish the power which has been assumed over a general subject.”

In conclusion, Representative Alexander “was not disposed to occupy the time of the House, which he knew to be precious, but he thought the question thus pending was entitled to much higher consideration than some were disposed to give it, and it was due to the feelings he entertained to have said this much.”

With that, the Committee of the Whole voted on Representative Hardin’s motion to strike out the \$10,000 appropriation for laying out the Cumberland Road west of Wheeling. The question “was determined in the affirmative – ayes 85.”

On February 19, the Committee of the Whole took up the Senate bill that appropriated \$25,000 for repair and preservation of the Cumberland Road. The first question concerned Representative Buchanan’s amendment, introduced when the bill was last considered. The amendment called for the United States to turn over the Cumberland Road to Maryland, Pennsylvania, and Virginia on December 1, provided that the “Legislature thereof shall, within six months thereafter, accept the same, upon the following express conditions, that is to say: they shall forever keep such portion of the said road in good repair, and shall collect no more toll thereon than will be necessary for that purpose, and to defray the expense of

collection; and shall, also, annually, cause to be published, an account of the tolls received, and the manner in which they have been expended.”

Following “an animated and pretty able debate,” not reported in the *Annals*, the Committee of the Whole “decided in the negative, 66 to 44, on one part of it, and 68 to 34 on the remainder of it.”

The Committee of the Whole dissolved after reporting the bill to the House without amendment. After a motion to adjourn the House was rejected, Representative Buchanan insisted that the House consider his amendment:

. . . and the question upon it was, at his request, ordered to be taken by yeas and nays . . . . And then another motion to adjourn was made and carried, 75 to 61; and the House adjourned half an hour before sunset.

The vote on the Buchanan Amendment would have to be postponed.

On February 20, Secretary Crawford responded to a House resolution, introduced by Representative Jackson of Virginia on February 17, seeking an accounting of money expended for the Cumberland Road, or remaining to be paid:

- Amount appropriated: \$1,718,846.35
- Surveying and locating: \$29,144.25
- Constructing: \$1,544,882.70
- Repairs: \$16,160.19
- Salaries to superintendent and assistants: \$53,034.61
- Miscellaneous and contingent: \$2,457.45
- Total amount accounted for: \$1,645,679.20

To which add:

- Amount carried to the surplus fund: \$66,810.63
- Advances unaccounted for: \$5,314.85
- Due the United States on settlement: \$1,041.67

The report included a note:

NOTE. – On the last settlement of David Shriver’s account, there appears against him a balance of \$22,013.07, for which he will ultimately be entitled to credit when the accounts of the individuals to whom it was paid (by said Shriver) shall be settled, or transferred to the books of the Treasury. This amount is included in the above statement of expenditures for the objects for which it was advanced. [ASP, Doc. No. 542]

The House resumed consideration of the Senate bill on February 21, with the question pending on the Buchanan Amendment. Representative Samuel D. Ingham of

Pennsylvania introduced a further amendment to Representative Buchanan's proposal "to obviate one of the main objections which had been taken to the principle of the amendment." The amendment to the Buchanan Amendment provided that if any of the States "shall neglect or refuse to comply with the same," the Congress would have the right "to resume any right which the United States may now possess to such part of the said road as shall be within any of the said States so neglecting or refusing to adopt such rules and regulations for the preservation and repair of the same, as though this act had never been passed." Representative Buchanan accepted the Ingham amendment.

The House voted first on the Buchanan amendment, which was turned down, 65 to 66, "and Mr. Ingham's proposition fell with it."

Representative Thomas Whipple, Jr., of New Hampshire offered an amendment to the Senate bill to specify that the \$25,000 would come from the two-percent fund:

*Provided*, The sum hereby appropriated shall be charged to, and repaid from, the fund pledged for the construction of said road.

He explained that he introduced the amendment "on the ground that it would be proper to continue to this road that distinctive character, by which it had been separated from objects of internal improvement generally."

Several Representatives opposed the amendment "on the ground that, as the fund in question was already in debt to the Treasury ten times as much as it would ever be able to pay, and of course worse than exhausted, to insert this amendment would be in fact the rejection of the main object of the bill."

Representative Walter Forward of Pennsylvania "took also a broader ground":

. . . that he wished this bill to appear in terms what [sic] he contended it in fact is, an exercise of the general power of internal improvement; maintaining that the end and object of any appropriation of public money is the only test of the constitutionality of that appropriation, and that to speak of a Constitutional appropriation for an unconstitutional object was an absurdity.

Representative Whipple assured his colleagues that he was not trying to defeat the bill, but only "to make it conform to preceding legislation on the subject." The House voted the amendment down, without a vote total in the *Annals*.

Representative Farrelly asked what the basis was for the amount of \$25,000. "Mr. Trimble informed him that it was predicated on estimates by intelligent men."

New York Representative Colden rose, not to discuss the bill. He had no doubt it would pass, although he had some doubts about the power of Congress to execute internal improvements. His purpose was to substitute the word "public" for the word "National" in the enacting clause of the bill. He said the term was "equally descriptive of the road,

and not liable to the objection which he perceived to the other term.” The House agreed to the amendment, 71 to 63.

Representative Jonathan Jennings of Indiana introduced another amendment, but it concerned the General Appropriation Act, 1819, and to reserving the two-percent fund collected for land sales in Illinois and Indiana to those States, not to be diverted “unjustly and illegally” to the Cumberland-to-Wheeling section. Representatives Mallery of Vermont and John Rhea of Tennessee objected to introducing the matter as an amendment to this bill. The House, as Representative Mallery pointed out, “was not prepared at this time” to discuss the matter, and it “would but serve to embarrass this bill.”

Representative Cook of Illinois “concurred most heartily” with Representative Jennings:

He believed the provision of the law of 1819 to have been a glaring outrage on the rights of Indiana and Illinois. Lest a decision negating this proposition, as an amendment to this bill, should be used as an argument against the rights of these States hereafter, when separately and directly before the House, Mr. C suggested to the gentleman from Indiana the propriety of withdrawing his amendment.

Representative Jennings did so.

The House then voted to read the bill a third time the following day, 89 to 66.

On February 22, the bill was read a third time and passed, 75 to 45, without discussion. The House also voted to approve an amendment substituting “public” for “National” in the title of the bill, 63 to 56, to conform with the change approved the day before by the Colden Amendment to the body of the bill.

Later that day, the Senate agreed, “without objection,” to accept the amendment. The bill went to President Monroe.

On February 28, 1823, President Monroe approved “An Act appropriating money for the purpose of repairing the public road from Cumberland to Wheeling.” It appropriated \$25,000 for repairing and improving the road, with the funds coming from the general Treasury, not the two-percent fund. Section 2 read:

*And be it further enacted*, That, for the faithful and speedy accomplishment of this object, the President, with the advice of the Senate, shall appoint some fit person as superintendent of the said road, whose duty it shall be, with all practicable despatch, to contract for, and personally superintend, the execution of the repairs and improvements which shall be deemed necessary on the said road, as well as to receive, disburse, and faithfully account with the Treasury for, the sums of money which may be received by him in virtue of this act.”

In addition, before assuming his duties, the superintendent shall execute a bond to the United States, with security, “to be approved by the Secretary of the Treasury, conditioned for the faithful discharge of his duties.” He would serve at “the pleasure of the President,” at a per diem of \$3 a day when he is employed at this work.

Sky wrote:

In light of this legislation, it appears that Monroe, on the basis of the long legal memorandum that he had provided to Congress, felt justified in signing legislation appropriating federal funds for the purpose of repairing the Cumberland Road. A clear precedent had thus been set for the appropriation of federal funds for purposes not strictly specified in the enumerated powers in Article I, section 8 of the Constitution. In the course of providing for the repair of the National Road, a significant obstacle had been overcome to the use of such funds for broad, “general welfare” purposes.

### **The Canal Alternative**

At the start of the 18<sup>th</sup> Congress, President Monroe cited the Cumberland Road in his seventh message to Congress on December 2, 1823. He assured Congress:

The sum which was appropriated at the last session, for the repair of the Cumberland road, has been applied with good effect to that object. A final report has not been received from the agent who was appointed to superintend it. As soon as it is received, it shall be communicated to Congress.

He acknowledged that Congress was moving beyond roads. Secretary Gallatin’s 1808 report had covered canals as well as roads, a reflection of the understanding that travel by water was easier than by road. The Cumberland Road, for example, was a portage between the Potomac and Ohio Rivers at a time when a canal linking the rivers was impractical in the absence of sufficient funds and civil engineering expertise. The relevant Senate committee was called the Committee on Roads and Canals.

The Erie Canal changed the perception of the prospects for canals as practical transportation arteries. After years of battling for funds, officials began construction of the canal in 1817. The first segment of the Erie Canal had opened in 1819 (Rome to Utica), and it would not be completed until 1825, but its early success convinced many people that America had the civil engineering skill and potential for raising funds to build more such facilities to speed transportation by overcoming the many inconveniences of travel on roads. As a result, even before the Erie Canal was completed, officials in Congress, the general government, and around the country began to imagine the value of just such a canal connecting other bodies of water in their own States.

President Monroe, after his brief discussion of the Cumberland Road, turned to the subject of canals:

Many patriotic and enlightened citizens, who have made the subject an object of particular investigation, have suggested an improvement of greater importance. They are of the opinion that the waters of the Chesapeake and Ohio may be connected together, by one continued canal, and at an expense far short of the value and importance of the object to be obtained. If this could be accomplished, it is impossible to calculate the beneficial consequences which would result from it. A great portion of the produce of the very fertile country through which it will pass, would find a market through that channel. Troops might be moved with great facility in war, with cannon, and every kind of munition, and in either direction. Connecting the Atlantic with the Western country, in a line passing through the Seat of the National Government, it would contribute essentially to strengthen the bond of union itself. Believing, as I do, that Congress have the right to appropriate money for such a national object, (the jurisdiction remaining to the States through which the canal would pass,) I submit it to your consideration whether it may not be advisable to authorize, by an adequate appropriation, the employment of a suitable number of officers of the corps of engineers, to examine the unexplored ground, during the next season, and to report their opinion thereon. It will likewise be proper to extend their examination to the several routes through which the waters of the Ohio may be connected, by canals, with those of Lake Erie.

Then he turned to a suggestion for repair and maintenance of the Cumberland Road:

As the Cumberland road will require annual repairs, and Congress have not thought it expedient to recommend to the States an amendment to the Constitution, for the purpose of vesting in the United States a power to adopt and execute a system of internal improvement, it is also submitted to your consideration, whether it may not be expedient to authorize the Executive to enter into an arrangement with the several States through which the road passes, to establish tolls, each within its limits, for the purpose of defraying the expense of future repairs, and of providing, also, be suitable penalties, for its protection against future injuries.

President Monroe understood the value of a national transportation network, despite his concerns about compliance with the Constitution.

### **Amending the Constitution**

As Presidents Jefferson, Madison, and Monroe understood, a constitutional amendment on internal improvements would settle, once and for all, whether Congress had the authority to fund such projects.

Senator Martin Van Buren agreed. After joining the Senate on March 4, 1821, he had voted for the toll-gate bill in May 1822. However, as he explained in his autobiography, he soon changed his view:

Mr. Monroe's veto, which would have shed enduring honor on his name, if he had suffered it to stand alone, brought me to instant and thorough examination and reflection. It did not take me long to satisfy myself that I had acted under a grave

mistake and I embraced an early opportunity to acknowledge my error on the floor of the Senate. Convinced also of the inexpediency as well as unconstitutionality of the construction of works of internal improvement under the direct or indirect authority of the Federal Government, so long as the Constitution remained as it was I became earnestly solicitous not only to arrest the course of legislation on the subject, which was then making fearful progress, but to devise some way by which it could be placed on a better and a safer footing. My name will be found recorded against all the Bills which the General voted for [Senator Andrew Jackson, Van Buren's future ally] and I believe against every similar proposition subsequent to the act to erect toll-gates on the Cumberland Road.

I have now carefully examined the Journals of Congress and reviewed my official acts to the close of my public life, and can, I think, safely challenge a comparison with the strictest of the strict-construction sect in regard to a faithful adherence to the principles of that school, with the single exception of which I have spoken.

On January 22, 1824, he introduced a resolution to amend the Constitution consistent with President Monroe's stated preference:

*"Resolved, &c., That the following amendment of the Constitution be proposed to the Legislature of the several States:*

*"Congress shall have the power to make roads and canals; but all money appropriated for this purpose, shall be apportioned among the several States according to the last enumeration of their respective numbers, and applied to the making and repairing of roads and canals within the several States, as Congress may direct; but any State may consent to the appropriation by Congress of its quota of such appropriation in the making or repairing of roads and canals, without its own limits; no such road or canal shall, however, be made within any State, without the consent of the Legislature thereof, and all such money shall be so expended under their direction."*

He said he usually opposed changing the form of government, but "would make no apology for bringing this matter before the Senate, in so imposing a form as that of an amendment to the Constitution." He did so only "because he was entirely convinced that no one could dispassionately consider the present state of the question, to which his resolution relates, without feeling the imperious necessity of some Constitutional provision on the subject."

At this time, he told his Senate colleagues, he would offer only a few remarks on the subject, leaving debate for a later date. He did not have to explain the importance of the issue. "Suffice it to say, that, in its scope, it embraces the funds of the nation to an unlimited extent, and in its result must affect, as far as the agency of the Federal Government was concerned, the future internal improvements of a great and flourishing country."

The key question was whether the Constitution vested the power to make roads and canals in the Federal Government. This question had been a subject of much debate in Congress and in the States, with the issue unresolved. As for Senator Van Buren, he thought not:

Efforts have at various times been made in Congress to exercise the power in question. They have met sometimes with more, and sometimes with less favor. Bills, containing the assertion, and directing the exercise of this power, have passed the two Houses, and been returned, with objections, by two successive Presidents, and failed for want of the Constitutional majority.

During the 30 years of the general government's existence, the subject had been debated, but "no law clearly embracing the power has ever yet been passed. There is, therefore, but little reason to hope that, without some Constitutional provision, the question will ever be settled."

If the government did not have the power, Senator Van Buren "thought that, under suitable restrictions, they ought to have it." There would, of course, be debate over which restrictions were appropriate:

But, as to the abstract proposition, that as much of the funds of the nation as could be raised, without oppression, and as are not necessary to the discharge of existing and indispensable demands upon the Government, should be expended upon internal improvements, under restrictions regarding the sovereignty and securing the equal interest of the States, he presumed there would be little difference of opinion.

He could not help but think that those who thought Congress had the power already would support an amendment confirming it. At the same time, they must admit "it is far from being a clear, and certainly not a settled matter, and in view of the danger always attending the exercise of a doubtful right by the Federal Government against the persevering opposition of the several States, they would decide whether, instead of contesting this matter as it has been done for so many years, it would not be more for the interest of the nation, as well as the credit of the Government, to place this matter on well defined ground."

At the appropriate time, he said, he would outline the reasons for an amendment:

For the present time, he would simply add that, independent of the collisions of State interests, which this power is more likely than any other to produce, the exercise of it in the present state of the Constitution, and with an Executive whose reading of it should be different from that of the present, and the two who last preceded him, could not fail to be grossly unequal among the States; because it is well known that there were some States who have invariably, and who will, as long as they prefer the inviolability of the Constitution to their local interest, continue to oppose the exercise of this power with them.

The Senate, as Senator Van Buren intended, agreed to consider the resolution at a later date.

On December 20, 1825, the time came for discussion of his idea. By then, a new President, John Quincy Adams, had taken office, with a decidedly pro-internal improvements viewpoint (to be discussed later). Meanwhile, Senator Van Buren had revised his measure into two resolutions:

*Resolved*, That Congress does not possess the power to make Roads and Canals within the respective States.

*Resolved*, That a select committee be appointed, with instructions to prepare and report a Joint Resolution, for an amendment to the Constitution, prescribing and defining the power Congress shall have over the subject of Internal Improvements, and subjecting the same to such restrictions as shall effectually protect the sovereignty of the respective States, and secure to them a just distribution of the benefits resulting from all appropriations made for that purpose.

He explained why he had offered a resolution to develop an amendment instead of the amendment he had previously introduced:

Upon the suggestion of gentlemen who feel an interest in the subject, and think the principal object can, in that way, be better effected, he had consented so far to change the course originally contemplated, by substituting resolutions expressive of the sense of the Senate on the Constitution, as it now is, and proposing the appointment of a select committee to report upon the subject, under such instruction as the Senate may think proper to give.

He did not call for immediate consideration, but did earnestly implore his colleagues to consider it as soon as possible, “to the end that, when it was taken up, it might be carried to a speedy decision, and not exposed to those unprofitable delays and postponements which had heretofore attended measures of a similar character, and ultimately prevented an expression of the sense of the Senate on their merits”:

He deceived himself, if there was any matter in which, at this moment, their constituents felt a more intense interest, than the question of the *rightful* and *probable* agency of the General Government in the great work of Internal Improvement. Whilst, in the States, measures of that description had been harmonious in their progress, and, as far as the means of the States would admit of, successful in their results, the condition of things here had been of a very different character.

From the first agitation of the subject, the constitutional power to Congress to legislate upon the subject had been a source of unbroken, and, frequently, angry and unpleasant controversy. The time, he said, had never yet been, when all the branches of the Legislative Department were of the same opinion upon the question. Even those who united in the sentiment as to the existence of the

power, differed in almost every thing else in regard to it. Of its particular source in the Constitution, its extent and attributes, very different views were entertained by its friends. There had not been anything in the experience of the past, nor was there any thing in the prospect of the future, on which a reasonable hope could be founded, that this great subject could ever be satisfactorily adjusted by any means short of an appeal to the States.

He saw no reason for either side in the argument to give up their position. If he was right, “he respectfully submitted it as a matter of imperious duty, on the part of Congress, to make a determined effort to have the question settled in the only way which can be final – an amendment of the Constitution, prescribing and defining what Congress may, and what they shall not do, with the restrictions under which what is allowed to them shall be done.” To do otherwise would undermine the people’s faith in the actions of Congress, meaning that “such measures as may be undertaken upon the subject must be constantly exposed to peril from the fluctuations of the opinion of successive Legislatures.”

Some of the country’s greatest leaders had recommended an amendment. “As early as 1808, the propriety of an appeal to the States upon the point in question, had been suggested by Mr. Jefferson, in his last message to Congress. The same course had been recommended by Mr. Madison, and the recommendation repeated by Mr. Monroe.”

President Adams had not suggested a constitutional amendment on the subject, but “the reasons why he had not done so were apparent, from the communications he has made to us. From those, it appeared that the President entertained opinions, as to the power of Congress, which removed all difficulties upon the subject”:

But Mr. V. B. said that, although that circumstance might possibly diminish, it certainly did not obviate the necessity of now acting upon the subject, as the Senate were now left to conjecture as to the fact, that there existed a discordance of opinion between the Executive and portions, at least – how large time would shew [sic] – of the other branches of the Legislative Department. Mr. V. B. said that, entertaining such views upon the subject, he had felt it his duty to bring the subject thus early before the Senate, and when the proper period for discussion arrived, would avail himself of their indulgence to assign his reasons for the course proposed.

In his autobiography, Van Buren suggested that his efforts to amend the Constitution “raised for the moment the drooping spirits of many sincere State-rights men”:

It soon, however, became evident that there was no reasonable hope for their success. It was obvious that the Virginia and Kentucky doctrines of *Ninety Eight* had been too successfully derided and contemned to leave, at that moment the slightest ground of confidence in the adoption of any such proposition. I therefore, after postponing its consideration from year to year in the hope of more favorable indications, suspended further efforts of that nature.

He added that “my failure was not my fault.” Moreover, after dropping the subject, he had “prepared, after much reflection and laborious examination a brief for the discussion of the subject”:

If the mad schemes of that day should ever be revived those who take a part in defeating them may perhaps find in these notes useful suggestions. They will at all events prove the deep interest that I took in the matter.

As Professor Larson explained, whatever the merits of the proposal, the opportunity for debate never arose. Much of the Senate’s time was taken up by debates on President Adams’s appointment of delegates to the international Panama Congress; Congress delayed approval for so long that the delegates did not have time to reach the event before it ended. (“On March 30, at the end of a rambling diatribe, John Randolph [of Virginia] became so personally abusive that Henry Clay called him out and tried to shoot him in a duel.” Randolph accused Secretary of State Clay of “crucifying the Constitution” and cheating at cards. In the duel by pistol, they both missed.)

Senator Van Buren’s motions, concerning an amendment to the Constitution that had little chance of adoption under the best of circumstances, never made it back to the Senate floor.

(Beginning with the second session of the 18<sup>th</sup> Congress (December 6, 1824 to March 3, 1825), *Gales & Seaton’s Register of Debates* in Congress replaced the *Annals*. Joseph Gales, Jr., and William W. Seaton had published the *Annals*, with Gales reporting from his seat next to the president of the Senate and Seaton covering the House from the Speaker’s side. The format remained similar, with summaries rather than stenographic accounts of debates.)

### **The General Survey Act of 1824 in the House**

In the wake of the Panic of 1819, many officials favored a higher tariff. Increasing the cost of imported goods, they reasoned, would promote an increase in domestic manufacturing, employment, and recovery. Reliance on foreign goods, Speaker Clay argued, undermined American independence.

Clay continued to promote internal improvements as one element of a plan for American economic sovereignty that he first referred to as the American System in 1820. Historian Stephen Minicucci described the concept:

For some time, Speaker Clay had been linking support for internal improvements with a protective tariff as the cornerstones both for a pro-development strategy of economic nationalism as well as for a political alliance between agricultural regions and emerging manufacturing interests. By 1824, these had been rhetorically linked in a cross-policy linkage that Clay called “the American System.” Fully articulated, the System also included a strong pro-Bank stance with opposition to the reduction of public land prices and a nonaggressive Indian policy, both of which were intended to support orderly development rooted in the

East. [Minicucci, Stephen, "Internal Improvements and the Union, 1790-1860," *Studies in American Political Development*, 18 (Fall 2004)]

In 1820, Clay managed to get his tariff bill through the House after a week-long debate, but the measure failed in the Senate. The divided Congress, with advocates of a strong and advocates of a weak central government undermining each other's solutions, managed to pass the legislation to extend the National Road. However, Congress could not agree on economic solutions.

Clay left Congress for 2 years to improve his personal finances, which had been damaged by the panic. He was elected to resume service in the House in March 1823, again becoming Speaker.

With the economy rebounding, Congress began in 1821 looking again at internal improvements, responding to appeals for roads, canals, military highways, and river and harbor improvements. Although the U.S. Army Corps of Engineers was prohibited from participating in civil works, Secretary of War Calhoun, in his report to the House on January 7, 1819, had proposed the use of army engineers for survey and construction of roads and canals, particularly in sparsely populated areas where the States could not provide the needed facilities for the national transportation network.

Professor Larson explained:

Bouyed by evidence of popular demand, the House Committee on Roads and Canals in 1822 ventured to report another forceful proposal for a national system. Reiterating Gallatin's claim, that certain projects could not be done by state or private enterprise, committee members listed five examples of urgent national projects: the Atlantic coastal waterway; a Washington-to-New Orleans road; canals around the falls of the Ohio and connecting that stream with Lake Erie and the Potomac; a waterway linking the Susquehannah with New York's Finger Lakes drainage; and canals linking the Tennessee with the Savannah, Alabama, and Tombigbee Rivers. The report culminated in a bill for a program of surveys to "lay the foundation of a well-digested and regular system," that would enable Congress "the better to decide on the propriety of engaging in these undertakings."

Under this idea, the U.S. Army's engineers, including cadets at West Point, could conduct the surveys and provide impartial recommendations to Congress:

The time was right to commence a system; the greatest burden of expense would be deferred until such time when the improvements themselves helped pay the debt; and the power of Congress to do so had been settled by precedent (if not by presidential blessing).

On January 2, 1822, Representative Hemphill of the Committee on Roads and Canals, submitted a report to the 17<sup>th</sup> Congress on needed internal improvements and a bill on conducting the necessary surveys, plans, and estimates to bring such a network into reality. The committee believed "it will not be controverted, that, after the formation of a good government, it is the next interest of a nation to adopt such a system of internal

policy as will enable people to enjoy, as soon as practicable, all the natural advantages belonging to the country in which they live.”

Transportation “necessarily forms a heavy charge on the fund of labor, and, in proportion to the reduction of labor, in this respect, will be the gain of a nation, as the part saved can be employed to advantage in other objects.” The size of the country “will always render the expense of transportation an object of great and national importance”:

From a well regulated system of internal commerce in the United States by the means of good roads and canals, the happiest consequences may be expected to flow . . . . It is admitted, by the ablest writers on political economy, that the most important branch of the commerce of any nation is that which is carried on between the inhabitants of the towns and those of the country; customers become acquainted with each other, and less risk is generally incurred.

The States were creating many transportation projects within their means and interests, but “others are of a character too extensive, their productiveness depending on improvement to be made in different States at great distances from each other.” Echoing a point made by Secretary Calhoun, the committee’s report continued:

Such objects are great and national, requiring one general head, and, consequently, the aid of the General Government is rendered indispensable, as well as regards the funds to be furnished as the facility of execution. Objects of such transcendent importance to the welfare and defence of the nation must be perfected by the General Government, or their perfection can scarcely ever be expected. Had we waited for the joint agency of States, more than an age would have passed before we should have seen a road constructed by the union of States, equal, in national design and costliness, to the road from Cumberland to Wheeling. Objects on the large scale of national benefit are creatures of the Union, the scope and views of State authority being local in their nature.

To initiate such a survey of national needs, Representative Hemphill introduced “An Act to procure the necessary surveys, plans, and estimates on the subject to Roads and Canals.” The bill authorized the President “to employ two skillful civil engineers, and such officers of the corps of engineers, or who may be detailed to do duty with that corps” to conduct the surveys. The bill left the amount to be appropriated blank, but was clear on what the survey would cover:

That the President of the United States is hereby authorized to cause the necessary surveys, plans, and estimates to be made for a national road from the city of Washington, to that of New Orleans, and for canals from the harbor of Boston to the South, along the Atlantic seacoast, and to connect the waters of the Ohio above those below the Falls at Louisville; Lake Erie with the Ohio River, and the tide-waters of the Potomac with the same stream at Cumberland; designating what parts may be made capable of sloop navigation, and for communications between the Susquehannah and the rivers Seneca and Genessee, which empty into Lake Ontario; and between the Tennessee and Savannah, and between the Tennessee,

Alabama, and Tombigbee rivers; and for such other routes for roads and canals as he may deem of national importance, in a commercial or military point of view. The surveys, plans, and estimates for each, when completed, to be laid before Congress. [Reports of Committees, First Session, Seventeenth Congress, Vol. 1, Doc. No. 8]

The 17<sup>th</sup> Congress did not adopt the bill.

President Monroe, in his seventh message to Congress on December 2, 1823, had said he thought it “advisable” to appropriate funds for the Corps of Engineers to conduct surveys. (In addition to recommending a survey for a Chesapeake and Ohio canal, he observed that, “It will likewise be proper to extend their examination to the several routes through which the waters of the Ohio may be connected by canals with those of Lake Erie.”)

With this evidence of presidential support, Representative Hemphill reintroduced his bill in 1824 but without reference to specific projects. On January 12, he moved to take up the revised bill for the surveying of roads and canals. He acknowledged that similar bills had been before the House without success, but their passage “had only been retarded in consequence of opinions entertained by the present Chief Magistrate and his predecessor, as to the Constitutional powers of Congress to carry into effect a system of internal improvements.”

He spoke of the value of internal improvements, including the history of canals in Great Britain, but did not want to elaborate on the subject:

It would be an easy task to go into some detail, but I consider it unnecessary, the subject is so well understood. There is no country, said Mr. H., capable of higher improvements than this, nor any society of people to whom such a measure would be of greater advantage, owing to the extent of our country, and the variety of its soil and climate.

Canals were preferable over roads, wherever they could be built, but he expressed “one principle” about them:

It is this, that canals may be highly advantageous to the nation, although not profitable to the proprietors of them.

After citing some examples, he continued:

Let this principle, said Mr. H., be applied to the different sections of the Union, where it is practicable to construct canals; and who can too highly appreciate, or calculate too largely upon the inevitable consequences!

Such objects are national, and do not fall within the sphere of State jurisdiction. A State, in making improvements, looks only to the prosperity of that particular State. But the object is national, when it transcends the boundaries of States, and embraces the interest of the whole Union, or large sections of it.

He illustrated his point by citing the many States bordering the Mississippi and Ohio Rivers. He asked, “what individual State can be expected to improve the navigation of these streams?”

After discussing canals, he turned to the general subject of internal improvements:

The expediency of adopting some system of internal improvements cannot be questioned; and, as to the mode and manner of its execution, it is not required, for the support of the present bill, to go into any discussion; for, whatever mode may be finally resorted to, there is one preparatory step to be taken, and that is, to procure the necessary information. This will be useful to the General Government, to the States, and to individuals. The present bill is merely of this character; it presents a measure that must precede the actual undertaking upon any enlarged scale.

He explained why the bill, unlike the bill he introduced in the previous Congress, did not specify which roads and canals would be surveyed:

The committee who reported the bill, said Mr. H., were under the impression that it would be more efficacious than otherwise, to leave the routes to be surveyed entirely to the discretion of the President, and that it would be no advantage to designate them in the bill. The President will unquestionably act, in the first instance, on the most prominent objects as a basis for the construction of roads and canals and the improvement of water courses, in order to benefit internal commerce among the States, and to facilitate and give security to the common defence of the nation.

He understood why the bill he had introduced in the previous Congress had been hurt by the impression that the President would veto it. “That impression is now entirely removed, not only by the acts of the President, during the last Summer, but by his Message.” Representative Hemphill particularly cited the President’s language about the value of the Chesapeake and Ohio Canal. “The present bill, said Mr. H., is nothing more than an enlargement of the views and objects contained in the Message of the President.”

Further, he believed the idea would have popular support. “I sincerely believe,” he said, “that the people are fully prepared for, and that the spirit of the nation would now justify, the expenditure of large sums on great national objects.” He suggested adding \$30,000 to the bill in the blank for the amount to be appropriated.

The House debated the Hemphill bill for what Professor Larson described as “three solid weeks of mind-numbing argument.” He provided a summary:

Heralding a new era, in which “the spirit of the nation” justified national action, Hemphill opened debate 12 January. Philip Barbour entered a brief defense of originalist states’ rights dogma, adding one new argument that probably revealed Virginia’s greatest fear: federal disbursements necessarily would fall disproportionately outside Virginia. But spending was always redistributive, scoffed Clay: otherwise “we should restore to each man’s pocket precisely what

was taken from it.” Hopelessly distracted at the moment by underground presidential politics, Clay delivered an uninspired speech too freely toying with Monroe’s arguments in his 1822 treatise and placing incautious weight on his own “philological” conviction that the power to “establish” post roads obviously meant power to build them. Representative Silas Wood rose again to denounce consolidation, and Vermont’s Rollin Mallary expanded on Wood’s fears, warning that the government would soon seize control of state roads, perhaps even the new Erie Canal. With New York on the verge of claiming through innovation the commerce of the interior, he wondered if Congress could resist demands from disappointed rivals to redistribute trade in the name of interstate “fairness.” Both sides agreed that, while the bill before them called only for surveys, the real intention of this measure was to launch a general system of national internal improvements.

For three solid weeks of mind-numbing debate the advocates of public works rang familiar changes on the sources of road-building power – the post office mandate, national defense, commercial regulation, the right of appropriation, and the “necessary and proper” and “general welfare” clauses. Opposing speakers (once again almost exclusively from Virginia) met them thrust-for-parry with dire warnings about the progress of consolidation and the “prostration of the States.” Pennsylvania’s Andrew Stewart gave a stirring review of the record of past public works (lighthouses, beacons, piers, post roads, and fortifications), the relative neglect of the West, the danger to the Union of centrifugal forces, and the urgent need for consolidation. “Defeat this bill,” he concluded, “and you give the death-blow to the best hopes and best interests of the nation.” Pass it (along with the tariff) and the Eighteenth Congress would “be hailed by future generations as having laid the foundation of a system of policy which would soon raise this nation to the high and brilliant destiny that awaits it.”

On the other side, “these visions of national grandeur” were the bane of State rights advocates. Representative William S. Archer of Virginia pointed out that the Constitution was drafted to limit congressional power; the “importance of the work” could not make it constitutional. Virginia’s Alexander Stevenson observed that roads and canals were inevitably local – and best constructed by the States with help from private enterprise. He warned that the funds for internal improvements would be distributed unequally among the States, posing a greater danger to union than uneven development by each State. As Professor Larson explained, Representative John Randolph of Virginia told his colleagues what was at least in part behind Virginia’s fears:

If Congress can act to improve interstate commerce, argued Randolph of Roanoke, can it not just as surely “prohibit, altogether the commerce between the States”? And take notice, “every man who has the misfortune . . . to be born a slaveholder,” that “if Congress possesses the power to do what is proposed in this bill . . . they may emancipate every slave in the United States – and with stronger color of reason than they can exercise the power now contended for.” Here, on the public record, was the warning that Macon had circulated privately for years, linking neo-Antifederalist principles to the defense of the peculiar institution.

Doubtless this fear of emancipation helped feed the development of southern sectionalism that flourished in the years just ahead; but Randolph and Macon were famous cranks, and in 1824 prominent slaveholders such as Clay and Calhoun still led the campaign of national internal improvements.

Finally, supporters prevailed on February 10, 1824, by a vote of 113 to 86, with \$30,000 appropriated to pay for the surveys.

Professor Larson summarized the vote:

Virginia was joined in its opposition by New York and the New England states, where much had been done already and little benefit was expected, and by ideological North Carolina; slave-dependent South Carolina and Georgia split their votes despite Randolph's lurid talk about emancipation, while the West, free and slave, cast not a vote against internal improvements. Granting Virginians their claim, that they only loved the Constitution, states' rights conviction accounted for probably less than half the negative votes, or less than a quarter of the whole. More telling, thirteen out of twenty-four state delegations embraced without a dissenting vote the promise of internal improvement – and presumably the vision of consolidation. Considering the exhaustive debates spread across the pages of the newspapers and the strength of the vote in the House, it would be hard (but . . . not impossible) to argue that the people in 1824 did not understand and apparently approve the public choice being made in their behalf.

### **The General Survey Act of 1824 in the Senate**

On February 11, the Senate received several bills that had passed the House, including the survey bill. They were read and passed on to a second reading. The survey bill was read a second time on February 12 and referred to the Committee on Roads and Canals. The committee reported it on March 11 to the Senate without amendment. The bill was taken up on March 23, but Senator Thomas Hart Benton of Missouri “proposed, by way of amendment to this bill, an entire new bill.” After the amendment was read, the subject was postponed for consideration at a later date.

When the Senate took up the act again on April 21, Senator Benton's new bill, offered as an amendment, was the question for consideration. His amendment specified the canals and roads to be surveyed:

For Canals.

1. A route to connect the inland tide waters along the Atlantic coast, from Maine to Florida.
2. A route to connect the Ohio and Potomac rivers.
3. A route to connect the Illinois River and Lake Michigan.
4. A route to connect the Tennessee river with the waters of the Mobile bay.
5. A route to connect the inland tide waters along the Gulf coast, from the Mississippi to the Atlantic Ocean.

## For Roads.

1. From Washington City, south, to Florida.
2. From Washington City, north, to Maine.
3. From Washington City, southwest, through Virginia and Tennessee.
4. From Washington City, northwest, in completion of the Cumberland road, to Missouri.
5. From New Orleans to Columbus, in Ohio.

He criticized the House bill as being too general in its requirements:

It places \$30,000 in the hands of the President, and leaves him at liberty to select such routes for roads and canals as he shall think proper. It contains no details, neither as to the construction of the roads, nor as to the depth and width of the canals. It contains no limitation upon the number of persons to be employed in the survey, nor upon the wages to be allowed them. It asks no consent from the States to the execution of the works proposed to be undertaken within their limits.

The amendment is specific. It places the same thirty thousand dollars in the hands of the President, but specifies the routes to which he shall apply it. It defines the extent and capacity of the intended works. It limits the number of surveyors to be employed, and fixes their compensation. It asks the consent of the States to the execution of the works.

He “did not consider the field to be open for debate on the constitutionality or general expediency of internal improvements.” The only debate was on the comparative merits of the House bill and his amendment. With that point in mind, he outlined his argument:

1. That it is better to adopt the specific than the general provisions.
2. That the routes specified are national.
3. That we have the funds to execute them.

Regarding the first point, he said it was wrong to give the President what was essentially “a legislative duty to perform”:

He has enough to do under the Constitution. He cannot quit the great concerns of the nation to superintend these subaltern affairs. They are devolved upon some subordinate officer, we know not whom, and the errors and mistakes of the unknown deputy, are sanctified by the adoption of his august superior.

The selections would “interest the local feelings of every part of the Union, and every section will claim its road or canal.” If they are disappointed, they will be discontented. After all, the President cannot satisfy everyone; neither can the Congress. It came down to dividing the funds for internal improvements:

How stands the question at this moment in the Senate? We have one proposition to divide the fund according to the population of the States; another to divide according to the rule of laying direct taxes; a third to divide according to the

superficial content of the States; and each State goes for that by which it would gain most. The amendment which I have submitted adopts a rule of division different from all these: it proposes to apply the fund nationally, to make roads and canals where the national interest requires, without regard to population, direct taxes, or the size of the States. The Congress can agree upon neither, and it throws the responsibility of division upon the President. What will be the result? Why, the President will order some routes to be surveyed, and when the surveys are brought in, and an appropriation is demanded, all the disappointed may stand together, attack his selection, and defeat it . . . .

The adoption of the amendment will prevent all these evils, will save the President from a labor to which he ought not to be subjected – from a responsibility to which he ought not to be exposed – from a legislative duty which does not belong to him – from an increase of patronage which may bring the members of the National Legislature, in crowds, to his feet.

He explained why the amendment asked for State consent. The point was not that one State's consent could give Congress a power it did not have. "It turns upon the question of trespass upon the soil and jurisdiction of a sovereign State":

The right of Congress to appropriate the money, is generally admitted. The great objection is to the right of the Federal Government to enter the limits of a sovereign State, and dig up its soil, cut down its trees, and trample upon its grass. This involves the idea of trespass upon the soil and the jurisdiction of the States; and that presents a question limited to the two parties concerned . . . .

It would be respectful towards them to ask their consent. It would conform to the opinion of some distinguished statesmen. [A footnote indicated he was referring to former Treasury Secretary Gallatin's report on roads and canals: "It is evident that the United States cannot, under the Constitution, open any road or canal, without the consent of the State through which it passes."] It would follow the principle of the act under which the Cumberland road was opened; an act which had the approbation of Mr. Jefferson, and which procured the assent of Virginia, Maryland, and Pennsylvania, to the construction of that great road within their respective limits.

It cannot be presumed that a State would refuse its consent in any case in which it would be beneficial to itself to grant it, or that the Congress would wish to open a road or a canal contrary to the will and the interest of the State through which it would pass. The request will not compromise any existing right. I can see no possible evil; on the contrary, great advantages from making the request.

Regarding the second point in the outline of his speech, Senator Benton described the national scope of each proposal.

The third point involved the availability of funds for the program. "It would have been idle to put the Senate upon an inquiry into the propriety of adopting this great system, if,

in the event of its adoption, we should have no money to carry it into effect.” After much thought, he had decided on two possible sources of revenue:

First, from the lapse of different appropriations now applicable to objects which would soon cease to require them. Under this head came the sums appropriated for paying Revolutionary pensioners, for completing the fortifications, and finishing the public buildings . . . . From the lapse of these three items of annual appropriations, the sum of two millions of dollars will soon be disengaged from their present objects, and application to such new purposes as the Congress may determine.

The second source from which the necessary funds may be derived is, from the increased revenue from the customs . . . . The present revenue is more than enough for the current expenses of the year; the annual increase must therefore be a surplus, applicable to new objects of expenditure. This, without the benefit of the new tariff; but, under the operation of the increased duties, it is admitted on all hands that the revenue must be increased upwards of two millions per annum.

The funds for all the projects would not be needed at one time. Senator Benton thought that an annual appropriation of \$2-3 million “would complete them all in some ten or fifteen years”:

We should then have all the grand divisions of the Republic united and bound together by great leading roads and canals, made at the national expense. The State governments might complete the system, by executing smaller works at their own expense. When completed, the whole would redound to the benefit of all parts of the country, and of every individual of the community. Roads and canals are objects of universal use and convenience. They belong to that class of benefits which it is the noblest ambition of the statesman to bestow upon his country . . . .

Our great Washington, in all the situations of his life, when a young man in the Colonial Legislature, when President, when again retired to private station, was a constant advocate for internal improvements. To us, who are mere legislators, whose peculiar duty it is to apply the public money, I can see no higher object of ambition than that of applying it in a way so universally advantageous to the whole body of the people.

Senator John Holmes of Maine said he opposed the House bill and the Benton Amendment, as well as Senator Benton’s assumption that constitutionality was not at issue. He had to “admire the frankness of the mover of the amendment”:

He shows you at once the extent of his plan; a plan as magnanimous as it is magnificent, and as extravagant, as impracticable. Still, I should have been better pleased, if the advocates of internal improvement would have selected the part of the Constitution that gives them the power. This, they have carefully and prudently avoided. Prudently, indeed, for should any one source be selected, my life for it, not one-fourth of either House would concur. Yet this subject presents this

singular inconsistency: that a power which must be derived from some one grant in the Constitution, can unite but a small minority as to the source from whence it is derived, but yet, will I fear, unite a majority in favor of its existence.

One tells us, that it is to be found in the grant to “regulate commerce;” another, from the consent of the States; a third, from the right to “erect needful buildings;” a fourth, from the military power; a fifth, from “common defence, and general welfare;” others, from other sources; and some, from all combined.

Some people had argued in support of implied or incidental powers – those that were necessary and proper to execute enumerated powers. “The position has been too willingly yielded, and once yielded, these powers may be claimed to an unlimited extent. Now, sir, I deny that any of these are necessary to the execution of any of the defined and enumerated powers in the Constitution.”

He would present two questions. “Is it clear, that, by the Constitution, you have the power to pass the bill? And if so, is it prudent at this time to exercise it?” He conceded that the bill and the Benton Amendment called only for a survey – “and this surely, cannot be unconstitutional. But is it intended to stop here?” If the assumption was that after the surveys were completed, the States would build the roads and canals, they surely would not thank Congress or the surveyors for telling them where to build them, something the States were better equipped to do:

No, sir, however disguised the bill may be, this is the entering wedge; the commencement of a grand scheme of internal improvement. And I call upon the advocates of this measure to point out to me the part of the Constitution which gives you this authority.

He went through and rejected the possibilities. Regarding the establishment of post roads, for example, he said, “I confess I could never perceive how a power to “establish” a road, could be deemed an authority to construct a canal.” As for the meaning of “establish,” he said, “we have nothing to do but to take language in its usual and ordinary sense”:

The word “establish,” as applied to this subject, was taken from the Articles of Confederation, in which a power was given to the United States “to establish and regulate post offices from one State to another, throughout the United States.” The word occurs twice in the preamble, and three times in the body of the Constitution. It is, in every instance, prescriptive or directory.

In each reference in the Constitution, he said, the word meant “to prescribe the rule by which it is to be administered”:

With these instances before us, and these are all, let us now apply the word to post roads, and it is plain, that the intent must have been, not to construct, but to prescribe or designate. Had the Constitution intended to have given us the power which is contended for, it would have used a word, a monosyllable of four letters only, and all doubt would have been removed. The word “make” could never have

been misunderstood. It is the ordinary statute word. The literal definition of establish is, to fix firmly, to settle; substitute this definition for the word itself, and read the clause, "Congress have power to fix and settle post roads," and no mortal would suspect that we had thereby the power to make them.

The ordinary meaning of the word, forbids the construction which is attempted. Were you to order your servant to "establish" a fire for you, he would stare at you with astonishment. Should you direct your tailor to "establish" for you a coat or pantaloons, surely he would not understand you, and be more likely to believe that you wished him to put them on, than to make them for you . . . .

And ever since the adoption of this Constitution, you have observed the same distinction. When you intend to designate only, as in the case of post roads, you "establish;" when you would construct, as in the Cumberland road, your language is "to lay out and make." Hence sir, the literal, ordinary, statute, and Constitution meaning, all combine to deny to this word any creative power.

The States, then, were to make the post roads that Congress could establish for the purposes of carrying the mail. The argument had been made, he said, that a State could obstruct or close a post road established by Congress:

A very reasonable supposition! Before the adoption of the Constitution, the people were united by strong ties, and one of the objects of that instrument was, "to form a more perfect union." They can never dispense with roads; they will and must have them where they have inhabitants, where they need them the most, and there your mail can be carried, and nowhere else was it intended it should go.

The framers of the Constitution were not trying to guard against "mere possible dangers":

Have you ever yet known the people opposing the establishment of a post route near them? The contest is always for it.

After going through each of the suggested sources of constitutionality, he continued:

Sir, gentlemen who would commence this mad project, are bound to show us "the ways and means." What are they? You have read of a man who began his house without funds – and how "those who passed by wagged their heads and said one to another, this man began to build, and was not able to finish." This will be our case.

Senator Holmes suggested that Senator Benton had undertaken to become the Minister of Finance to open the budget for his proposal. As for taking the money from the Revolutionary War pensioners, Senator Holmes recalled an old adage: "that those who wait for dead men's shoes will go barefoot." Not that he wished anything but a long life for the pensioners, but he suspected that as they died, "the fruit of this tree will be picked up quite as fast as it falls."

As for the completion of public buildings and fortifications, Senator Holmes was skeptical. Referring to public buildings in the capital city, he said, "if he calculates that

for fifty years we shall expend less than we do now in this city, he calculates without his host.” And when, he asked, would fortifications ever be finished?” According to the Department of War, “\$20,000,000 will not complete the works in contemplation”:

The honorable member forgot to remember that the increase of expenditure has far surpassed that of the income. In 1803, the public debt was about \$70,000,000, receipts \$14,000,000, and the expenses of Government between three and four millions. At this time the public debt is about \$90,000,000; the average income \$19,000,000, and the ordinary expenditures \$11,000,000; of the income is \$1,500,000, annual sale of public lands – a fund always diminishing. The Sinking Fund, as established in 1817, with proper economy, would by this time have reduced our public debt to forty instead of ninety millions.

Sir, for twenty years, the surplus revenue derived from the sources suggested by the honorable member, would not be sufficient to complete Goose Creek Canal. But, sir, I have already dwelt too long on this disgusting scheme and its disastrous results. For my constituents, I see nothing but taxes, taxes without any the least equivalent – I see that the Constitution is made to mean just what the interest of a majority shall dictate; that the rights of the States are nominal – and that this measure is to reduce them below the grade of petty corporations. And where can the encroachment be resisted? No where but in this Senate. For this purpose were we ordered to this post. The States expect us to do our duty. We should never surrender. If we fall in the conflict our country will consecrate our fame. Twice, within my experience, has this Senate stood firm, and refused to admit a State into the Union, shorn in the least of the political powers enjoyed by the rest; and that, too, against strong popular excitement. Once, at least, have we stood firm and fast against Executive power, and in spite of strong partialities.

He concluded:

I trust that we shall not yet give way, but stand to our duty like the rock in the ocean, which defies the storm.

After additional speeches on April 22, the Senate voted on striking out the House bill, but decided in the negative by a tie vote, 21 to 21. Before voting on the House bill, the Senate adjourned.

On April 23, the Senate turned to the unfinished consideration of the House bill. Senator Smith of Maryland proposed to amend the House bill by adding the proviso, “that nothing herein contained shall be taken to affirm or admit the power of Congress, on their own authority, to make roads and canals in any State of the Union.”

Delaware Senator Nicholas Van Dyke proposed to amend the Smith Amendment by inserting a requirement that a State must consent to each survey to be made within its limits. The Senate rejected the Van Dyke Amendment, 15 to 28.

Maine Senator Chandler suggested changing the word “admit” in the Smith motion to “deny,” so that it would read “that nothing herein contained shall be taken to affirm or

deny the power of Congress, on their own authority, to make roads and canals in any State of the Union.” After some discussion, the Senate rejected the suggestion, 10 to 36, and then rejected Senator Smith’s amendment, 21 to 25.

Senator Holmes proposed an amendment to the House bill:

*Provided*, and the faith of the United States is hereby pledged, that no money shall be expended for roads or canals, except it be among the several States, and in the same proportion as direct taxes are laid and assessed, under the provision of the Constitution.

The Senate rejected the amendment, 19 to 27.

The Senate then voted, 25 to 21, to order the bill, without amendment, to a third reading.

That reading took place on April 24. The Senate voted to pass the House bill, 24 to 18.

Professor Larson summarized the debate:

In the Senate, Thomas Hart Benton of Missouri tried to introduce a measure of control and political ownerships over the final design of the system by offering a substitute bill that specified exactly which projects merited national attention. John Holmes of Maine voiced the standard “Virginia” opposition. Richard M. Johnson of Kentucky dismissed Holmes’s worries: this bill *made* no roads but authorized surveys only – to which John Taylor of Carolina [sic, referring to Virginia’s John Taylor of Caroline] responded with appropriate reference to “foolish Trojans” and their wooden horse. Benton’s amendment failed on a tie, and eventually the Senate passed the House bill 25 to 21. Again, with virtually no states’ rights tradition to stand on, New York and New England lent their solid, interest-based support to the “principled” objections of Virginia and North Carolina. The Middle Atlantic states (except Delaware) favored the bill, as did the West (two senators dissenting, but not Andrew Jackson, who voted silently for it). As in the House, South Carolina split. So by April 1824, seven years after the Bonus Bill veto, internal improvers stood possessed once again the possible shell of a system of national public works.

President Monroe signed the General Survey Act on April 30, 1824.

### **Senator Andrew Jackson**

As Professor Larson noted, one of those voting yea was the new Senator from Tennessee, General Andrew Jackson. After Tennessee became the 16<sup>th</sup> State on June 1, 1796, Jackson had served in the House (1796-1797) and the Senate (1797-1798). He disliked his experience in the House so much that when his term ended, he vowed to retire from public life. His term in the Senate had been equally frustrating. He not only was the youngest member (30 years old), but a Republican in a Senate dominated by Federalists.

Since then, he had become the hero of the Battle of New Orleans (January 8, 1815) and battles in Florida against the Seminole Indians, with fame and popularity that made him a

possible candidate for President. His “Junto” of advisers had secured his election to the Senate in autumn 1823 as a way of contradicting General Jackson’s image as a violent, uneducated hothead, ever ready to fight for his honor with fist or gun. They anticipated that the Senate would be a forum to demonstrate that he could be a thoughtful statesman who would be equal to the challenge should he be elected, as the Junto hoped, President in 1824.

General Jackson arrived in the Senate on December 5, 1823, as a member of the 18<sup>th</sup> Congress. He was appointed chairman of the Committee on Military Affairs.

His friendly, steady appearance in Washington and his diligent work in the Senate confirmed the Junto’s expectation that official Washington would see the General as worthy of the office of President. In the Senate, internal improvement was one of the key issues for Senator Jackson to demonstrate his readiness for the presidency. After President Monroe vetoed the Cumberland Road toll-gates bill, General Jackson had praised the action. “My opinion has allways [sic] been that the Federal government did not possess that constitutional power – That it was retained to the States respectively, and with great wisdom.”

While this statement appealed to easterners who complained about paying for projects to benefit the West, his constituents in the West wanted internal improvements, as did some of the eastern States that were still recovering from the Panic of 1819. His vote for the General Survey Act seemed to contradict his earlier statement on the Monroe veto, but his allies explained that he had always believed that the general government had the power to fund national projects that had the consent of the States in which they would be located, just as President Monroe had said in the message accompanying his veto. [Heidler, David S. and Heidler, Jeanne T., *The Rise of Andrew Jackson: Myth, Manipulation, and the Making of Modern Politics*, Basic Books, 2018]

Although he had been chairman of the Military Affairs Committee, he spoke infrequently during debates, usually on military matters. One exception occurred on February 20, 1824, when the Senate was considering a House bill appropriating \$20,000 to build a road from Pensacola to St. Augustine, Florida, a distance of about 300 miles, and \$3,000 to survey other connecting routes in the territory. Because Florida was a territory, Congress could act on road proposals without the usual debate on constitutionality. (As noted earlier, Article IV of the Constitution gave Congress “the power to dispose of and make all needful rules and regulations” covering the territories.) Senator Jackson, who had led the U.S. Army during the Seminole War in the late 1810s and had been the Florida territory’s first governor (1821), told his colleagues:

Mr. Jackson said this road was of great importance, from two considerations – the first, as it related to the defence, and the second, in regard to the population of that part of the country. If gentlemen would recur to the map of that part of the Territory, they would perceive that it would be absolutely impossible to succor St. Augustine, except by water. The road could be made at a small expense, and would furnish the means of immediate defence. He thought the United States ought to keep an eye on that part of the country – it is now very weak and

defenceless. Without this road, people could not be induced so speedily to emigrate to that Territory, and its settlement would be retarded.

After brief discussion about the length of roads to be surveyed and the relatively small appropriation for a 300-mile road, Senator Jackson said:

Mr. Jackson did not doubt that the appropriation provided in this bill, with the labor of the military force stationed in that part of the country, would be adequate to the proposed objects – he said that, by this means, a topographical view of the country through which the roads were to run would be obtained; and the President would not apply more money to the purpose than should be found necessary.

Maine Senator Holmes said he could hardly believe that \$20,000, or \$50 or \$60 a mile, would be enough to build a 300-mile road. He wanted to know what the real cost would be. Senator John Elliott of Georgia understood Senator Holmes's doubt. In Maine, where "the roads must be rendered perfectly hard, so as to secure them from the operation of the frost, the expense would, undoubtedly, be much greater":

But, in the section where this road is to be located, all that is done is to fell the trees, and excavate ditches by the side of the road. There is no need of any great quantity of material. He believed that ten thousand dollars would be sufficient to fell the timber, and lay out the road. The most important difficulty is the swamps through which the road must pass; the timber is rolled into them, as it is cut down, and the mud is filled in from the ditches. These are our roads. They are not like those in the North, and hence they do not cost as much money.

Senator Jackson agreed:

Mr. Jackson said he had himself marched through a considerable part of that Territory, and was enabled to open roads at the rate of twenty miles a day. If an army was able to open a road at that rate, he believed that twenty thousand dollars would be a sufficient sum for this purpose. He had no doubt that it would be sufficient, unless bridges were to be made over the streams, which he believed was not intended.

The Senate passed the bill to a third reading, 18 to 8. The next day, February 23, the Senate approved the bill on third reading. President Monroe signed it on February 28, 1824.

Under the law, the road was to be built by the Department of the Army using troops in such manner as he thought proper. The road was to be "plainly and distinctly marked, and shall be of the width of twenty-five feet." According to a history of Florida roads, "the portion west of Tallahassee being constructed by Captain Daniel E. Burch of the Army Quartermaster Corps, and the eastern portion from St. Augustine to Tallahassee by Burch's father-in law, John Bellamy," a wealthy planter from South Carolina who had established a plantation in Florida. Bellamy won the contract to build the eastern portion

of the road for \$13,500. Using equipment and slaves from his plantation, Bellamy began work in December 1824 and completed the project in 1826. The road, sometimes called the Bellamy Road, was only 16 feet wide, not the 25 feet required by law. In addition, the contract called for tree stumps in the road to be cut low enough for wagons to pass over them, but some stumps did not meet that test. “Nevertheless, this eastern portion, with some improvements, remained in use until the 1850’s, when traffic started into Jacksonville instead of St. Augustine.” [Kendrick, Baynard, *Florida Trails to Turnpikes 1914-1964*, A University of Florida Press Book, 1964]

## **To Make Surveys**

To implement the surveys, President Monroe established the Board of Engineers for Internal Improvements. He appointed General Simon Bernard, Lieutenant Colonel Joseph G. Totten, and civil engineer John L. Sullivan to the board. General Bernard, a French engineer who had served under Napoleon, had come to the United States in 1816 to serve on the new Board of Engineers for Fortifications. Colonel Totten, the 10<sup>th</sup> person to graduate from West Point, had joined the U.S. Army Corps of Engineers in 1808 and also had served on the Fortifications Board. Sullivan, a Massachusetts native, was a civil engineer and inventor who had traveled to England and France to study canal-building techniques and was chief engineer in 1804 of the 27-mile Middlesex Canal from Boston harbor to the Merrimack River. (His inventions included a 20-horsepower steamboat in 1814 for towing loaded boats upstream in a canal.)

Professor Forest G. Hill, in his book on the Army Corps’ contribution to transportation, said, “It was evident that the most able and experienced engineer officers were being used to staff the newly created agency.” [Hill, Forest G., *Roads, Rails, & Waterways: The Army Engineers and Early Transportation*, University of Oklahoma Press, 1957]

On December 7, 1824, President Monroe’s final annual message to Congress summarized his actions under the General Survey Act of 1824. The board, he reported, had focused initial efforts on examining the route for canals between the Potomac and Ohio Rivers; the Ohio River and Lake Erie; the Delaware and Raritan Rivers; Barnstable and Buzzards Bay; and Boston Harbor and Narragansett Bay.

The survey of “the very important route” between the Potomac and Ohio Rivers could not be completed until the next season, but President Monroe was gratified to indicate that “there is good cause to believe that this great national object may be fully accomplished.” It would, in effect, replace the Cumberland Road – originally needed as a land portage between the two rivers – by providing an easier water passage than would be possible on the road.

He added:

It is contemplated to commence early in the next season the execution of the other branch of the act – that which relates to roads – and with the survey of a route from this city, through the Southern States, to New Orleans, the importance of which can not be too highly estimated. All the officers of both the corps of engineers [Engineers and Topographical Engineers] who could be spared from

other services have been employed in exploring and surveying the routes for canals. [To] digest a plan for both objects for the great purposes specified will require a thorough knowledge of every part of our Union and of the relation of each part to the others and of all to the seat of the General Government. For such a digest it will be necessary that the information be full, minute, and precise.

In view of the importance of the surveys of canal and road locations, President Monroe asked Congress to enlarge the Corps.

(President Monroe forwarded the board's report to Congress on February 14, 1825. As for the planned canal between the Potomac and Ohio Rivers, the board members "are decidedly of opinion that the communication is practicable.")

One of the documents submitted with the President's message was a letter from Secretary Calhoun, dated December 3, 1824, discussing activities in the Department of War. In appointing the internal improvements board, it "became necessary, in giving orders to the board, under the act, to determine what routes for roads and canals were of 'national importance,' in the views contemplated by the act; as such only as the President might deem to be of that description were authorized to be examined and surveyed." In making this distinction, officials had to consider the division of power among the general government and the States because projects of primary interest to individual States were excluded from the provisions of the Act. As important as these State projects were to the State and the general government, other improvements were of a more general character less intimately connected with State functions and, therefore, their execution:

In projecting the surveys in this view of the subject, the whole Union must be considered as one, and the attention directed, not to those roads and canals which may facilitate intercourse between parts of the same State, but to those which may bind all of the parts together, and the whole with the centre, thereby facilitating commerce and intercourse among the States, and enabling the Government to disseminate promptly, through the mail, information to every part, and to extend protection to the whole. By extending those principles, the line of communication by roads and canals, through the States, the General Government, instead of interfering with the State Governments within their proper spheres of action, will afford (particularly to those States situated in the interior) the only means of perfecting improvements of similar description, which properly belong to them.

Secretary Calhoun explained that the "first and most important [route] was conceived to be the route for a canal extending from the seat of Government, by the Potomac, to the Ohio river, and thence to Lake Erie." As the board was established, it was ordered to examine this route:

The examination of the route was completed in September; but the survey will not be finished till the next season. That part of it, however, which is most interesting, the section of the summit level of the Alleghany, including its eastern

slope, is completed, which, it is hoped, will enable to board to determine during the present winter, on the practicability of the project.

As illustrated by the Erie Canal, such projects can unite the country, in the same way the Cumberland Road to Wheeling “commenced under the administration of Mr. Jefferson, unites, but more imperfectly, the Western with the Atlantic States.”

(By the end of the decade, the board had considered several roads, including roads from Washington to Buffalo, Washington to the Cumberland Road, and Baltimore to Philadelphia. However, the board’s surveys were predominately for canals or, late in the decade, railways. During the remaining life of the board, the engineers increasingly considered “road” to include railroads. The Corps’ Topographical Bureau took over the board’s work in 1831.

(According to Professor Hill, “The first investigation involving railroads took place in 1826 to determine the practicality of uniting the Kanawha with the James and Roanoke rivers by canals or railways or both.” He added, “It has been noted that opposition to government surveying for railroads was instrumental in undermining the Survey Act.” The board was dissolved in 1831.)

### **President Monroe’s Legacy**

During eight years in office, President Monroe’s views on internal improvements had matured. His veto of the toll-gates bill reflected his original views, but his accompanying memorandum was an attempt to find a way, in the absence of a constitutional amendment, to justify appropriations for internal improvements.

Congress, with his memorandum in mind, was able to pass additional bills that he signed for repair and extension of the Cumberland Road. On President Monroe’s last full day in office, March 3, 1825, he signed several internal improvements bills. One appropriated \$150,000 for the Cumberland Road. Most of the funds, \$140,000, was for the opening and making of a road from Canton, Ohio, opposite Wheeling, to Zanesville. The remaining \$10,000 was appropriated for completion of surveys of the road, as directed by the Act of May 15, 1820, for extension to the permanent seat of Missouri. The funds were to come from the general Treasury, to be replaced from the two-percent fund authorized by the Enabling Acts for roads to the four States.

President Monroe also signed “An Act confirming the act of the legislature of Virginia entitled ‘An Act incorporating the Chesapeake and Ohio Canal Company’ and ‘An act of the state of Maryland, confirming the same.’” The Act ratified the two State laws “so far as may be necessary for the purpose of enabling any company that may hereafter be formed by the authority of said act of incorporation, to carry into effect the provisions thereof, in the District of Columbia, within the exclusive jurisdiction of the United States, and no further.” Either State could apply to the President of the United States for the right to extend its route into the national capital.

Young, in his constitutional history of the Cumberland Road, summarized the legacy of the Monroe Administration:

During the two administrations of Monroe a great constitutional battle had been waged. Using the doctrine of the implied powers, Congress asserted its authority (1) to enter upon an extensive system of internal improvements; (2) to exercise jurisdiction over the Cumberland Road. Monroe's policy, as outlined in his veto message of May 4, 1822, denied both propositions. He suggested (1) an amendment to the Constitution which should grant power over internal-improvements; (2) the *appropriation* by Congress for internal-improvements of a national character under the authority of the "general welfare" clause of the Constitution.

As a direct result of Monroe's policy, Congress (1) passed the first river and harbor bill; (2) appropriated directly for the repair of the Cumberland Road; (3) created the Board of Engineers to determine on internal-improvements of a national character; (4) and extended the Cumberland Road west of the Ohio River. Congress did not provide for an internal-improvement amendment, and was not ready to yield on the question of jurisdiction over the road without another struggle when [James Quincy Adams] came to the presidency.

Sky pointed out that because of President Monroe's acceptance of the general welfare justification, "the National Road and its need for extension and repair provided the occasion for the establishment of a precedent that has played such an important role in the history of the country":

In the absence of the constitutional amendment that both he and Madison had sought, Monroe proposed a compromise constitutional theory that would sustain a federal role in funding the road at least for a time: Congress could appropriate funds for its construction but it could not assume jurisdiction over the road. On this basis, the road became a sustainable national investment for the better part of the next two decades and until it reached central Illinois. However, in the long run, it would become unsustainable for a combination of constitutional and fiscal reasons.

### **A New President, a New Approach**

The presidential election of 1824 was one of the most controversial in the country's history. The four candidates were Secretary of State John Quincy Adams, son of the country's second President; Speaker of the House Clay; former General and Senator Andrew Jackson, and former Secretary Crawford. Jackson won the popular vote, with Adams in second, and more votes in the electoral college, 99, than Adams, 84, but not the 131 needed to win the election. As provided for in the Constitution, the House of Representatives would have to decide the winner.

Crawford, a former Senator, Minister to France, and Secretary of War and the Treasury, had been a viable candidate, with strong support from former Presidents Jefferson and Madison as well as active backing from Senator Van Buren. However, Crawford suffered a debilitating stroke in 1823 after a doctor applied an incorrect dosage of digitalis for a minor illness. The stroke left him an invalid who could barely talk, yet alone hold a government office.

Nevertheless, the close election gave Crawford's supporters hope that if neither Jackson nor Adams could secure sufficient votes in the House, Crawford might be seen as a compromise candidate. His running mate, Senator Nathaniel Macon of North Carolina, would be able to take over if Secretary Crawford had not recovered sufficiently. Senator Macon's credentials included serving in the U.S. House of Representatives (1791-1815), and as the fifth Speaker of the House (1801-1807). At the time of the election, he had been serving in the United States Senate since December 5, 1815.

The House decided the election on February 9, 1825. Despite the fact that Jackson had won more popular and electoral votes than Adams, the House selected Adams, with South Carolina's John C. Calhoun as Vice President. When Adams then selected Clay to be Secretary of State, Jackson's supporters believed that Speaker Clay had swung the election to Adams in exchange for a promise that Clay would become the new Secretary. The Jackson supporters quickly dubbed this arrangement a "corrupt bargain," with Secretary of State being the position most likely to lead to Clay's own presidency. Although no evidence of such a bargain has been found, President Adams was never able to silence the critics during his single term, which was undermined by the Jacksonian opposition.

With the election determined and John Quincy Adams sworn in as President on March 4, 1825, Senator Jackson resigned from the Senate on October 14, 1825, and returned to Tennessee. Although he had accomplished the goal of making a good impression, he had not enjoyed his time in the Senate, which he found tedious.

While serving in the Senate, John Quincy Adams had strongly opposed a bill to grant western land to the backers of the Chesapeake and Delaware Canal, in exchange for a Treasury purchase of stock in the company. Senator Adams considered the plan a scheme of the States that would result in fraud and collusion. When the subject came up on February 23, 1807, he introduced a motion to postpone consideration of the bill, instead offering a resolution that would take self-serving States and promoters out of the internal improvements debate:

*Resolved*, That the Secretary of the Treasury be directed to prepare and report to the Senate at their next session, a plan for the application of such means as are constitutionally within the power of Congress, to the purposes of opening roads, for removing obstructions in rivers, and making canals; together with a statement of the undertakings of that nature now existing within the United States, which, as objects of public improvements, may require and deserve the aid of Government.

The Senate did not approve the resolution. However, Senator Worthington, as noted earlier, introduced his motion on March 7, 1807, for a similar study that resulted in Secretary Gallatin's landmark report on prospective network of roads and canals.

Nevertheless, Adams recalled his resolution in later years as the beginning of a systematic national improvement policy. [Hoffman, John R., *National Promotion of Western Roads and Canals, 1785-1830*, Thesis Presented to the Graduate Council of the North Texas State University in Partial Fulfillment of the Requirements for the Degree of Master of Arts, August 1969]

President Adams's Inaugural Address covered an array of topics, including internal improvements. He made clear that he had no hesitation on constitutional grounds. He said that as far as he was concerned, internal improvements not only were important, as his predecessors had stated, but unlike them, he believed they were within the powers of Congress under the Constitution. Referring to his predecessor, President Adams said:

To the topic of internal improvement, emphatically urged by him at his inauguration, I recur with peculiar satisfaction. It is that from which I am convinced that the unborn millions of our posterity who are in future ages to people this continent will derive their most fervent gratitude to the founders of the Union; that in which the beneficent action of its Government will be most deeply felt and acknowledged. The magnificence and splendor of their public works are among the imperishable glories of the ancient republics. The roads and aqueducts of Rome have been the admiration of all after ages, and have survived thousands of years after all her conquests have been swallowed up in despotism or become the spoil of barbarians.

Some diversity of opinion has prevailed with regard to the powers of Congress for legislation upon objects of this nature. The most respectful deference is due to doubts originating in pure patriotism and sustained by venerable authority. But nearly twenty years have passed since the construction of the first national road was commenced. The authority for its construction was then unquestioned. To how many thousands of our countrymen has it proved a benefit? To what single individual has it ever proved an injury?

Repeated, liberal, and candid discussions in the Legislature have conciliated the sentiments and approximated the opinion of enlightened minds upon the question of constitutional power. I can not but hope that by the same process of friendly, patient, and persevering deliberation all constitutional objections will ultimately be removed. The extent and limitation of the powers of the General Government in relation to this transcendently important interest will be settled and acknowledged to the common satisfaction of all, and every speculative scruple will be solved by a practical public blessing.

The Heidlers, in their book about the rise of General Jackson to the presidency 4 years later, described President Adams's 1825 Inaugural Address as mainly containing

platitudes, but his first annual message to Congress was another matter. As the Heidlers explained:

Unlike his inaugural address . . . the first Annual Message called for a broad national program of improvement to be aggressively promoted by the federal government. Knowing that the message would set the tone for his presidency, Adams and his cabinet had labored over it for days, which at least made Adams realize his first important presidential state paper was a “perilous experiment.” Treasury Secretary Richard Rush . . . found it pitch perfect, but the secretary of war, Virginian James Barbour, and Attorney General William Wirt were sure that the message would alienate states’ rights southerners. For that reason alone, Henry Clay, who found the message agreeable but quite impolitic, urged Adams to strive for more subtlety. The president only partly heeded this advice. The result was disastrous.

His first annual message to Congress, on December 6, 1825, reported on the internal improvement board’s survey work, which included a pending report to Congress on the completed surveys on the feasibility of a canal linking the Potomac and Ohio Rivers. He also expected the board to report to the present session of Congress on “two other objects of national importance,” namely the road to New Orleans and “the practicability of uniting the waters of Lake Memphramagog with the Connecticut River and the improvement of the navigation of that river.” He added that progress had been made on “the surveying, marking, or laying out roads in the Territories of Florida, Arkansas, and Michigan, from Missouri to Mexico, and for the continuation of the Cumberland road.”

Of all the canals, roads, and harbor improvements undertaken, he said, the Cumberland or National Road was “the most important of them all.” Its continuation west “after surmounting no inconsiderable difficulty in fixing upon the direction of the road, had commenced under the most promising of auspices, with the improvements of recent invention in the mode of construction, and with the advantage of a great reduction in the comparative cost of the work.”

Having described the status of “the measures sanctioned by [Congress] for promoting the internal improvement of our country, I can not close the communication without recommending to their calm and persevering consideration the general principle in a more enlarged extent.” The goal of government was “the improvement of the condition of those who are parties to the social compact . . . . Roads and canals, by multiplying and facilitating the communications and intercourse between distant regions and multitudes of men, are among the most important means of improvement.” He also called for development of educational institutions and extension of geographical and astronomical science.

In addition, he addressed the powers the Constitution had assigned to Congress:

But if the power to exercise exclusive legislation in all cases what so ever over the District of Columbia; if the power to lay and collect taxes, duties, imposts, and

excises, to pay the debts and provide for the common defense and general welfare of the United States; if the power to regulate commerce with foreign nations and among the several States and with the Indian tribes, to fix the standard of weights and measures, to establish post offices and post roads, to declare war, to raise and support armies, to provide and maintain a navy, to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and to make all laws which shall be necessary and proper for carrying these powers into execution – if these powers and others enumerated in the Constitution may be effectually brought into action by laws promoting the improvement of agriculture, commerce, and manufactures, the cultivation and encouragement of the mechanic and of the elegant arts, the advancement of literature, and the progress of the sciences, ornamental and profound, to refrain from exercising them for the benefit of the people themselves would be to hide in the earth the talent committed to our charge – would be treachery to the most sacred of trusts.

The Heidlars explained that President Adams, already under suspicion for the so-called corrupt bargain, worsened his standing by this discussion of an expanded role for the general government. “Adams opened himself up to attack. His recommendation that Congress significantly expand the federal government’s role in internal improvements was needlessly provocative”:

His professorial observation that “moral, political, intellectual improvement are duties assigned by the Author of Our Existence to social no less than to individual man” was perceived as an unseemly attempt to make God Almighty a member of his administration. The secular perspective was no better. Adams’s belief that the federal government had an obligation to interpret the constitutional concept of “general welfare” with maximum elasticity brought to mind Alexander Hamilton’s intrusive Federalism. Adams’s belief that the government had the right and the authority to improve the country’s agriculture, commerce, manufacturing, and transportation with active involvement and commensurate spending repelled even those who had been inclined to put aside the nature of his election and give him a fair chance.

The congressional mood grew darker in contemplating the message’s budget-busting wish list . . . . Adams called on Congress to cast off the fetters of limited government and move to the front of an international parade of progress. Members of United States government, he proclaimed, should not be “palsied by the will of our constituents.”

President Adams’s first annual message to Congress “all but demolished what little goodwill he had among a dwindling cohort of reluctant supporters”:

With his own pen, John Quincy Adams had given thoughtful men cause to condemn him. By abiding Federalists, James Monroe had made himself unpopular, but now, and despite his conversion to Jeffersonian Republicanism in

1808, John Quincy Adams wanted to embrace Federalists while betraying Jeffersonian principles of limited government. Moreover, he wanted everyone to embrace with enthusiasm initiatives that repelled many, and he was willing to censure those who objected as ignorant and even irreligious. Daniel Webster noted how Virginia was “in a great rage with the Message.” The reaction was typical among Crawfordites, though, which meant it spread beyond the Old Dominion.

The Heidlars added:

Adams’s message did not just distress southerners. It also made a deadly impression on many in the American heartland. People still in want from economic dislocations found the talk of astronomical observatories and national universities asinine. They needed jobs to put food on their tables, and farmers needed people who could afford their crops. Adams’s proposals on tariffs and trade agreements could have offered sensible solutions to the nation’s economic problems, but the clumsy way he presented his ideas allowed his enemies to portray them as frivolous while they denounced him for indifference to the plight of ordinary people.

John R. Hoffman, in his Master of Arts thesis on western road development, described some of the reaction to the message:

Reaction to his first annual message, read to Congress on December 6, 1825, came swiftly and inevitably. Among prominent political figures voicing their criticisms, Thomas Jefferson saw the message as a reversion to an aristocratic form of Federalism, “under the guise and cloak of their favored branches of manufactures, commerce, and navigation, riding and ruling over the plundered ploughman and beggared yeomanry.” William H. Crawford viewed it as “being replete with doctrines which I hold to be unconstitutional.” Clay supporter [journalist and editor] Francis Preston Blair reacted by switching his political allegiance to Jackson. Adams’ message struck inveterate states’ rights exponent John Randolph as “a mass of dangerous and threatening innovations.” But James Madison quieted his fellow Virginian’s fears with an astute analysis of the forces which would eventually defeat a national transportation system. Madison argued prophetically that the states would unite against the exercise of strong federal power, which would not only interfere with their rights but “expend vast sums of money, from which their share of the benefit, would not be proportioned to their share of the burden.” He concluded correctly that as states perfected their own improvements, their interest in federal aid would depreciate proportionately.

Public reaction to the first annual message ranged from humorous to severe. The entire country laughed at Adams’ unfortunate metaphor in referring to astronomical observatories as “lighthouses of the skies.”

Whatever the merits of the ideas, President Adams had to depend on Congress to pass the necessary laws. As Hoffman explained, passage was the problem:

In view of his failure to conciliate the opposing forces, changes for passage of Adams' program appeared nonexistent. Adams persisted in his view, however, trusting that his appeals to the West and to those interested in western connections would win over his political enemies. Unfortunately for Adams, the Nineteenth Congress proved neither sympathetic nor subservient, and paid little attention to the President's recommendations. No one seemed to represent the administration viewpoint in Congress. Vice-President Calhoun controlled the Senate, allowed the Jacksonians to gain control of seven of the fifteen standing committees. Southern leaders in the House openly opposed anti-slavery Speaker John Taylor of New York, and his friendship with Adams could only hurt the President in the South. The major difficulty in attempting to find someone to wield a party whip, however, was that there was no unified party over which to crack it. Because of his refusal to use patronage in his own behalf, President Adams lacked the assistance of an effective political machine. He was not politician enough to secure congressional support for his proposals.

Vice President Calhoun had thought himself to be the better candidate for President in 1824, but the nomination went to Adams. He now saw himself as the better candidate for 1828. He knew, too, that Thomas Jefferson was the last Vice President to become President, but three former Secretaries of State, Presidents Madison, Monroe, and Adams, had gone on to become President. The Heidlrs explained:

In a season of high opportunism, it was easy for observers to be cynical, even when – especially when – Calhoun took the high road of principle. His anger over Clay's appointment to the State Department and the implication that it designated Clay as Adams's successor rankled the new vice president. So Calhoun's reaction to the Annual Message could have been sincere in its alarm over violating the Jeffersonian ideal or a convenient way to justify his opposition to the administration he was part of. In any case, Calhoun soon was saying to trusted correspondents that Adams and Clay were worse than incompetent and dishonest. They were incipient tyrants.

Less than a year into his presidency, Adams had a vice president drifting into opposition, a secretary of state under constant assault for being corrupt, Old Republicans angry at his Federalism, and Jackson partisans accusing him of tyranny and incompetence. Meanwhile, men of thoughtful opinions . . . were in transition from nebulous discontent over Adams's vision to open support for those opposed to it . . . . Jackson's supporters perhaps could not distinguish between the partisanship stimulating the one and the philosophy animating the other. At the outset of Adams's presidency, many had detected the ever so faint fragrance of blood. After his first Annual Message of December 6, 1825, an uncharted political sea was awash in it.

## President Adams on Internal Improvements

Sky summarized President Adams's views on internal improvements:

During his troubled one term, Adams was a strong supporter of federal investment in internal improvements. He praised Monroe's efforts to support the National Road and other internal improvement projects and sought to extend them. His administration was to be a shining "era of internal improvement." He enthusiastically sought federal funds for roads, canals, and educational institutions. He did not see the need for a constitutional amendment to justify this program. Adams's efforts were often stymied by opposition in Congress, largely by supporters of Andrew Jackson and their allies. Despite these setbacks, Adams's vision of the federal government helping to improve the "condition" of the American people contributed to establishing meaningful precedents for the future.

The original section of the Cumberland Road, by then often called the National Road, continued deteriorating from overuse, lack of maintenance, and malicious acts, just as David Shriver had predicted. Harold Kanarek, in an article about the work of the U.S. Army Corps of Engineers in Maryland, discussed the condition of the road. At the time of the General Survey Act, the section of the Cumberland Road east of Wheeling "required extensive renovation":

The section in Maryland particularly needed fixing. David Shriver reluctantly supervised repairs during 1823-24, but as he himself noted, "The road has suffered so much, that its original form is lost, and the sum in hand is not sufficient to stop the progress of ruin on it."

This statement was from Shriver's letter to Secretary Crawford on April 5, 1823. [Kanarek, Harold, "The U.S. Army Corps of Engineers in Maryland," *Maryland Historical Magazine*, Spring 1977]

Author Merritt Ierley quoted from recollections by several travelers along the road. In 1820, James Hall, who traveled the road by wagon, described it in positive terms:

This section of the road, which embraces the Allegheny mountains, has since been completed, in a manner which reflects the highest credit upon those engaged in its construction. It is a permanent turnpike, built of stone, and covered with gravel, so as to unite solidity and smoothness; and noble arches of stone have been thrown, at a vast expense, over all the ravines and water-courses. In some places the road is hewn into the precipitous side of the mountain, and the traveler, beholding a vast abyss beneath his feet, while the tall cliffs rising to the clouds overhang his path, is struck with admiration at the bold genius which devised, and the persevering hardihood which executed, so great a work. Those frightful precipices, which once almost defied the approach of the nimble footed hunter, are now traversed by heavy laden wagons; and pleasure

carriages roll rapidly along where beasts of prey but lately found a secure retreat.

But Jerley quoted an unnamed early observer:

In some places, the bed of the road is cut through by wheels, making cavities which continually increase and retain water, which, by softening the road, contribute to the enlargement of the cavities. In others, the road is much impaired by the sliding down of the earth and rocks from the elevated hills.

William Blane, an English traveler, took a stagecoach from Cumberland to Wheeling in 1822:

The road became worse and worse all the way from Brownsville to Wheeling. The truth is, that as travelers coming from the Atlantic cities, with the intention of descending the Ohio and going into the Western States, prefer this road to the one which leads from Philadelphia to Pittsburgh, and which was made by the State of Pennsylvania, the traffic of the Pennsylvanian “turnpike” is very much diminished; and therefore all the people of the State, as well as of many of the other States, who do not derive any immediate benefit from it, are opposed to any grants being made by Congress for keeping it [the National Road] in order. Thus, for the want of a few thousand dollars expended annually, this great national undertaking was allowed to go very much out of repair. It would indeed in a year or two have become entirely impassable if, as I was informed on my return from the West, the advocates of internal improvements had not made a great effort, and obtained a grant of 25,000 dollars. This however is by no means enough for repairing the road at present, whereas a few years ago the same sum would have been more than sufficient. [Jerley, Merritt, *Traveling the National Road: Across the Centuries on America’s First Highway*, The Overlook Press, 1990]

President Adams, during his 4 years in office, was one of the few Presidents who never vetoed a bill. He signed every bill on internal improvements, including the Cumberland Road, that emerged from Congress. Thus, any bill that made it through Congress on repair of the eastern Cumberland Road or extension of the western section would become law.

Despite his expansive views on internal improvements, the bills he would sign to repair and extend the Cumberland Road were fought over bitterly in Congress. Sky explained:

During the course of the Adams administration, Congress did approve a number of bills appropriating funds for the continuation of the road first to Zanesville, Ohio, and then beyond it to Indiana and Illinois; it also provided funds for its repair. However, acrimonious debates accompanied the passage of each of these bills in both the House and Senate. Each proposed appropriation for the road entailed a massive struggle. Supporters of the road complained that they were forced to “beg” for funds for every inch of the road despite the solemn undertaking of the Congress to fund it. Opponents of the road complained of the

incessant appropriations that were draining the federal treasury for the benefit of one project and one portion of the country.

President Adams did not restrict his support to roads. Hoffman pointed out:

Meanwhile, Adams characteristically insisted upon participating in a losing cause, the Chesapeake and Ohio Canal. Despite the counsel of Henry Clay, this canal became Adams' favorite project. Clay wanted Adams of its impracticability, for it would not divert western trade from New York and Pennsylvania.

On July 4, 1828, President Adams participated in the groundbreaking ceremony for the Chesapeake and Ohio Canal. Journalist Joel Achenbach, in his book about the origins of the canal, began his account of the day: "They were really going to do it. They were really going to build this fantastic, borderline-preposterous canal from the Tidewater Potomac to the navigable headwaters of the Ohio." With funds from the government and private sources, they were ready to go:

Early in the morning, the President of the United States, John Quincy Adams, led an entourage of canal promoters and government officials by steamboat up the Potomac from a wharf at Georgetown. It would be a short but geologically evocative trip, for just upstream from Georgetown the placid Potomac becomes a very different sort of river, one with banks instead of shores . . . . The steamboat soon reached a small cove on the Maryland bank . . . . This was Lock Cove, the outlet of the Little Falls skirting canal dug half a century earlier . . . .

Switching from river to canal, the entourage moved up the gorge another couple of miles, past Chain Bridge, to the head of Little Falls, where a boulder dam funneled water into the canal. The Marine Band led the way. Two companies of riflemen fired a salute as the president arrived. Several thousand people dotted the hillside like wildflowers.

Picking up a spade, the president of the canal company, Representative Mercer, told the crowd, "There are moments, in the progress of time, which are the counters of whole ages. There are events, the monuments of which, surviving every other memorial of human existence, eternalize the nation to whose history they belong, after all the other vestiges of its glory have disappeared from the globe. At such a moment have we now arrived. Such a monument we are now to found."

He then handed the spade to President Adams, who began by quoting George "Bishop" Berkeley as saying, "Time's noblest Empire is the last." The United States was indeed the last empire, unlike any empire of the past – an empire of learning and the arts, "the dominion of man over himself, and over physical nature."

(The quote is a variation of the concluding line from Bishop Berkeley's "Verses On the Prospect of Planting Arts and Learning in America" (1728):

Westward the course of empire takes its way;  
The first four acts already past,  
A fifth shall close the drama with the day;  
Time's noblest offspring is the last.)

The Nation was, President Adams explained, in the third stage of development. The Declaration of Independence launched the first stage. Adoption of the Constitution began the second. The new, third stage was application of the powers “of the whole Union” to national improvements. As difficult as achieving independence and the Constitution had been, even more arduous was advancing the country through learning and internal improvements “to improve the bounties, and to supply the deficiencies of nature; to stem the torrent in its course; to level the mountain with the plain; to disarm and fetter the raging surf of the ocean”:

The project contemplates a conquest over physical nature, such as had never yet been achieved by man. The wonders of the ancient world, the Pyramids of Egypt, the Colossus of Rhodes, the Temple of Ephesus, the Mausoleum of Artemesia, the Wall of China, sink into insignificance before it.

Friends and Fellow-laborers: We are informed by the Holy Oracles of Truth, that, at the creation of man, male and female, the Lord of the Universe, their maker, blessed them, and said unto them, be fruitful, and multiply, and replenish the Earth, and *subdue it*.

He dug the spade into the ground, and hit an impenetrably hard object. He tried again, but with the same result:

The president threw down the spade and pulled off his coat. He would have to go at it like a true canal digger. He rammed the blade into the ground with all his might. Success!

The crowd on the hillside had heard none of the speech, but, upon seeing the elaborate pantomime below, cheered lustily.

With that, the new rival to the Cumberland Road was underway. However, as Achenbach pointed out, not 40 miles away in Baltimore, another even more significant rival also was getting underway:

This time the audience didn't number in the several thousands, but rather in the tens of thousands. Estimates ranged as high as 70,000, which would mean essentially every living soul in the city had come out to see the spectacle. Baltimore, boosted by the Cumberland Road, had grown into the third-largest city in the nation and had dreams of overtaking New York City. The citizens had come to see Charles Carroll, ninety-one years old, the last surviving signer of the Declaration of Independence, dedicate a symbolic stone. Carroll's gesture would signal the start of construction of something called the Baltimore & Ohio Rail Road.

The stone contained words declaring that the new road would perpetuate the “happy Union of these Confederated States.” As the *Baltimore Gazette* put it, the new railroad would “make the East and the West as one household, in the facilities of intercourse and the feeling of mutual affection.” In the long run, of course, the railroad was only the first of a new mode of transportation that would transform surface transportation. [Achenbach, Joel, *The Grand Idea: George Washington’s Potomac and the Race to the West*, Simon & Schuster, 2004]

When construction of the Chesapeake and Ohio Canal began in 1828, the plan was to build the section from Washington to Cumberland before beginning work on the section from Cumberland across the Allegheny Mountains to the confluence of the Casselman and Youghiogeny Rivers, and finally the section to the Ohio River at Pittsburgh. Only the first section, to Cumberland, was completed. By the time the canal reached Cumberland in 1850, the Baltimore and Ohio Railroad had already reached that city – in 1842. Although the canal would remain in operation until 1924, the parallel railroad to Wheeling, reached in early 1852, made the waterway obsolete except for bulk shipments, such as lumber and coal, and greatly reduced its earnings potential. In fiscal distress, the canal operators could not afford to extend the facility as planned.

In 1924, floods destroyed portions of the canal beyond the revenue available for repair. It is now maintained by the National Park Service as the Chesapeake and Ohio Canal National Historical Park.

## **Part 5: The Great Monument of the Wisdom and Beneficence of the General Government**

The Enabling Acts authorizing statehood for Ohio (March 1803), Indiana (December 1816), and Illinois (December 1818) included language setting aside land sales revenue, on the same 2 percent/3 percent ratio for roads. By passing the Enabling Acts, Congress and the Presidents who signed them accepted the idea that the Cumberland Road would be extended across the three States to the Mississippi River. When Missouri attained statehood (August 10, 1821), the comparable provision implied extension of the road across the Mississippi River by ferry to the new State's capital, Jefferson City.

With the Cumberland-to-Wheeling section open, Congress expanded its debates about the deteriorating initial section of the road to include its extension west of Wheeling. As mentioned earlier, an Act of May 15, 1820, called for appointment of commissioners to lay out the road from Wheeling to "the left bank of the river Mississippi." The road was to "be on a straight line, or as nearly so as" to accommodate the geography of the land.

Congress amended its direction on location by an Act of March 3, 1825, which directed the commissioners to lay out the road as straight as possible, "except that it shall pass by the seat of government of the states of Ohio, Indiana, and Illinois." The capitals of Ohio (Columbus) and Indiana (Indianapolis) were located in their permanent cities, but the capital of Illinois was Vandalia. In part because of the efforts of a State legislator named Abraham Lincoln, the capital was moved to Springfield in 1837.

President Jefferson had foreseen extension of the road beyond Wheeling, but had envisioned it following in the southern parts of the States where river travel would provide easy access for settlement of the interior. By the time Congress was ready to advance the project, however, the southern parts of the three States were being settled rapidly, with steamboats carrying much of the east-west traffic along the Ohio River. The road, therefore, could be located well to the north of Jefferson's projected routing.

The 1825 legislation appropriated \$150,000 "for the purpose of opening and making a road from the town of Canton, in the state of Ohio, on the right bank of the Ohio river, opposite the town of Wheeling, to the Muskingum river, at Zanesville." The funds were to come from Treasury funds not otherwise appropriated, to be replaced from the two-percent fund.

Construction of the extension began that summer with a groundbreaking ceremony as reported in the *Niles Weekly Register* on July 23, 1825:

The Great Western Road. On the 4<sup>th</sup> of July, the ceremony of breaking ground [sic] for the continuance of the great national road westward of the Ohio, took place at St. Clairsville. This is a noble work, and will, probably, one day, and before many years, extend to the Rocky mountains! A great crowd of people were collected. A prayer was offered by the reverend Joseph Anderson, the declaration of independence was read by Ezer Ellis, esq. and an oration pronounced by William Hubbard, esq. After which an excavation was made and

an address delivered by William Hubbard, esq. The company then dined together, Mr. [Benjamin] Ruggles [OH], of the senate of the United States, president, and Mr. [John] Patterson [OH], of the house of representatives, vice president. Among the regular toasts drunk were these –

*The surviving soldiers of the revolution* – Like the venerable oaks of the forest, respected for their firmness, patriotism and devotion to his country.

*The heads of departments* – Able counsellors and wise politicians. The republic is safe in their hands.

*William H. Crawford* – The undeviating republican; the able financier; the virtuous, patriotic and enlightened statesman; a star of superior lustre: pure and spotless as light; may the west, in sentiments and feelings of gratitude, follow this good and great man in his retirement.

*General Andrew Jackson* – His fame, in peace and in war, is identified with the prosperity and glory of the nation.

Jordan wrote:

That night, when the festivities were over, only a gash in the street marked a highway conceived more than twenty years earlier . . . .

Caspar W. Wever, superintendent, came to St. Clairsville . . . opened an office, advertised for bids and wrote reports to the War Department, which now was charged with construction. Once again axmen and grubbers invaded the woods, and once again oxen and horses hauled dirt and stone.

### **More Funds for the Cumberland Road**

Following President Adams's first annual message on December 6, 1825, Congress resumed consideration of funding to repair the Cumberland Road east of Wheeling and extend the road west of that city. It would pursue funding in a stand-alone bill and in the Military Appropriation Bill.

Representative Stewart of the Committee on Roads and Canals introduced a resolution on December 13, 1825:

*Resolved*, That the Committee on Roads and Canals be instructed to inquire into the expediency of making some provision for the preservation and repair of the national road from Cumberland, in the State of Maryland, to Wheeling, in the State of Virginia.

On January 6, 1826, Representative Stewart offered an amendment to expand the earlier resolution:

*Resolved*, That the Committee on Roads and Canals be instructed to inquire into the expediency of making provision for the erection of a Bridge on the National Road, where it crosses the Monongahela, at Brownsville, in Pennsylvania.

He explained that erection of the bridge was very much a part of a plan for a permanent system to preserve and repair the Cumberland Road:

Without this bridge, the road was incomplete, and inadequate to the great object of its construction. It was a fact, notorious in the West, that the public mail and the public travel had been frequently interrupted, for days together, during the Winter season, by the ice and floods upon this river. By referring to the files of the Houses, gentlemen would find an official communication from the Postmaster General, stating the fact that the frequent delays and failures of the Great Western Mail was owing to the impassable condition of this River; and that the only means of preventing them, in future, was the erection of the bridge mentioned in the resolution.

The Monongahela River was the only river not bridged on the entire length of the road:

Without this bridge, the road itself was incomplete. It was a broken link in the great chain of connexion which this road constituted between the Eastern and Western States. It ought to be repaired.

He urged approval of the resolution authorizing the Committee on Roads and Canals “to make provision for the erection of this bridge, in the bill providing a permanent system for the preservation and repair of the Cumberland Road.

The House approved the resolution, 70 to 47.

When the House was considering the Military Appropriation Bill on February 8, Illinois Representative Cook moved an amendment. The bill included an appropriation of \$110,000 for the continuance of the Cumberland Road. He proposed to amend that provision:

For the continuation of the location and construction of the Road leading from Canton, in Ohio, to the permanent Seat of Government in Missouri, to be applied, under the superintendence of the Commissioner appointed by virtue of the provisions of the first section of the act, entitled “An Act for the continuation of the Cumberland Road,” approved March 3d, 1825, one hundred and ninety thousand dollars.

He explained that the amendment was based on a change in the Department of War’s thinking about extension of the Cumberland Road:

. . . instead of going on at once to finish the road as it proceeded, they had concluded it was more advisable to do no more at first than grade and bridge the road, leaving it to the effect of a Winter’s frost, and settling, before they laid on

the metal, as it was called, or covering of small stone. On this plan, a greater extent of road would, of course, be gone over in the same time, than if the road were completed as it went.

On this mode the road might as well advance to Columbus as to Zanesville; it could be completed for one-third the price per mile which it had cost on the Eastern side of the Mountain; and one hundred and ninety thousand dollars could as well, and economically, be applied within the year, as one hundred and ten thousand dollars. The money would, in fact, be only a loan to the States through which the road passed, as provision was made for re-paying the whole expenses out of the two per cent. fund of the proceeds of the public lands.

The *Register* reported:

The motion of Mr. COOK did not succeed; the ayes being 56, and the noes 74.

A motion was afterwards made by Mr. [William] McCOY [of Virginia], to strike out the whole appropriation, but it was negatived, without debate.

An appropriation of seven hundred and forty-nine dollars was added, for repairing some of the bridges on the Eastern part of the road.

The bill was read a third time on February 10, passed, and sent to the Senate for concurrence.

On May 15, 1826, the House took up the Stewart Bill for the preservation and repair of the Cumberland Road east of Wheeling by the addition of toll-gates. In the Committee of the Whole, the House amended several parts of the bill, including agreement on a salary of \$1,000 a year for the superintendent.

Representative Lewis Williams of North Carolina expressed his hostility to the whole project and moved to strike out the section containing the appropriation, then a blank in the bill. Representative Alfred H. Powell of Virginia opposed the motion, suggesting instead that the blank be filled in with \$50,000. The *Register* reported that, "Several other motions were made to fill the blank, all of which were negatived; when, after considerable debate, Mr. STEWART then moved \$45,000, which motion was carried – ayes 75, noes 72."

Ohio Representative Joseph Vance's motion to strike out the 10th section of the bill on erection of a bridge across the Monongahela River at Brownsville was carried, with the ayes being 100. Georgia Representative John Forsyth's effort to strike out the 8th and 12th sections of the bill (providing for punishing those who caused injuries to the road) failed, 59 to 69, along with several other amendments not described in the *Register* account. However, Virginia Representative Andrew Stevenson's move to strike out the words "prior to the erection of the gates aforesaid" prevailed. His reason was so that the money might be appropriated to repairs and toll-gates simultaneously. His motion prevailed.

After the Committee of the Whole reported the bill to the full House, Representative Williams moved to postpone the bill indefinitely, as a way “to try the sense of the House.” Representative John Floyd of Virginia “opposed the bill in a speech of considerable length, and demanded the yeas and nays on the motion for postponement.” The House voted, 42 to 109, to reject indefinite postponement of consideration.

The House took up the bill again on May 18 to consider amendments reported by the Committee of the Whole. Some progress was made (not specified in the *Register*), before Representative Michael Hoffman of New York described the bill as “going to an act of robbery and usurpation.” He moved to lay the bill and amendments on the table. The motion was denied, 48 to 97.

The House agreed to the amendments by the Committee of the Whole, and the question on approving a third reading was moved. Representative Williams called for the yeas and nays.

Representative Churchhill C. Cambreleng of New York asked if the bill provided for obtaining the consent of the States before toll gates were erected. Representatives Stewart and Francis Mallory of Virginia answered (not reported).

Representative Thomas Worthington of Maryland moved to amend the bill further by striking all of the bill after the enacting words and inserting:

. . . that the sum of \$50,000 of moneys in the treasury, not otherwise appropriated, be, and the same is hereby appropriated, for the purpose of repairing the public road, from Cumberland to Wheeling, under the direction of the president of the United States.

*Sec. 2. And be it further enacted,* That, for the accomplishment of this object, the superintendent appointed by virtue of an act of 28th February, 1823, for repairing the Cumberland road, shall proceed in the same manner, and be entitled to the same compensation, as the said act prescribes.

The 1823 legislation appropriated \$25,000 for repairing and improving the road, with the funds coming from the general Treasury, not the two-percent fund. The President was to appoint a superintendent who would be paid at a per diem of \$3 a day when he was employed on the work.

Representative Ingham moved to amend the Worthington Amendment:

*Sec. 3. And be it further enacted,* That any right which the United States may have to so much of the said road, as lies within the States of Maryland, Pennsylvania, and Virginia, be, and the same is hereby, ceded to the said States, respectively: *Provided,* the Legislatures thereof shall, within twelve months from the date hereof, accept the same upon the following conditions: that is to say: Each of the said States shall cause its respective portion of the said road to be kept in good repair, in such manner as it shall deem expedient; but no greater sum shall be

collected for travelling on said road than may be necessary for said purpose, and for defraying the expense of erecting toll houses and gates, and collecting toll.

Representative Worthington demanded the yeas and nays on the amendment, but the House refused them.

Representative Cambreleng said he supported the amendment, adding that, “he did not object to vote an appropriation for repairing the road . . . but insisted that the consent of the states through which the road passes, should first be had before toll gates are erected.” He recalled President Monroe’s veto of a similar toll-gates bill.

By contrast, Representative George McDuffie of South Carolina said he would never vote for another cent for the Cumberland Road unless toll-gates were erected.

Representative Tristram Burges of Rhode Island objected to the bill, arguing that the general government did not have jurisdiction over the road and had no right to take cognizance of offences against the road or gates.

The previous question – “Shall the main question now be put?” – was put to the House, which sustained the question, 76 to 70.

The main question was then put, calling for engrossing the bill and ordering it to a third reading. The House then voted, 92 to 62, to approve the question.

That evening, the bill was one of several the House passed.

On May 22, 1826, the House adjourned until December.

### **In the Senate**

The Senate considered the Military Appropriation Bill approved by the House.

On March 17, after a clerk read the bill, Senator Thomas W. Cobb of Georgia said “he had no desire to vote against the passage of this bill, so far as the appropriations were directly confined to the military service of the year; but it did seem to him that, by some kind of process, things had got into the bill which did not belong to it.” He cited, as an example, the following provision as an example:

For the continuation of the Cumberland Road, one hundred and ten thousand dollars, which shall be replaced out of the fund reserved for laying out, and making roads under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on a footing with the original States.

The bill also contained \$750 for repairs to the road in 1825.

What, he asked, “had the Cumberland Road . . . to do with the military service – either the continuation of the road, or for repairs made on it.” He also cited the appropriation for deepening the channel entrance into the harbor of Presque Isle in Michigan. He wanted to strike out all such provisions that belonged in a separate internal improvement bill so he and his colleagues could vote for the military bill.

Senator Smith pointed out that Congress had approved \$150,000 for extension of the road in 1825. He said, “the committee to whom the bill was referred, finding these articles contained in it, presumed it was the intention of Congress to continue the road as far as the Mississippi.”

Kentucky Senator Johnson did not want to get into the history of the Cumberland Road, but said:

The nature of this country and of our Government is such, Mr. J. said, that while the Hon. gentleman from Georgia wanted an appropriation of \$100,000, to remove some obstructions in the river Savannah, the People in the interior of the Western country want an appropriation of the same amount to continue this same national road, by which they might enjoy some facilities of intercourse, not only as regarded the Post Office Department, but some little comfort, also, in coming to the seat of Government.

He looked at the appropriation for Georgia as being in the national interest:

The Western People had no sea-port. No Philadelphia, no Baltimore, where to erect an arsenal; they could not call on Congress for a part of the four or five hundred thousand dollars appropriated for the erection of offices; they came into the Union too soon to get any part of the ten millions appropriated annually as a sinking fund for the payment of the debts of this Union; they lived too far in the interior to ask for fortifications; the stout hearts and the strong arms of the militia were, he said, the barrier to the interior settlements; they did not call for fortifications.

The western people did not “shrink from” appropriations for fortifications along the seaboard or improvements along the rivers running for the coast. Unless the Constitution said otherwise, the western States wanted the patronage of the general government:

But this for the Cumberland Road had been admitted and repeated for a period of twenty years; yet at every session some honorable members think it their duty to oppose it. He regretted this, because his honorable friend from Georgia could not vote for that which would give interest and advantage, though not equal advantage, to every part of the Union, from the conviction on his mind that the Constitution interposed a barrier.

Senator Johnson said the goal was for the road to reach the Mississippi River and, he hoped, “when it got there, it would not stop short of the Rocky Mountains, if indeed our population is to proceed so far”:

They asked for it now, and while they bore the burthen and heat of the day with any portion of the country, they were entitled to equal privileges and equal advantages; and where the Constitution did not oppose a barrier, he was well aware his honorable friend would not refuse.

Senator Benton said he had expected the bill to pass “without producing discussion,” but since it did, suggested laying it on the table “with a view of moving afterwards to go into the consideration of the Executive business.” His motion prevailed.

The Senate took up the Military Appropriation Bill again on March 20, with the pending business being Senator Cobb’s motion to strike out appropriations for the Cumberland Road and other items he did not consider military measures. The Senate engaged in a lengthy debate reprinted in 16 columns in the *Register*.

Senator Smith conceded that such a provision had not previously been in military appropriations acts. The Cumberland Road had been built with funds appropriated for the Department of the Treasury. In the General Survey Act of 1824, however, “a new system, and perhaps a much better one, had been adopted. The bureau of roads and canals has been transferred to the War Department, because they have there the aid of the Engineer Corps.” After the transfer, appropriations went to the War Department, which had received appropriations for extension of the road to Missouri’s seat of government, the point of which was that “there shall be a short course from the seat of Government to St. Louis, in Missouri, by which many days would be saved to the United States in the transportation of the mail, and facilities would be afforded for travelling.”

Senator Cobb replied that he wanted to vote on appropriations for the military service. He had delivered his constitutional objections to appropriations for the Cumberland Road in 1825, and would not repeat them now. Here, his point was not constitutional, but that the appropriation “ought not to be inserted in a bill, the general objects of which are clearly constitutional and proper, viz: making appropriations for the military service.”

As for Senator Johnson’s implication that by favoring an appropriation in Georgia, Senator Cobb was hypocritical, he justified the expenditure. “During the Revolutionary war, the United States, for the defense of the place, directed certain obstructions to be placed in the River Savannah,” that had still not been removed. The question “here to be considered was, not whether they would adopt a system of internal improvement, but whether they would remove the obstructions from the harbor, where they had themselves placed them.”

Ohio Senator Ruggles agreed with Senator Smith’s explanation of the provision. Now that the project was under the jurisdiction of the Department of War, money was

“expended in the same way that the other items in the bill are expended. Hence the necessity of uniting these items in one bill.” He had listened to Senator Cobb’s constitutional arguments in 1825, but the Senate had rejected his motion, 16 to 28. “The proper course for the gentleman to pursue, would be to strike at the law passed at the last session, if they wished to arrive at their object – to repeal it”:

Mr. R. then contended that the fund arising from the sale of the lands would be sufficient, not only to make the road, but a large surplus would be left, and argued that the road could be made cheaper than had been estimated. It was now in the hands of the laboring classes, instead of speculators or monopolists, and the system was altogether improved. As this item in the bill had passed the House of Representatives in that shape, he trusted it would pass this body likewise, and he repeated that he hoped the gentleman would not persist in his motion.

One of those participating in the debate was Senator Harrison of Ohio. He regretted that some of the Senators had raised constitutional objections to the subject. On a practical side, the western States saw the compacts in the Enabling Acts benefiting the general government more than the States. “The single concession by the State, that it would not tax the lands of the United States, was worth ten-fold all those advantages that any of the States Northwest of the Ohio ever received from the General Government.”

In return, the States had given up the right to build the road to the general government. That point addressed the concerns of those who thought the general government could build a road only with State consent. All that the western States had done was ask Congress “to lend on this two per cent. fund, which they considered as sufficient security, a sufficient sum of money to accomplish this purpose.”

The question was whether the road served an important purpose:

Mr. H. said he considered the United States would be more benefitted by the construction of this road than any of the States which it was intended immediately to benefit. What is it, Mr. H. asked, that binds and connects this great Union together? Is it a string of words and sentences, called the Constitution? Or was it mutual interest? It would be an insult to this body to say, such was the fact. When had interest ever produced the continuation of an alliance, when that alliance was not secured by the affection and attachment of the parties to that alliance? Whenever the time shall come that these United States are connected together by no other bond than interest, they will then have tottered to their foundation.

What is it then that connects them together? It is the affection that exists between the individual citizens of the different States; it is the attachment that the People of Ohio feel for those of Georgia and Maine; that attachment which was manifested, and which led the People of Ohio to step forward at once, in support of what? Not their immediate rights, but the rights of their sea-faring fellow citizens in Massachusetts.

He talked about how the appropriation would increase the principle of affection. It would, he said, help “bring the long absent daughter to the embraces of her mother, and the son to receive the blessings of his father”:

Mr. H. said, he had seen a great deal of human misery, but he had never seen it in any shape which touched his heart in a greater degree, than in the emigrants to the Western country before the Cumberland Road was constructed. A farmer, with a fine family of children, finding a difficulty of procuring subsistence in some of the old States, and looking forward to their future welfare, determines to go to the Western country, where land is cheap; and he sets out with a little cart, and two poor horses, to carry his wife and half a dozen children; and, not knowing the distance, or the road accurately, his slender means are soon exhausted; the horses are unable to carry any farther all that is dear to him; he is broken down by sickness, and his children cry around him for that relief which he is unable to afford them; and, when he arrives at the place of his destination, he is separated forever from all those relations whom he may have left behind.

But now, by the means Congress has given to level the mountains, and causeway the swamps, this poor man turns his eyes once more to the place of his nativity – he recollects once more the mother whom he has left; he returns, and is once more blessed by her embrace.

This is no story, sir; it may be daily realized. By travelling along this same Cumberland Road, you may see persons in the situation I have described, who are offering their prayers to Heaven, and calling for blessings on the heads of those who have again enabled an affectionate daughter to be restored to a tender mother. Such are the facilities which this road gives, has given, and will give, that, aided by the genius of Fulton, the most imbecile man in St. Louis may hope to travel comfortably once more to behold those who gave him birth. It is on the confidence, reverence, and attachment, with which the People of the United States look on Congress, that the prosperity of this Union depends. The word Congress – not the Congress of Panama – is an important word with the People of the United States. This very road is called by the People, not the Cumberland Road, but the Congress Road; and they remember with gratitude and veneration, the venerable body of men who first assumed that appellation; and the men, women, and children, that travel along that road, offer their prayers to Heaven for that body who afforded them this facility.

After the debate concluded, the Senate voted, 15 to 21, to reject Senator Cobb’s amendment.

Senator Cobb moved to strike out the \$750 appropriation to pay for repairs in 1825, but that motion was lost, too, without a recorded vote.

Later, the Senate passed the bill to a third reading. The following day, March 21, the Senate passed the Military Appropriation Bill, and returned it to the House.

President Adams signed the “An act making appropriations for the military service of the United States, for the year one thousand eight hundred and twenty-six” on March 25.

On March 7, 1826, Senator William Hendricks of Indiana from the Committee on Roads and Canals had reported on the outcome of a memorial from the General Assembly of Indiana that had been referred to the committee:

That the memorial sets forth, that a direct line from Columbus to Indianapolis passes within one mile of Centreville, the Seat of Justice of Wayne county, the most populous county of the State; and that a straight line from Indianapolis to Vandalia, passes within two miles of Terre Haute, the Seat of Justice of the rich and flourishing county of Vigo; that the ground for the location through those villages, is favorable for a road; and that the prosperity of those towns, and the interests of the counties whose Seats of Justice they are, will be very much affected by the final determination of the Commissioner in the location. The memorialists request that Centreville and Terre Haute may be made points on the road.

Senator Hendrick had asked for information from his Indiana colleagues, Senator James Noble and Representative John Test, on how a straight line road between Columbus and Indianapolis would affect Centreville and Richmond. They replied on February 10 that on a straight line, “Richmond would be near three-quarters of a mile South and Centreville in and near the same distance, South”:

If the road was to be made on a direct line, after entering the State of Indiana, it would pass down a creek, crossing it repeatedly, which creek empties itself in White Water, three-quarters of a mile North of Richmond; and, by making the road on the direct line, vast expense must accrue, especially when the cost of bridges is estimated.

The location of the road through Richmond and Centreville, as recommended by the Legislature of Indiana, the aforesaid creek would be avoided, and large sums of money saved to the United States, and the distance only increased by a few rods. We add, further, that, for twenty miles and upwards, throughout Wayne county, (on very near a direct line from Richmond and Centreville, to Indianapolis,) the State Road is cut out complete, upwards of forty feet wide, on fine level ground.

The Committee on Roads and Canals decided against introducing a bill, believing that the object of the memorial “will be attained under the direction of the Secretary of War.” This belief was based on a response from Secretary James Barbour, the former Senator from Virginia, to an inquiry from Senator Hendricks. In a letter dated February 23, 1826, Secretary Barbour explained the statutory situation. The Act of May 15, 1820, authorized the western extension of the Cumberland Road with the instruction that “said road to be on a straight line, or as nearly so as, having a due regard to the condition and situation of the ground and water courses over which the same shall be laid out, shall be deemed expedient and practicable.” This instruction from 1820 was amended by the Act

of March 3, 1825, which directed the commissioner to set the line as stated in 1820, “except that it shall pass by the Seats of Government of the States of Ohio, Indiana, and Illinois.” The Secretary explained:

I do not conceive that the Department can, with propriety and consistently with the express terms of the said laws, direct the points through which the road shall pass, except the Seats of Government of the States of Missouri, Ohio, Indiana, and Illinois, as indicated by the law of 1825; but your letter will be communicated to the Commissioner, with instructions to make an examination embracing the points indicated in your letter, in order that the route passing through them may be compared with the most direct route, as contemplated by the law; and orders will be given accordingly.

On May 8, 1826, Senator Noble took the floor to request consideration of his bill on locating the Cumberland Road in Indiana as provided for in earlier bills. Section 1 provided that as soon as the road was located in Indiana in accordance with the 1820 and 1825 laws, “the President of the United States shall cause the said road to be opened eighty feet wide, by cutting off the timber, digging out the roots, and removing them from the road, preparatory to making a turnpike road, commencing at Indianapolis, cutting and digging, as aforesaid, to the Eastern and Western boundary of the said State.”

Section 2 appropriated \$50,000 for the purpose, to be replaced out of the two-percent fund.

The final section of the bill provided that:

*Sec. 3. And be it further enacted,* That, for the accomplishment of this object, the President shall appoint some fit person, as the superintendent of said road, whose duty it shall be, under the direction of the President, to divide the same into sections of not more than ten miles each; to contract for, and personally superintend and make the said road, as before mentioned, as well as to receive, disburse, and faithfully account with the Treasury for, all sums of moneys by him received in virtue of this act. That the said superintendent, before he enters upon the discharge of the duties enjoined by this act, shall execute a bond to the United States, with security, to be approved of by the Secretary of the Treasury, conditioned for the faithful discharge of his duties prescribed by this act. That he shall hold his office during the pleasure of the President, and shall receive at the rate of fifteen hundred dollars per annum for his services, during the time he may be employed in the discharge of the duties required by this act.

Senator Noble said the purpose of the bill was to make the public land owned by the United States more valuable and “to give the State of Indiana that which she expects and claims as her right” under the Enabling Act. “The moment the road is located, and unequivocally, the moment when the opening commences, not one single tract of land bordering on the road, will remain long the property of the United States, but will be purchased by actual settlers, in which there will be great competition.”

He would have introduced the bill earlier in the session, but held off while gathering information. Under the Act of March 3, 1825, the location of the road as far as Columbus, Ohio, had been completed in 1825. The commissioner – he did not name him but it was Jonathan Knight – who had completed the location had been in Washington to receive instructions from the Secretary of War:

Within the last two weeks he arrived here – received his instructions from the Secretary of War, and recently left the city to visit his family at or near Union Town, Pennsylvania, and will proceed forthwith, to complete the location of the road. Mr. N. said he had seen his instructions; they were promptly given to him by the Secretary of War, and, for the want of knowledge as to the nature and extent of the instructions, and the probable time that the location would be completed in Indiana, he had been compelled to delay the introduction of the bill till the present.

He was now satisfied that the location would be early completed in Indiana, during the present year, and he did not wish to lose sight of the interest of the People of Indiana longer.

He would have included appropriations for the road in Illinois and Missouri, but the location in those States could not be completed in the present year:

Ohio is now at work, not merely cutting off the timber, and digging up the roots, preparatory to making a turnpike road, but actually making it; he rejoiced to see it, and let Indiana commence, at least, to make preparation.

He told his colleagues, “we must have the road,” and he hoped the “bill would take the usual course.” The bill was then read for the first time, but the Senate would not take up the bill in its few remaining weeks.

(Jonathan Knight, born on November 22, 1787, in Bucks County, Pennsylvania, was a self-taught surveyor and civil engineer with unique mathematical skills. After working as a subordinate in preliminary surveys for the Chesapeake and Ohio Canal and the Cumberland Road between Cumberland and Wheeling, he was appointed in 1825 to serve as a Commissioner for the survey of the extension of the road through Ohio and Indiana to the eastern line of Illinois. In 1827, the Baltimore and Ohio Railroad Company chose Knight and Colonel Stephen H. Long to survey the new line from Baltimore to Cumberland and from there to the Ohio River. Knight became the company’s chief engineer in 1830, a position he held until 1842. Knightstown, Indiana, platted in 1827, along the line of the Cumberland Road (and future U.S. 40) was named for him. [Stuart, Charles B., *Lives and Works of Civil and Military Engineers of America*, D. Van Nostrand, 1871])

On May 18, the Senate considered the House bill on preservation of the Cumberland Road east of Wheeling. The *Register* did not recount the “long discussion” that took place before the Senate voted on whether to read the bill a second time. The Senate decided, 23 to 15, in the affirmative.

The second reading took place the following day:

The bill for the preservation and repair of the Cumberland road, was read a second time, and referred to the Committee on Roads and Canals.

Senator William Findlay of Pennsylvania submitted a resolution for commitment to the same committee, “which was, in substance, that the road should be ceded to the States through which it passed, on condition that they should keep the road in good order.”

Senator Hendricks objected to the resolution because in his view, the State of Pennsylvania “was hostile to the road, and might destroy that part of it which passed through that State, if she chose.”

Senator William Marks of Pennsylvania “repelled the assertion,” stating that his State “would take as much care of that road as she would of roads of her own construction.”

Senator John H. Eaton of Tennessee, “to get clear of the discussion, which was likely to consume time,” moved to lay the resolution on the table, “which was carried.”

On May 20, Senator Hendricks moved to take up the Cumberland Road repair bill, but the motion was denied, 15 to 16.

Shortly after that vote, the Senate adopted a resolution that Senator Robert Y. Hayne of South Carolina introduced:

*Resolved*, That the President of the United States be requested to cause to be laid before this House, at the commencement of the next session, a detailed statement of the expenditures for the construction of Cumberland road, showing the expense incurred per mile for each section of said road.

Later in the day, Senator Ezekiel F. Chambers of Maryland renewed the motion to take up the Cumberland Road repair bill, but the Senate, again, declined, in this case 15 to 20.

With the Senate, like the House, nearing adjournment, the bill came up again that day during the evening session. Senator Hendricks called for the yeas and nays on reconsidering the bill:

The motion was opposed by Messrs. [John M.] BERRIEN [of Georgia], [Levi] WOODBURY [of New Hampshire], and BENTON. It was supported by Messrs. HENDRICKS and HARRISON, who stated that, under the present circumstances, the friends of the bill would be content with that part of it which related to the appropriation; (discarding the provision for toll gates.)

Senator Hendricks withdrew his motion. The House bill on preserving and repairing the Cumberland Road east of Wheeling by erection of toll-gates would not receive further Senate consideration, but supporters were not done.

Senator Chambers moved that the Senate reconsider its vote on the bill appropriating funds for public buildings in Washington “by adding a clause making an appropriation for the repair of the Cumberland Road.”

Senator Benton objected that “there were other bills which would come up in due course, to which the proposed amendment could be attached.” The Senate agreed, voting 16 to 17 to decline to reconsider the public buildings bill.

On a motion by Senator Harrison, the Senate took up a bill to authorize surveying and make a road in the Territory of Arkansas. Senator Chambers moved to amend the bill to appropriate \$45,000 for repair of the Cumberland Road. However, Senator Eaton moved to put the bill on the table “as being calculated to involve important principles; and which would give rise to much discussion” as the Senate raced through bills before the end of the session. After Senator Chambers withdrew his amendment, the bill was laid on the table.

After consideration of two other measures, Senator Eaton moved for the Senate to reconsider the vote on the bill appropriating funds for public buildings in Washington. Senator Chambers “then offered the amendment relative to the Cumberland Road, which had been before offered and withdrawn.” Several Senators engaged in discussion that was not reported in the *Register*. Senator Marks moved to strike out \$45,000 from the amendment to substitute \$30,000.

A point of order was raised. The Senate, on third reading, had earlier passed the public buildings bill; could it now be amended? The chair ruled that the bill stood as passed, and could be amended only if recommitted to the Committee on the District of Columbia. Senator Chambers, therefore, moved to recommit the bill “with instructions to report an amendment of 30,000 dollars for the repair of the Cumberland road”:

Mr. HAYNE moved to lay the bill on the table; stating that the public buildings must suffer the fate of the Cumberland Road appropriation, if gentlemen would insist on tacking the one to the other; and the motion was decided in the negative  
.....

The vote to lay the public buildings bill on the table was 7 to 25.

The Senate then voted, 17 to 14, to recommit the public building bill to the District Committee:

The Committee, in a short time, reported the bill, with the aforesaid amendment.

The Senate agreed to consider the bill with the Cumberland Road amendment, ayes being 17.

After some discussion that the *Register* did not report, New Hampshire Senator Levi Woodbury offered an amendment to the amendment, “providing that a sum equal in

amount to the said appropriation remains unexpended of the two per cent. fund,” but it was “decided in the negative,” 13 to 17.

The Senate agreed, 17 to 14, to the Cumberland Road amendment to the public buildings bill. “And the bill was then ordered to a third reading, and subsequently passed, as amended, and sent to the House of Representatives for concurrence in the amendment.”

The House, also racing to adjournment, considered the Senate’s two amendments to the appropriation bill for public buildings in the District of Columbia that the House had previously passed. One was an amendment to increase the salary of the Commissioner of Public Buildings to \$2,000. The House agreed to the change. The second amendment, for repair of the Cumberland Road, received 54 ayes, but a quorum was not present. After some protocol votes, the House voted again, 55 to 50, to agree to the amendment. However, the continuing lack of a quorum led to additional discussion and votes. In a third vote on the amendment, the House disagreed to it, 52 to 56.

At half past 3 a.m., the Senate received a message indicating that the House had disagreed to the Senate amendment to the public buildings bill regarding the Cumberland Road. On motion by Senator Chambers, the Senate receded from the amendment.

When the Senate receded from the amendment on the Cumberland Road, the bill appropriating funds for public buildings in the District of Columbia was sent to President Adams. He signed “An Act making appropriations for the public buildings in Washington, and for other purposes” on May 22.

As the session ended, only the Military Appropriation Act that President Adams had signed on March 25 contained significant funds for the Cumberland Road:

For the continuation of the Cumberland road, one hundred and ten thousand dollars, which shall be replaced out of the fund reserved for laying out, and making roads under the direction of Congress, by the several acts passed for the admissions of the states of Ohio, Indiana, Illinois, and Missouri, into the Union, on equal footing with the original States.

For repairs on the Cumberland road during the year one thousand eight hundred and twenty-five, seven hundred and forty-nine dollars.

In addition, the General Appropriation Bill, signed on March 14, contained \$3,000 due to Superintendent David Shriver, \$158.90 for Assistant Superintendent William Hawkins, and \$252.13 due a contractor, William Stephenson.

## Setting the Stage for Action in 1827

As the second session of the 19th Congress began, President Adams sent his second annual message on December 5, 1826. He began by calling for “grateful acknowledgments to the Giver of All Good”:

With the exceptions incidental to the most felicitous condition of human existence, we continue to be highly favored in all elements which contribute to individual comfort and to national prosperity.

Amid the usual wide range of topics such messages covered, he mentioned internal improvements several times. In his discussion of Department of War’s activities, he pointed that some of its duties are not about war, but contribute “rather to the security and permanency of peace.” He cited “internal improvements and surveys for the location of roads and canals, which during the last 3 sessions of Congress have engaged so much of their attention, and may engross so large a share of their future benefactions to our country.”

He discussed use of the \$30,000 appropriated for activities associated with the General Survey Act of 1824. Under President Monroe, the Board of Engineers for Internal Improvement had undertaken the first survey, which was “the examination of the country between the tide water of the Potomac, the Ohio, and Lake Erie, to ascertain the practicability of a communication between them, to designate the most suitable route for the same, and to form plans and estimates in detail of the expense of execution.” A report to Congress had been transmitted on February 3, 1825, indicating that “the communication was practicable.”

The estimated appropriations needed for the War Department in 1827 exceeded \$5 million. About \$1.5 million of that amount, which was to be “invested in fortifications, or for the preparations of internal improvement,” would provide “for the quiet, the comfort, and happier existence of the ages to come.”

The documents accompanying the message included a report, dated November 18, 1826, from General Alexander Macomb, the Chief Engineer, to Secretary Barbour. The report discussed the status of many projects, including the Cumberland Road. He cited the Act of March 3, 1825, which appropriated funds for extension of the road from Canton to Zanesville and for examination and survey of a route to extend the road to Jefferson City, Missouri. Contracts had been entered into during 1825 “for the execution of the grading, the masonry of the bridges, culverts, &c., and two layers, each of the thickness of three inches, of the pavement of stone, reduced to the small size, upon the McAdam plan, for the distance of 28 miles and 88 poles, extending from Canton to Fairview; and, in the course of this year, a good deal of the grading and masonry was completed.”

Those contracts “probably” would be completed by the end of 1826:

They embrace three divisions – the whole distance from Canton to Zanesville having been laid off into seven divisions, and each division into sections of

lengths adapted to the probable cost of constructing the road upon them with a view to having the cost of each nearly the same, and sufficiently limited to admit of their being respectively embraced, by a single contract for each of the several kinds of work to be done upon them. The fourth and fifth divisions, extending from Fairview to Cambridge, and the second, third, fourth, and fifth sections of the sixth division, have been put under contract this year, for the grading and masonry required for them. The distance put under contract this year, as above stated, exceeded  $23\frac{3}{4}$  miles.

Between Canton and Fairview, some parts of the new road occupied the site of the old road, but “in other places, the effect of its construction has been to produce injuries to the old road, which must render it unfit to be travelled upon during the ensuing Winter”:

It will, therefore, be unavoidable to allow the new road to be traveled upon during the ensuing Winter, at the places alluded to; and, as it may be doubted, if, upon a soil recently formed, a pavement, of the thickness of six inches, recently laid, will have acquired the requisite solidity to sustain, at that season, without experiencing injury, the travelling of heavy carriages upon it, an additional layer, of the thickness of three inches, has been authorized to be put upon the pavement, and contracts have been made for the accomplishment of this object without delay. The distance to receive the additional layer of stone, as above stated, will be about eight miles.

The existing contracts were covered by available appropriations, with \$7,000 left over to “cover extraordinary contingencies, which may occur.”

Although examination and survey of the route west of Zanesville had begun, Commissioner Knight had been preoccupied in the present year with determining the final location from Fairview to Zanesville, a distance of 44 miles. After that task was completed, the commissioner continued work on the extension:

The examination has been extended this year from Columbus to Indianapolis. It embraced the direct route, and a route through Springfield, Richmond, and Centerville. It was also contemplated to examine a route through Dayton, Eaton, and Springfield. The survey of, and location upon, the direct route from Columbus to the State line, dividing Ohio and Indiana, will be made this year. The distance from Columbus to Indianapolis, is estimated at 167 miles.

In view of expressions of concern in Congress about the condition of the section east of Wheeling, General Macomb had ordered an officer who would pass over the road on the way to an assignment elsewhere to make such examination of the road as would be possible while riding in a stagecoach:

He has reported it to be in very bad condition, and particularly that part of it between Cumberland and Uniontown. The superstratum, or top dressing of small stone, which was originally of the thickness of six inches, has almost entirely disappeared, which is accounted for by the supposition, that it had been washed

off the road during heavy rains, after having been gradually pulverized, or displaced by the heavy waggons which passed over it. It is also supposed the hard foundation of large stones upon which it rested, by divesting it of elasticity, or the capacity of yielding to, and there by neutralizing the effect of the heavy waggons passing over it, was the chief cause of its destruction.

The large stones composing the substratum or foundation, are generally disunited, in many instances displaced, and frequently lying loose on the top of the road. The consequence is, that the surface of the road is extremely rough, and the travelling upon it inconvenient for slow draught, and dangerous for swift draught carriages.

The opportunities afforded of observing the condition of the masonry of the bridges, culverts, &c. were not such as to admit of an accurate opinion being formed, in relation to it.

The graduation, as far as it could be judged of, was considered objectionable in several places, where the extreme grade appeared to be greater than five degrees. The route of the road is very direct, and it is therefore inferred the location is very advantageous; but, whether it is the most eligible that might have been made, could be determined only by comparing it with such others, as may be practicable. The only part of it which attracted notice as being otherwise than eligible, was in the immediate vicinity of Wheeling, where, at a steep grade, it is carried over a hill. It was understood it might have been carried round the hill, at a level, or nearly so; and that, although the distance upon the location around the hill would have been greater, the time required to travel it would have been less; and, moreover, that the expense of construction would not have been so great. [Macomb, General Alexander, Report of the Chief Engineer for the Year 1826 Relating to Fortifications, Internal Improvements, and the Military Academy, *Documents from the War Department Accompanying the President's Message to Congress, Part II*, Doc. No. 2, November 18, 1826. General Macomb's letter was based on: Road Through Ohio, Indiana, and Illinois]

On December 19, 1826, Secretary Barbour wrote to Speaker of the House John W. Taylor, in response to a House resolution, transmitting Superintendent Wever's report on construction of the Cumberland Road from Canton to Zanesville. The report, a letter to General Macomb dated October 18, 1826, provided the information for General Macomb's letter on the Engineering Department's work in 1826.

Superintendent Wever explained that due to several causes, the contracts for the first three divisions had not been completed on time:

The Spring season, as well as the month of June and part of July, was unusually wet, so much so, as to occasion a suspension of the work or graduation nearly altogether, and greatly check the operations of procuring and reducing stone. The failure to complete, by the stipulated times, is, however, in my opinion, mainly attributable to the novelty of the plan adopted. The contractors were

unacquainted with it, and were greatly deceived in their estimate of the quantum of labor which the reduction of the stone to the proper size would require; and, in consequence, did not employ as many laborers as they otherwise would have done. It is, nevertheless, confidently expected that the greater portion of the line will be finished in the course of two months.

He thought that some penalty was necessary to “ensure a faithful and punctual fulfilment of future contract” [sic], but the obvious penalty, forfeiture of a portion of the contract sum, seemed “rather oppressive, especially when, in many instances, neglect cannot be fairly charged, and when it is considered that many of the contracts were taken at prices really below their value.” Instead, Wever sought General Macomb’s approval of “a refusal to accept of the contracts for a time after their completion, or until Spring,” a penalty he thought “would be a measure sufficiently strong to mark the displeasure of the Government, and to operate as a stimulus on future contractors to complete their undertakings within the prescribed time.” He added:

It is, however, but justice to the contractors to remark that, in the history of the public works of this country, and for the number of contractors, it is believed, that fewer instances or abandonment of contract have not occurred, and that for the general good deportment and correct conduct on the part of both contractors and laborers, this work is, perhaps, unexampled.

During the work in Ohio, only one road contractor – one of the masonry contractors – had abandoned his contract, but the government did not lose money on the abandonment because new contracts were let for the balance of the original contract. Still, Wever had some concerns:

Fears are entertained that a few more, who took contracts below their value, may be compelled, for the want of funds, to abandon them, and that the unpaid balance may be inadequate to their completion. A strong hope is nevertheless indulged, that those fears may prove to have been unfounded.

On September 9, Captain J. L. Smith, Esq., had visited the project, at General Macomb’s direction, to examine the operations under Wever’s charge. “The whole line was shown to him, which he examined very minutely, and I hope his report may give a satisfactory account of the progress and execution of the work.” Captain Smith, who provided “many useful hints, and much valuable information,” authorized Wever to “contract for an additional or third layer of metal of three inches in thickness, to be laid upon such parts of the road as the travel must be admitted upon during the approaching Winter, which parts together comprise a distance of nearly eight miles”:

This measure was thought advisable, to save those parts from apprehended destruction. The cover could not acquire, before Winter, that compactness and solidity essential to render it impervious to water, and of course would not resist the pressure of the narrow wheels of heavy laden carriages. The additional layer is intended as a provision for the want of solidity in the best way which that object could be effected. From those parts where it can, the travel will be

excluded, until the weather be excluded, until the weather becomes settled in the Spring. Although, in my opinion, a cover of metal of six inches in thickness will become impervious to water after it shall have attained a state of complete solidity, and will be impenetrable to the wheels of every description of carriage, unless the frost and wet season should make a more serious impression upon it than I expect; I would, nevertheless, urgently recommend that the whole line should be covered early next Summer, with an additional layer of three inches. Unless this is done, there will be no provision for wear.

Commissioner Knight began locating the line between Fairview and Zanesville in early May and completed it on July 22. Superintendent Wever declared that, "The location is a very eligible one; and, if compared with the route of the present travelled road, will seem to pass through quite another country." The road was split into four divisions, 4 through 7.

Wever had advertised contracts for about 30 miles of the road on July 25 for receipt of proposals between August 25 and September 11. "The competition was considerable, and the road was taken in the aggregate at a fair price; some sections a little above, and some perhaps a little below their value."

He estimated that the road to Zanesville could be completed for \$156,052.61, but "I would most respectfully suggest the propriety of asking Congress for an appropriation of one hundred and seventy-five, or two hundred thousand dollars":

It is unnecessary for me to remark that the more rapidly the work is prosecuted, the less will be the amount requisite for contingent expenses, as you have, heretofore, expressed your views upon that subject. The whole line from the river to Zanesville can be put in travelling condition, by the month of June or July, 1828, if the appropriation be granted at the next session of Congress. [*Road Through Ohio, Indiana, and Illinois*, Letter from the Secretary of War, Transmitting a Report of the Chief Engineer, in relation to the Road Through Ohio, Indiana, and Illinois, December 20, 1826, House of Representatives, War Dept., 19th Congress, 2d Session, Doc. No. 18]

Secretary Barbour sent a letter on December 28, 1826, to Speaker Taylor responding to a December 26 House resolution. The letter transmitted Commissioner Knight's August 15 letter to General Macomb on "reconnaissance" between Zanesville and Newark, a distance of about 23 miles, and the route from Newark to the capital of Columbus (32 miles). Knight had explored five alternatives, with the shortest being about 55 miles, "which is about two and one-eighth miles longer than the route which I reported last year, and which passed about seven miles South of Newark." He had not completed comparisons, but informed General Macomb:

[The] Newark route will be the levellest, having about two miles less of extreme grade, and something less of cutting and filling to overcome the uneven ground. The Newark route will have the most bridging. [*Road – Zanesville to Columbus*, Letter from the Secretary of War Transmitting a Report on the Subject of The

National Road between Zanesville and Columbus, Ho. of Reps, War Dept., 19th Congress, 2d Session, Doc. No. 81, January 3, 1827]

On January 10, 1827, President Adams sent a report to the Senate, in response to Senator Hayne's resolution of May 20, 1826, on expenditures for the Cumberland Road. The report from the Treasury Department stated that all expenditures for construction and repair of the road from Cumberland to Wheeling, between March 24, 1811, and December 31, 1826, totaled \$1,735,596.38. This total covered "the expenditures for making each section of the said road; for building bridges, culverts, &c., for gravelling, for repairs, and for salaries to the superintendents, assistant superintendents, and to the commissioners for examining the work."

An accompanying table provided specific costs for making the road; building bridges, culverts, etc.; gravelling and rolling road; repairs before the road was completed; and salaries to superintendents and commissioners, with the totals being:

On the eastern section (Cumberland to Brownsville, 74 miles):	\$830,765.03
On the western section (Brownsville to Wheeling, 56 miles):	\$876,533.90
For repairing the road (under the Act of February 28, 1823):	\$ 25,000.00
Balance due the superintendent of the western section:	\$ 297.45

These figures included salaries for the eastern section (\$45,185.96) and the western section (\$33,244.51). [Message from the President of the United States, transmitting A Detailed Statement of the Expenditures for the Construction and Repair of the Cumberland Road, 19th Congress, 2d Session, Doc. No. 14, January 10, 1827]

Secretary Barbour sent a letter to Speaker Taylor on February 2, 1827, to transmit three reports on the survey and location of the "National Road" from Wheeling to Jefferson City. General Macomb, in sending the reports to the Secretary, wrote:

They constitute, together, the annual exhibits of the duties upon which the Commissioner was employed during the year 1826, relative to the survey and location of the National Road, from the right bank of the Ohio, opposite Wheeling, to the permanent seat of Government in the State of Missouri. One of these reports relates to an examination of a route from the road between Zanesville and Columbus, different from the route adopted, and passing through the town of Newark. Another furnishes the results of a reconnaissance of a route from Springfield, in Ohio, through Dayton and Eaton, to Richmond, in Indiana. The third exhibits the continuation of the location adopted, between Columbus and Indianapolis.

Supervisor Knight's first report was on locating the route between Columbus, Ohio, and Indianapolis, Indiana, the two points designated by the Act of 1825. Congress had dictated identification of as straight a line as practicable between those two capitals. Knight explained that he began by running "a random line, or lines, and continue the examinations for some distance to the right and left of the whole way through, in order to determine, with any precision, the proper ground for the location, the intermediate points,

and consequently the point on the line dividing the State of Ohio and Indiana, which should be intersected”:

Hence a line was started at Columbus, and continued on the same bearing until it was found proper to change it, under their belief of its too great deviation from the direct bearing, and, in this manner, prosecuted to the seat of Government of Indiana, a distance of about 167 miles. Whilst running this line attention was paid to the general character of the country, and to its peculiarities. To its relative susceptibility with regard to the construction of the contemplated road. To the soil, wet or dry, high or low. To the materials, stone or gravel. To the crossing of streams, and to such other circumstances as were deemed proper to enter into the comparison.

After discussing the geology of the areas in reference to those considerations, Knight pointed out:

Whatever route, having the great property of directness, may be selected through such a country, must encounter more or less wet ground. It would not do, to make the location so devious as to occupy the dry ground throughout. It is believed that, to do so, would so lengthen the route, as to increase the expense to an amount which would be ample to overcome the difficulties on the direct route. And the public would have no compensation for the tax of travelling the increased distance . . . .

After the random lines and reconnoissances were prosecuted to Indianapolis, it was determined, on full view of the subject, that such were the circumstances of the ground and waters, lying on and near to a straight line, the location should pass through Springfield, the Seat of Justice for Clarke county, Ohio; Richmond, in Indiana, and Centreville, the Seat of Justice for Wayne County, Indiana . . . . The most direct route has been adopted in obedience to the terms of the acts of Congress.

He concluded:

The route is divided into 14 sections of not less than five or more than ten miles each in length . . . . This route is marked on the ground by the blazing of trees, and by quarter-mile posts, &c. in all respects as the marking was done between Zanesville and Columbus, last year. The length of this route, from High street, in Columbus, to the State line, is 96 miles 110 chains 22 links.

He estimated the cost of grading, bridging, and a cover of 6 inches of gravel to be \$269,187.04 or \$2,784.01 per mile.

For his second report, Knight noted that on April 25, 1826, he had been instructed to examine and report on a route for continuation of the Cumberland Road from Zanesville to Columbus that would pass through the town of Newark, which was off the straight-

line course previously identified. (These were the instructions Senator Noble had mentioned while introducing a bill on May 8, 1826.)

While occupied on locating the road east of Zanesville, he had asked interested individuals between the two cities “if they should think proper, to make such examinations, previous to my arrival at Zanesville, with the location, as would enable them to conduct me, at once, along something like the shortest and best route to the town of Newark, and thence to Columbus; and also informing them that a survey and rough draft would facilitate the contemplated examinations.”

When he arrived in Zanesville, he met with Judge Holmes and two other residents of Newark, “on behalf of the People interested in that route.” They conducted him “along the several routes which were deemed proper to be examined.” Based on the explorations of the alternatives and his own examinations and calculations, he favored “the shortest route between Zanesville and Newark.”

Next, he had to decide “whether we shall take a circuitous route through the beautiful village of Granville, or pursue the most direct route from Newark towards Columbus. The route through Granville and a more direct route that avoided the city both had advantages. “The chief advantage in favor of the Granville route is, the improved state of the road, caused by the industry of this enterprising and enlightened people”:

With all the improvements in the location of this route of which it is susceptible, there would still be a balance of distance against it of more than a mile. I should not deem it proper, therefore . . . to tax the Newark route with this increased distance. I adopt the direct route South of Granville.

He then had another comparison to make:

Having determined the nearest and best route from Zanesville to Columbus, through Newark . . . it remains to compare it with the direct route from Zanesville to Columbus, reported in 1825.

All factors considered, he adopted the direct 1825 route south of Granville, rather than through the town.

All that remained was the decision whether to route the road between Zanesville and Columbus through Newark, or stick to direct 1825 routing. He compared the locations based on expense, the cost of graduation, the clearing off of timber, paving and gravelling, and the expense arising from difference in distance. In this way, he found that the Newark route was longest by over 2 miles, but has the least extreme grade and was less expensive by \$2,740:

Having arrived at this ultimate comparison by successive steps in accordance with my judgment, and believe it not to be within the scope of the delegated powers under which I am now acting to take into view, or to endeavor to set a value upon the commercial or political importance of the town of Newark, a

county seat situated upon the Ohio Canal, or the commercial or political advantages or disadvantages in embracing it or not in the location, I leave the decision with the Government.

In the third report, Knight indicated that his instructions on April 25, 1826, also had directed him to examine a route for the Cumberland Road between Springfield, Ohio, and Richmond, Indiana, that would go through Dayton and Eaton, Ohio, in Montgomery and Preble Counties, respectively – both off the straight line required by law.

After describing differences between the straight line from Springfield to Richmond, and the route via Dayton and Eaton, Knight offered general remarks, beginning:

The act of Congress of the 15th of May, 1820, and the fourth section of the act of the 3d of March, 1825, which provide for the location of this road, make it the duty of the Commissioner, under the solemn obligation of an oath or affirmation, to locate “the said road to be on a straight line, or as nearly so as, having a due regard to the condition and situation of the ground and water courses over which the same shall be laid, shall be deemed expedient and practicable.”

I have, to the best of my judgment and abilities, kept within the limitations of the law as mentioned in the text; consequently, I have endeavored to exclude all such matters of argument or consideration in the prosecution of the location as were conceived by me not to be within the text, either in terms or by implication.

In considering the alternative lines, he had considered only those factors cited in the law to justify deviations from a straight line, namely the condition of the ground, situation of the ground, and water courses crossed. Other justifications, by implication, included the proximity, quality, and quantity of materials; the condition of the road regarding future repairs; and fitness for travelling upon with the least expense of time and force.

Based on his understanding of the law, “I have not deemed it within the powers committed to my trust by the Government to deviate from a straight line for arguments or considerations of the following class:

1. For the accommodation of towns, villages, or settlements.
2. For those of a commercial character, in opposition to the nearest and best route for the road.
3. A superior adaptation of one district of land over another for the support of a dense population.
4. The accommodation of lateral and intersecting roads.

This is forbidden ground, reserved by the law, making power to be trodden by itself only.

He closed his findings with these remarks:

Lastly. Believing that if the towns of Dayton and Eaton are to be embraced in the location, it must be by giving weight to considerations not allowed by the act of Congress to influence the Commissioner, such as the political, commercial, or other like advantages, to flow solely from the circumstance of their being made points in the road, and the benefit it would be to go to Dayton on account of the Miami canal, which, it is said, will terminate there; or the impending injury consequent to these towns if the road should pursue the direct route, thereby changing the travelling from them, and causing rival towns to arise.

I have made, under a conviction of imperious duty, located and reported the direct route, leaving the final determination of the question to the Government.

[*National Road – Wheeling to Missouri*, Letter from the Secretary of War, Transmitting Reports and Drawings Relative to the National Road, From Wheeling to the Seat of Government in the State of Missouri, Ho. of Reps., Dept. of War, 19th Congress, 2d Session, Doc. No. 74, February 3, 1827]

As will be discussed later, the issue of deviating from the straight line to include Dayton and Eaton would remain contentious.

### **Congressional Action, 1927**

On February 16, 1827, the House Committee of the Whole considered a provision in the Military Appropriation Bill that read:

For the continuation of the Cumberland Road, \_\_\_\_ dollars.”

Illinois Representative Cook, acting chairman of the Committee of Ways and Means, explained the provision. “At the last session, 110,000 dollars had been applied to this object, and it was now going on at a cheaper rate than any public road construction by any other Government.” He summarized the history of the road, dating to 1806, and the compacts entered into with the new western States. “The Cumberland Road had been constructed in fulfilment of that contract; and it was of great value and importance to those States.” He added:

But it was not expedient to appropriate for this work by millions at a time, as had been done in respect to the national fortifications, and for the navy; it ought to proceed gradually, and at such a rate as to be completed before the public lands were sold.

That was the principle behind construction, and “all the Committee of Ways and Means now asked, was, that the House would permit the same principles to actuate it on the present occasion.”

The western States, safe in their remote location, “had no need of fleets or of fortifications.” Extension of the Cumberland Road “was the only object on which the Western States expected any large appropriation of the public money”:

They wished for an economical expenditure of the public treasure – the present plan of conducting [sic] this road was economical in its character – all things necessary to this great national object were now ready and in action – it was only asked that it should proceed, and not stop.

Representative Cook had been an “unwavering advocate of all the appropriations which had been made for the Atlantic States. All he asked was a reciprocity of the same feelings.” He recommended that the House fill in the blank with \$170,000.

Pennsylvania Representative Ingham said that because he had heard no objection to this provision, he could not “see the need of so much zeal and warmth as the gentleman had manifested.”

Representative Forsyth wanted to know if the proposed appropriation would render any further legislation on the subject unnecessary. “Mr. COOK replied in the negative.”

Representative Woods of Ohio explained why the appropriation was needed. The appropriation in 1826 allowed completion of the first division of the road in Ohio and part of the second, “so far as grading and bridging went.” The second division had to be completed, and work on the third division begun. “If the appropriation now asked should be refused, the forty-nine miles which are already completed, and which terminated at a point near to no particular place, but in the midst of the woods, would be in a great measure thrown away; and the other twenty-one miles, which were under contract, could not be completed.”

Representative William McCoy of Virginia thought the Ways and Means Committee, in reporting appropriation bills, “ought to confine them to objects contemplated by law,” because an appropriation bill “was a most unfit place for an item like that now under consideration.” It should be put into a separate bill.

Further, the western States had no right to complain about the lack of money for making roads. After all, he asked, “What had been given for roads in the old States?” Referring to the compacts with the four western States, he explained that, “Under these agreements, Government were [sic] bound to advance the money, but not faster than the fund produced it.” Building the road from Cumberland to Wheeling, he pointed out, “had cost two millions of dollars, and four hundred thousand more had been given to carry it beyond the Ohio.” Speeches such as the one by Representative Cook were why “these sums had been obtained from the House – sums which the Government would never receive again. The fund set apart from the public lands would not reimburse it in fifty years.”

Representative Williams, who had first represented his North Carolina district in 1815, said he had heard many debates about the Cumberland Road during his time in Congress. Every time, “they had been told that was the last time any thing would be asked”:

To him it seemed, that the House was never to have done appropriating for this road. He knew it was in vain to say any thing about the constitutional objections

to it; but, for himself, he had been invariably opposed to the whole matter. He earnestly hoped the House would not consent to the item.

He added that if they were to make the road, they likely would want to repair it, so “what end was there to be to the expense?”:

The item was now asked “for the continuation” of the road. He had no disposition to continue what he had opposed when it was commenced. But if the road must be continued, and afterwards kept up, it was best at once to set up gates and collect a fund to do it from.

Representative Stewart wanted to correct Representative Williams’s misunderstanding. The funds in the bill were not for preservation and repair of the road. They were “merely for carrying the road forward to the point already determined on, and to examine the ground for its farther progress.”

He also responded to Representative McCoy’s observation that the general government was under no obligation to continue the road:

He would ask the gentleman under what obligation it was to continue the system of fortification any farther? If one was to be dropped and left to go to ruin, why not the other? Both were national objects, and prosecuted from public and national considerations. Under what obligation was it to complete this Capitol?

Representative Forsyth called for the reading of the Act of May 3, 1825. After the clerk did so, Representative Forsyth said he “did not see how any gentleman could object to the present item, if they were satisfied that the sum before appropriated was expended, and that this sum is wanted for the current year”:

He should be glad to hear a particular account of the manner in which the last year’s appropriation had been applied, and for what the present is wanted. And, also, whether this is the last sum that will be needed; and if not, what is to be the cost of the whole road?

Representative Philemon Beecher, an Adams supporter from Ohio, explained that “not less” than \$2 million had been expended on the section of road from Cumberland to Wheeling. The expenditures were to come from the two percent fund, but, he said:

More money had been expended in carrying the road from Cumberland to Wheeling, than had been received from the whole of this two per cent. fund, in all the three States where it was reserved, and he was by no means sure that the fund would ever produce enough to defray the expense of so great a work.

If the general government sold all the public lands at the present price, more would be raised for the two percent fund. However, “no such event could be calculated upon”:

The price of the public lands would most likely be lowered, and, for his own part, he would frankly confess that he did not believe enough would ever be realized from this source, to reimburse what had already been expended East of the Ohio river.

This funding dilemma had been discussed during the 1st session of the 19th Congress:

Four hundred and fifty thousand dollars had been calculated as sufficient to construct the road from Wheeling to Zanesville; but experience had shown that this estimate was too large, and that \$380,000 would be sufficient for that purpose. It was found that the work could be done at a cheaper rate than has been supposed; the price, both of labor and provisions, had fallen. In respect, however, to the hard material for covering the road, the fact had turned out the other way; the estimate of the committee had been too low, and the contractors who had furnished this material had suffered some loss in fulfilling their agreement.

The person employed to superintend the work had proved very competent to his situation; every thing in relation to it had been conducted with judgment and economy; and if the gentleman from Georgia would take the trouble to consult the returns of the superintendent, he would see at once how the money formerly appropriated had been expended, and where that now asked is to be applied.

He said the amount suggested by Representative Cook, \$170,000, was too low to finish the road to Zanesville. The work would require at least \$200,000. "The Secretary of War had, however, taken the lowest estimate, and the bill had been framed accordingly." Representative Forsyth "would find a complete and satisfactory account of all expenses hitherto incurred, and would be satisfied, he believed, that the appropriation now asked for was needed." Representative Beecher had provided the estimate to the Committee of Ways and Means:

To obviate the inconvenience of putting the same sum into the bill, on motion in the House, he thought it was best to do this, and to legislate specifically, since the War Department had reported what sum would be required.

Representative Beecher also replied to Representative McCoy's comments. First, Representative Beecher "insisted that this was a fit subject to be introduced in the appropriation bill." He did not elaborate.

Second, he explained that friends of the road had not supposed that "extension of the road depended on the avails [sic] of the two per cent. fund." In the 1st session of the 19th Congress, the majority of the House had approved the appropriation "not on that ground, but on the great general principle of the propriety of Internal Improvements; and he now frankly and explicitly stated, that it was the wish and intention of the friends of this measure to have this great national highway extended all the way to the State of Missouri; nor would they ever cease to bring their influence to bear on the legislation of this House, till that object had been accomplished."

If the House did not agree or if “there was no constitutional way in which the West could ever be benefitted, it was as well to stop now, or at least to finish the road no farther than Zanesville, and to insert a pledge that this shall be the last law that shall ever appropriate money to such an object.” He did not, however, believe Congress would halt the road. “Every man of intelligence, from Mr. Jefferson downward, had given to this road the character of a great and praiseworthy national undertaking.”

Finally, he said that the constitutional argument regarding internal improvements had been debated “so often and so fully argued, and so long settled and practiced upon, that he really did not expect it would have been brought forward on the present occasion.” The road from Wheeling to Zanesville had been advanced with the approval of the House. Part was finished, more needed to be done. “He trusted that a great and valuable national object would not be abandoned in such a situation.”

Representative Woods summarized the report of Superintendent Wever on the number of miles completed, those graded and bridged, as well as the portion under contract, “to show, that the money already granted must be as bad as lost, unless an additional appropriation should be made, sufficient, at least, to complete what had already been begun.”

He also corrected Representative McCoy’s statement that half a million had been granted to extend the road west of the Ohio River. “The whole amount was but two hundred and fifty thousand dollars; nor had the Department placed the whole seventy miles between Wheeling and Zanesville under contract – but only fifty miles of that distance.”

Representative Buchanan, who had voted against the extension to Zanesville, intended to vote for this appropriation. He had not voted for the extension, he said, “because he thought experience had sufficiently shown that Congress ought not to make a road unless they could provide the means for keeping it in repair; and the moment they attempted this, they introduced a subject of endless contention.” Therefore, if the present situation were a new proposal, not yet begun, he would vote nay.

It was, however, begun and “now too late to oppose it”:

Congress had passed upon the question, the road had been laid out; it was partly completed; bridges had been erected; and to stop at such a point a work commenced under the faith of an act of Congress, was not, in his view, compatible with the dignity or good faith of the Government.

He added that the appropriation raised only one constitutional question:

“Whether the United States may, as proprietor, make a road in a State with the consent of that State?” for, in the present case, the consent of Ohio had been obtained. The right to do this, as proprietor, with consent, and the right to erect toll gates, as a sovereign, without consent, were widely different.

Representative Forsyth wanted to make clear that his objection was not to finishing the road:

The only objections must have reference to the propriety of making the appropriation at the present time, or to its amount.

He had hoped “they should have had an estimate which had been duly sanctioned.” The War Department had submitted an estimate but “had not sanctioned it”:

Had this been done, no doubt would have remained. At present, the Commissioner says \$156,000 will be sufficient to finish this portion of the road, but the Superintendent thinks not, and asks for \$200,000 or 170,000, at least. The Committee of Ways and Means had taken the lowest sum, and Mr. F. said he should vote in favor of it.

Representative Richard P. Marvin of New York produced a memorandum from the War Department “which he trusted, would prove satisfactory to the House”:

The bill for extending the road to Zanesville also provides for the extension of the survey all the way to Missouri, and says that \$170,000 shall be provided for these objects. The present item in the appropriation bill is to carry that act into effect.

Representative Ingham moved an amendment to limit the funds to expenditures between Canton and Zanesville, but Representative Stewart said the change was unnecessary. The bill was sufficiently explicit that it was extending the road to Zanesville:

But the law of the last session also authorized the location of the road West of Zanesville, and it had been already located as far as Columbia [sic]. There was no bill on the subject, except for the \$170,000 mentioned by the gentleman from New York. If the amendment should be adopted, there must be another bill. There could be no reasonable apprehensions of the application of the money now appropriated to the actual construction of the road further than Zanesville.

The *Register* reported that, “Mr. COOK, with a view to obviate the difficulty suggested by Mr. Ingram,” moved the following amendment:

For constructing the road from Canton to Zanesville, in the State of Ohio, and for continuing and completing the survey of the Cumberland Road, from Zanesville to the Seat of Government in Missouri, 170,000 dollars, which shall be replaced out of the funds reserved for laying out and making roads under the direction of Congress by the several acts passed for the admission of the States in Ohio, Indiana, and Missouri into the Union, on an equal footing with the original States.

In submitting the amendment language, Representative Cook submitted:

*Extract from the remarks accompanying the general estimate for the year 1827, submitted by the Chief Engineer:*

“The estimate for the continuance of the Cumberland Road refers to the construction of the road between Canton and Zanesville, and to the examination and surveys relative to its location West of Zanesville. Nearly the whole amount is contemplated for the former, and is proposed to be applied, 1st. In adding a third layer of stone, which will increase the thickness of the pavement nine inches upon twenty miles and eighty-eight poles of the distance, between Canton and Fairview, the remaining eight miles being already provided for by existing appropriations; 2d. In putting two layers of stone, or a thickness of six inches, on nearly 23 3-4 miles [sic] between Fairview and Cambridge, and a short distance beyond the latter; and, 3d. In grading, and building the bridges and other masonry, on 21 miles, the remainder of the distance to Zanesville.”

Representative Burwell Bassett of Virginia, who had joined the House in 1805, “replied to Mr. Beecher, repelling with warmth the idea of its being an object of Congress to spend public money in this place or that,” as the *Register* summarized his remarks:

Were they dwindled down to a mere local legislature? Their duty was not to deliberate how to spend a dollar here or there, but how to promote the collective interest of the whole country.

He acknowledged that if Congress owed a debt, “it must pay it – and when the 2 per cent. fund overran the amount expended, Congress must go on to locate the road farther”:

But he reprobated the idea of keeping, as gentlemen had said, a look just ahead, and thus going on locating and locating the road farther and farther ahead of what was completed. He was utterly against these surveys ahead – this assumption of obligations in advance.

He recommended waiting until the two percent fund caught up with expenditures or the condition of the treasury, although “to him, it did not appear probable that it would be very overflowing”:

A gentleman from Pennsylvania [Mr. Stewart] had urged, as a reason why they ought to continue the road, that they had got a very competent Superintendent. He could not perceive much force in this; there would always be enough applications for such a birth – they should have superintendents in great abundance.

Representative Mercer “said, if he could hope his colleague might be induced to vote for any work of Internal Improvement, undertaken by the General Government at any time hereafter, he might consent to wait as his venerable colleague had proposed; but he feared, that, let him wait as he would, he need never count on the support of that gentleman.” Representative Mercer said that Representative Bassett’s objection was

that the Cumberland Road was a local work confined to a particular part of the country, “and that Congress dwindled down into a mere corporation by acting on such matters”:

He thought this objection was too broad, and went too far to be a sound one. It would cut off two-thirds of the legislation of this House. How is the general welfare of so extended a nation ever promoted but by promoting a part at a time? There is no practicable mode of reaching the object: not an appropriation does the House ever make, but it is for an object of a limited and particular nature – now in one part of the country, now in another. Even defence itself, than which nothing can be more general and national in its character, has, in practice, to be divided into parts . . . .

Roads, too, are an essential means of defence – he had no doubt that this capital would be infinitely better secured from again falling under the power of any enemy by the construction of proper roads for military use, than by that miserable fortress on the river which struck its flag even before an enemy approached it. His venerable colleague had expressed very strong dislike to surveys in anticipation; he would, it seems, have a road constructed without any previous examination of the country through which it was to pass; to him this seemed any thing but the dictate of wisdom.

In the view of Representative Mercer, when the road reached Zanesville, “the country in advance of it should be surveyed to Dayton, and when it reached Dayton the survey should be pushed on to Missouri, and thence again onward to the remotest bound of the empire.”

Representative Cook said he was disappointed that his amendment had not ended objections to the provision. A survey before advance of a road was desirable, “if on no other account, that the State Governments through whose jurisdiction the road was to pass, might know how to locate their own State roads with reference to it.”

He pointed out that if the two Representatives from Virginia, Bassett and McCoy, seemed willing to abide the government’s promise to build the road to Zanesville, but if so, were they not equally bound by the promise to continue the road to Missouri? “The same act provided for both,” with the compacts carrying the road into Missouri for the benefit of the new States. He added:

Mr. C. therefore submitted it to gentlemen, whether a road thus constructed did not become, when finished, the property of the State? It was certainly, ipso facto, a State road. The State may do with it what they please; they may set up gates, and exact toll for its preservation. It was the interest of such a State to preserve their road when made, and the dread of the trouble of endless legislation, were equally out of the present question. When the General Government had made the road, it turned it over to the State, just as a tailor does who has finished a coat, and has no further care or trouble about it. If the owner wants it mended, let him mend it where and as much as he pleases.

Representative Bassett was not convinced. He had hoped Representative Mercer would provide some valuable information to the House regarding roads and canals:

All that had induced himself to trouble the House was to reply to what he considered an abominable doctrine, viz. that Congress ought to spend public money, that the expenditure might take place in a particular portion of the Union, and thereby benefit that portion. This he considered, and would ever call, an abominable doctrine. It was abominable. What! Is the Legislature of a nation to spend the fund raised from the whole country in this district or that, in order that the People of those districts might have it spent among them? He agreed with the gentleman from Illinois, that the roads made for a State by the General Government were State roads; and he would give the Cumberland Road to the Western States with all pleasure.

He agreed that surveys ahead of road building were needed:

He agreed that this was proper to a certain extent; but we were carrying it to extremes; and had ordered surveys already for 200 miles ahead of the actual progress of the road. Congress had gone on with these surveys at the rate of 30 miles a year for six years back . . . .

Mr. B. concluded by moving to amend the amendment of Mr. Cook, by striking out all that part of it which went to apply the appropriation in part to the surveys between Zanesville and Missouri.

Representative Hoffman said “he earnestly hoped this road would prove as great a convenience to the country as it was an inconvenience to this House; for really, let him turn himself where he would, the Cumberland Road met him at every step; it haunted him like a ghost.” A general appropriation bill? There’s the Cumberland Road. A military appropriation bill? Here comes the Cumberland Road:

And can it be, (said Mr. H.,) after the middle portion of this road has cost you a sum so gross, that, if it had been granted by an individual, it would be called shameless profligacy, that you are now asked to continue it both ways? Even West of the Ohio it has cost 6,000 dollars a mile, yet we are told of the economical expenditure of the money! It had been said by an honorable gentleman that it was too late to resist this measure after it had proceeded so far; but it was never too late, when a measure grew merely out of local interests, for other local interests to unite in opposing it.

Local advocates always fought for public works, “but those other interests, which were not benefitted, but which were, on the contrary, hindered or injured by it, must be expected to resist it; and then the whole must be abandoned, and go to wreck, or we must be threatened with toll gates”:

Did you not, in the outset of this business, creep on by consent? And as soon as that was obtained, did you not expend, with wanton profligacy, more than would

be enough to make the same extent of the Ohio Canal? And now, because the act of 1824 made an engagement to continue to road to Zanesville, we are asked for \$170,000, and required to continue the survey to the West of Zanesville. Grant this, and next year we shall be told that the road been surveyed, a commencement has been made, must money expended in preparations, and asked if we will leave it an abortion? All this may be very logical; but if we are to go on in this way, let us say at once that we will make a particular road, appropriate the money, claim the jurisdiction, and exercise penal and criminal justice throughout its extent. The next step will be to use force against the States, if they refuse; but as that will hardly do, we must ask their consent, and as soon as give it, instantly set up your gates, and exact the toll . . . .

We have already spent on this project nearly two millions; and in whatever way we construe our obligation, whether to extend it Westward or Eastward, the Government is discharged not only, but has gone far beyond its bond. By such proceedings, we are destroying the very fund of the States. Instead of making a road at 6,000 dollars a mile, let us make a sound expenditure of the resources entrusted to us. Why, a canal would cost but 8,000 dollars; roads should be made cheaper than this, or they should not be made at all.

He favored Representative Bassett's amendment to strike out the provision allowing use of the funds for surveys of the road west of Zanesville to Missouri, so "that the Government would at last come to the end of this evil." When the general government was to build a road, he hoped it went all in, with penal and criminal justice, constables and marshals, and toll gates, "and shall say to the States, we *will* go through your Territory." Unless that happened, "he hoped the House would not proceed in committing itself, by spending thousands in surveys."

He ended by noting that the road already had cost ten times more than the two-percent fund had raised; he appreciated Representative Beecher's frank admission that the fund would never repay the cost.

After further lengthy debate, the House Committee of the Whole took up the Bassett Amendment, which was "negated, without a division." The House committee adopted Representative Cook's amendment, before moving on to other subjects of the bill.

While the House was debating other aspects of the bill, Representative Henry W. Dwight of Massachusetts introduced two motions:

Mr. DWIGHT moved to fill the blank in the following item, viz.: "For defraying the expenses incidental to making examinations and surveys authorized by the act of 30th April, 1824 \_\_\_\_\_ dollars," with the sum of \$30,000.

Representative William C. Rives of Virginia opposed the entire measure, but indicated he would "defer his motion until the bill should come into the House, in order to avoid delaying its passage through the Committee of the Whole. The committee voted, 74 to 51, to adopt the motion. Then:

On motion of Mr. Dwight, an appropriation of \$510 being a balance due to the Superintendent of the Cumberland road, was agreed to by the Committee.

On February 19, the House took up measures the Committee of the Whole had adopted for the Military Appropriation Bill. On the amendment to insert \$170,000 into the blank for the Cumberland Road appropriation, the House agreed by a vote of 81 to 55.

On February 20, much of the day was spent on an amendment introduced by Representative Rives to strike out the following provision from the Military Appropriation Bill:

For defraying the expenses incidental to making examinations and surveys authorized by the act of 30th April 1824, 30,000 dollars.

He regretted having to bring up this matter at this late part of the day, but he had, early on, submitted a resolution instructing the Committee of Ways and Means to inquire into the expediency of discontinuing the annual appropriation for surveys under the General Survey Act of 1824, and substituting instead “distinct and specific appropriations for such surveys as should be authorized by Congress.” Instead of taking the resolution seriously, the committee had waited 5 to 6 weeks by asking the House to discharge it from further consideration of the matter.

The fact that his resolution was laid on the table did not diminish the importance of the matter. He did not question the authority of the general government to appropriate funds for internal improvements. “It is directed exclusively to the present mode of exercising this power, (supposing it to exist,) in the preliminary operation of making surveys and examinations of routes.” He elaborated on this matter for 16 pages (two pages to letter-sized pages).

After 49 pages of debate, the House voted 101 to 67 “in favor of the appropriation of 30,000 dollars for the further prosecution of surveys for the purposes of Internal Improvement.”

The bill was engrossed for a third reading.

On February 21, the Military Appropriation Bill for 1827 was read a third time. After a debate on the state of the Treasury, the *Register* recorded the result:

The question was taken on the passage of the bill, and decided in the affirmative, without a division.

So the bill was passed, and sent to the Senate for concurrence.

### **Preserving the Cumberland Road**

On February 24, the House resolved into the Committee of the Whole to consider a bill for the preservation and repair of the Cumberland Road. The bill was read, with the blanks filled in for rates of toll and salary of the superintendent. This was, in essence,

the toll-gate bill that the House had passed in the 1st session, but that the Senate had not considered.

Representative Stewart offered an amendment providing that when repairs were completed, “the surplus avails arising from the toll should be applied to the erection of a bridge over the Monogahela river.” After a debate that the *Register* did not report in detail, the amendment was rejected.

Representative Buchanan had intended to introduce an amendment to strike out the provisions of the bill involving the erection of toll gates. However, he had been asked “by gentlemen all around him” to hold the amendment while the House was in Committee of the Whole. “As the present was the last day appropriated for consideration of private bills, (among which, it seemed the present bill was to be classed,) and, as from the magnitude of the subject, he had no doubt its discussion would occupy the whole day, he had concluded to yield to the suggestion which was pressed upon him, and would pursue the course the gentlemen requested.”

Representative John Barney of Maryland proposed to strike out the whole of the bill after the enacting clause and substitute an appropriation of \$50,000 for repair of the road between Cumberland and Wheeling. He was not opposed to the bill, as proposed, “nor by any peculiar sensitivity as to the constitutional question supposed by some to be in it.” Instead, he believed that “at this late stage of the session, it was morally impossible to carry the bill in the form reported by the Committee.”

His concerns were practical. Following passage by the Committee the Whole, the House would face a lengthy and contentious debate when Representative Buchanan introduced his amendment. When that happened, “a discussion would arise too deeply involving the sensibilities and theories of different gentlemen of this House, to be concluded during the short remaining limits of the present session”:

Every body must remember that a similar measure was lost at the last session, from the same causes; and should the bill even get through this House, and go to the Senate, it was sure to slumber there without being further acted upon. But, in the form he proposed to give it, he felt himself warranted in saying, the bill would find favor in the Senate, and be promptly acted upon.

Representative Mercer, chairman of the Committee on Roads and Canals, “said that he was willing depart from that course which the Committee on Roads and Canals, after mature deliberation had concluded to pursue.” He believed the views of the House were unchanged from the previous session and would pass the bill as reported, as soon as possible:

He was aware, indeed, that difficulties would be encountered in the Senate. For that very reason, he wished the bill to go there, that there might a full and fair expression of the sentiments of that body in respect to it. Even there, he did not apprehend that the same difficulties would be found to exist as at the last session.

The most prudent course, in his view, was to pass the toll-gate bill and send it to the Senate, “no matter at what stage of the session,” and then introduce and pass a bill as suggested by Representative Barney to appropriate funds only for repair and preservation of the road. That way, if the Senate would not pass the first bill, the Senators could take up the second bill:

At the last Congress, a disposition was manifested by Pennsylvania, to set up gates on this road, and make it equal to the turnpike road from Pittsburgh to Philadelphia. If that disposition still continued, the only effect the gentleman from Maryland would accomplish, would be to lose his amendment, and to lose the bill too; he thought, therefore, it would be best to travel in a path they knew to be safe. If they abandoned the bill to adopt the amendment, they put all at hazard. Besides, stronger ground could afterwards be taken with Pennsylvania, should the bill go to the Senate, and there be rejected.

Mr. M. concluded with saying, that, if he was sure of the support of the gentleman from Pennsylvania, he might be induced to accept the amendment, as the best he could obtain.

Mr. BUCHANAN complained that the gentleman from Virginia had attempted to distinguish the advocates and opponents of the present bill, as the friends and enemies of Internal Improvement; and though he had not expressly asserted that he [Mr. B.] was hostile to those improvements, he left it as a fair inference to be drawn by all who heard him.

[Mr. MERCER explained: He had alluded, in his remarks, not to the gentleman particularly, but to all the members of the Pennsylvania Delegation.]

Representative Buchanan pointed out that no one had been “more friendly to this great national undertaking, the Cumberland Road, than he was, and ever had been.” He did not object on constitutional grounds, but “he doubted its power to set up toll gates, and exact toll of all who travelled the road.”

He would even cheerfully support the Barney Amendment if he would insert \$30,000, instead of \$50,000 in the amendment’s blank:

The bill, in its original form, proposed but 45,000 dollars for the whole expense of repairs and toll gates, &c. Why, then, should the gentleman ask 50,000 dollars for repairs merely? If the friends of the amendment were willing to take such a sum as was needed to save the road from ruin, he was ready to vote for the appropriation. But, if the question as to toll gates was forced upon him, he should be compelled, by what he owed himself, to go at large into an explanation of the reasons which forbade him to advocate such a measure.

Representative Mercer responded that he had not intended to imply that Representative Buchanan opposed internal improvements. He was referring to the rest of the Pennsylvania congressional delegation, who “were adverse to repairing this road out of

funds taken from the Treasury.” He referred to his predecessor as chairman, Pennsylvania Representative Hemphill, who had resigned in 1826:

He had been told so repeatedly, and he well knew that his predecessor [Mr. Hemphill] had been actuated by that sentiment. He had always pressed for the establishment of the toll.

(In 1818, Representative Buchanan had met Representative Hemphill’s sister-in-law, Anne Caroline Coleman. They became engaged, but as Buchanan became distracted during the Panic of 1819 and she became aware of rumors that he was marrying her only for her money and was unfaithful, she broke off the engagement and, unexpectedly, died on December 9, 1819. Representative Buchanan never married.)

Representative Mercer was sorry that Representative Buchanan opposed the plan to install toll gates:

The whole amount of the doctrine was only this, that, when you have the power to make a road, the jurisdiction goes with that power; and the jurisdiction itself is only a power to declare what the law is . . . . The objection was a mere bugaboo, conjured up without any substantial reason to support it.

The States already had given their assent to installation of toll gates:

Mr. M. concluded by declaring, that, if the gentleman from Pennsylvania would, as he had promised, give his support to the appropriation of 30,000 dollars, he [Mr. M.] would give his assent to the amendment, provided the mover would consent to such a modification. He hoped the gentleman from Pennsylvania would say that he could do this. He should feel himself his debtor if he would. He was fully aware that Pennsylvania held the balance. The friends of the measure were in their power, and well knew that, if the Pennsylvania Delegation should unite against the present appropriation of \$30,000 dollars, they would be unable to carry it.

Representative Buchanan said he was astonished to be addressed as if he controlled the Pennsylvania delegation. He was “but a solitary individual” who “answered for no man, and was controlled by no man.” He had declared, and did so again, that he would postpone his amendment on the toll-gates issue to support an appropriation of \$30,000 for present repairs:

For himself, he could say, after much reflection, that he believed that the assumption of the power to establish toll-gates by the authority of the General Government, would be a longer stride towards consolidation than any other which had yet been taken. He viewed it as a fearful effort to destroy our present happy system of Government. If the Government had power to do this on one road, they had power to do it on all roads, whether constructed for the purpose of commercial intercourse or of war.

He said the difference between State and Federal jurisdiction was great. "If the latter were established, the former must be prostrated." He did not want to get into this issue at the present time, and would not have brought it up at all but for Representative Mercer's comments. "Mr. B. concluded by observing, that he hoped the gentleman from Maryland would consent to modify his amendment by substituting 30,000 for 50,000 dollars, and that, in this form, it would prevail."

Representative Stewart took a practical approach. He doubted that the bill, as originally reported, could pass the House, especially if his colleagues entered into a lengthy debate on the constitutional issue. If the bill nevertheless passed the House and sent it to the Senate, "he feared it would again suffer the same fate as at least session." Therefore, he was in favor of the Barney Amendment. "This would secure at least something."

He said:

It was notorious to all the members from the West, that the road had become, in some parts of it, nearly impassable, and if something were not speedily done to arrest this course of dilapidation, all the money heretofore expended would be sunk and lost. The road would soon operate a non-intercourse with the Western States, instead of providing a highway to them. Here Mr. S. went into a description of the damages which the road had sustained.

The House, just a few days earlier, had appropriated a large sum in the Military Appropriation Bill for extending the road to the west. Would the House "now consent that the portion already made and finished should go to destruction?" He continued:

A great part of this road had been constructed eight or ten years ago; and, in all that time, nothing had been given to preserve it but one small appropriation of 25,000 dollars.

He discussed the idea that \$30,000 would be sufficient:

From this opinion he differed entirely; and, to show the reason of his dissent, he would refer to estimates made by two different Engineers, Mr. Weaver [sic] and Mr. McClure. [Here Mr. S. quoted the estimates, and referred to the condition of particular parts of the road, one of which a wagon had sunk through the coating of stone, so as to require eight horses to drag it out of the hole.] Mr. S. concluded, by insisting that any thing like a substantial repair would require at least 50,000 dollars, which amount, he hoped, would not be refused by the House.

(The bracketed interjection was from the *Register's* account.)

Representative Barney, in an effort to end the debate, said he would modify his amendment to strike out \$50,000, and insert \$30,000, "and he promised not to protract the debate, by saying another word on the subject."

Representative Hoffman "expressed his horror at once more meeting this many-headed

monster.” The proposal to operate toll-gates “was not an ordinary power; it would lead to the most serious usurpation.” Already, the general government’s power “had been stretched to a most dangerous length, but, at so late a period of the session, the constitutional question could not be entered upon.” He would not vote for a simple appropriation, “because he considered the power of the House stretched for that, too.” If the toll-gate bill were rejected, and the amendment adopted, “his duty would oblige him to discuss the constitutionality of such an appropriation in Committee of the Whole.”

Representative Joseph Johnson of Virginia disagreed that the same objections to the toll-gate bill applied to the appropriation. He regretted the talk of reducing the \$50,000 appropriation to \$30,000, “a sum quite insufficient to put the road in proper repair.” The former appropriation of \$25,000 had “effected comparatively little”:

He regretted very much to discover the existence of so strong a hostility in some gentlemen toward this great national undertaking; but was gratified to perceive a disposition in others to appreciate its value, and to preserve it from ruin . . . . The road itself was a noble monument of national enterprise, and a most valuable item of national property – it ought to be as permanent as the Government itself.

Why, he asked, should the road be abandoned now? He explained:

The tract through which this great national thoroughfare passed, was, before its reception, a perfect wilderness – uncultivated and almost uninhabited. Now, it resembled a continued village – buildings and improvements of every description had sprung up, as if by enchantment, along its entire course. The time was, when he who proposed to pass over this formidable barrier furnished himself, before he sat out [sic], with provisions for several days; he took with him his rifle and his blanket, and every preparation to encamp in the woods – and when, at length, prepared to set out, he bade an affectionate farewell to his family, as being about to enter on a serious and formidable journey.

What was the case now? By the application of a comparatively small amount of the national means, the precipitous and threatening mountain had dwindled to a hillock. Instead of making his bed beneath the open sky, surrounded with rocks and trees, the traveller reposed himself amid all the comforts and conveniences of a well furnished hotel; and instead of climbing steep ascents on foot or on horseback, he might roll at his ease in a gilded carriage, without fatiguing either himself or his horses. He breakfasts on the Ohio, and sups on the Potomac, having achieved in a single day, without pain or effort, what formerly was the work of many days of toilsome exertion. And was the money to be considered as wantonly thrown away which was given to save from utter destruction such a monument of National munificence.

He said that Representative Hoffman had described the road “as a stalking monster, with more heads than that dragon which John saw in the Apocalypse, which had seven heads and ten horns.” Representative Johnson asked if his New York colleague, who saw the road as a “hideous phantom” had ever considered “the importance of such a highway

between the Eastern and Western sections of this Union.” He noted that Representative Hoffman “nods assent”:

Then I would ask him whether he has ever honored the country through which it passes with a visit? Whether he has ever climbed the top of those stupendous mountains, which once seemed to have been interposed by the God of Nature as an impassable barrier between the East and the West? and whether he has seen for himself this great avenue opened from the Atlantic to the interior? I think the honorable gentleman has not. I am sure, if he had, he could never have anathematised this road in the manner he has seen fit to do.

If nothing could persuade opponents, “there seemed to be but one course remaining – to stop instantly the farther progress of the road toward the West.” The people in the West saw the Cumberland-to-Wheeling road as the most important portion of the road. If the general government was going to abandon the western extension, “it is needless to keep the West any longer in suspense”:

Tell them, at once, that they must abandon all hope of having this great avenue opened to them into the Eastern States.

Keep in mind, though, that if that happens, “you will burst asunder the strongest ligaments which wisdom could devise to bind, in irrevocable union, the diversified interests of this widely extended country.”

When he concluded, the clerk read the Barney Amendment in its original form. Representative Buchanan moved to amend it to strike out \$50,000 and insert instead \$30,000. Representative Stewart demanded a division of the question.

Ohio Representative Vance intervened to say that he had never favored a large appropriation for repairing the road. He would rather have one toll-gate erected on it than appropriate \$50,000 or even \$100,000 for repairs. “He knew, however, that the passage of the bill granting toll-gates was, at this late hour, wholly out of the question.” Moreover, he knew that \$50,000 “was the smallest sum that could usefully be applied to these repairs.”

He understood that many opponents “considered the road as local and Western in its character, and were opposed to it on that ground”:

But any man who was conversant with the actual state of things in the West, must view the road as being quite as much an Eastern as a Western object.

He also addressed Representative Hoffman’s objections. “The argument of the gentleman from that State, [Mr. Hoffman] he could not but think, smelt strongly of the New York canal”:

But he trusted the gentleman would be willing, at least in the Winter time, while his canal was frozen up, to allow some little pittance of communication to pass to

the People of the West by the Cumberland Road. It would be well also to remember, that those People have strong feelings on this subject, and the truth was, that, if this communication should be cut off, they would be little disposed to sustain this Government.

Representative Buchanan, saying he had no wish “to throw obstacles in the way of the passage of the bill,” said he had thought Representative Barney was willing to modify his amendment to read \$30,000.

Representative Barney acknowledged he had said so, “but as gentlemen did not seem agreed respecting the sum to be appropriated, he would modify his amendment by leaving the sum in blank.”

Representative George Peter of Maryland moved to place \$50,000 in the blank, “and the question being put on so filling it, was decided in the affirmative – Ayes 62; noes 54.

So modified, the rest of the reported bill was stricken out. The Committee of the Whole then rose and reported the bill to the House.

With the House now in place, Representative Buchanan moved to insert \$30,000 in place of \$50,000. Representative Mercer asked him to withdraw the motion, but Representative Buchanan would not do so in view of consistency and duty:

He had stated again and again that he was friendly to the road; but as the Committee of Roads and Canals had asked for but 45,000 dollars for repairs, toll-gates, and toll-houses, he could not consent to give 50,000 dollars for repair only. Mr. B. concluded with the calculations as to the expense of gates and toll-houses, from whence he inferred, that, when that expense was deducted from the 45,000 dollars, the balance for repairs could not be over 30,000 dollars.

Representative Joseph Lawrence of Pennsylvania said he had seen estimates that the toll-gates and toll-houses might be erected for \$6,000. He opposed his colleague Representative Buchanan’s motion, “and insisted that 50,000 dollars was as small a sum as ought to be granted, if any effectual repairs were contemplated.”

The House then voted, 84 to 67, to approve the Buchanan Amendment to reduce the appropriation to \$30,000.

Representative William McLean of Ohio proposed an amendment:

That the President of the United States be, and he hereby is, authorized to appoint some suitable person to superintend the repairs to be made on said road, whose compensation, to be paid out of the sum appropriated by this act, shall be fixed by the President of the United States.

The House agreed to the amendment.

The bill was ordered to a third reading, which occurred on February 26.

The bill was read a third time, with the question being whether it would pass.

Virginia Representative Archer said he understood that the road was so greatly dilapidated “that hundreds of thousands of dollars would be required for its repair.” He asked if any benefit could be derived from \$30,000. “Was it intended to pave a great road of one hundred and thirty-five miles in length, for thirty or thirty-five thousand dollars.” It might provide work for somebody, but “would be an absolute unredeemed waste of the public money to that whole amount.” He added, “No man could tell him of any real benefit that would inure to the road from such an appropriation.”

He and those who agreed with him had been silent while the original bill was considered in the Committee of the Whole. “They had no resource [sic]; they must either take this amendment, or a proposition every way much worse.” Then the toll-gate bill had been rejected by its friends, and the House, in favor of “a proposition every way much worse.” Those who opposed the measure “now had an option, and they should oppose the proposition in its present shape, and in every shape.” Given the small amount of the appropriation, the bill was “a mere color, with a view to keep the system alive.”

He brought up the constitutional question:

Many of the warmest friends of Internal Improvements say, that all objections of a constitutional kind are met and fully obviated, when the consent of a State is given to the making of such improvement by the General Government. To those who hold such an opinion, he wished to put this query, Is not the same consent requisite for the repairing and improving of a road, as for the original construction of it?

The power to build the road implied the power to take materials, to condemn them, and use them. The same power was necessary for repairs. If consent of the States involved conferred constitutionality, Representative Archer pointed out that only one State had so consented, namely Pennsylvania. Consent of Maryland and Virginia was needed, but they, “not having expressed such consent, have virtually refused it.”

He should be glad if the advocates of the bill would answer this argument. Does the power to build the road, involve, as of course, the power to take over and over again, as often as I choose, all materials necessary for its repair.

In conclusion, Mr. A. said, he wanted to know precisely what good was to result from the expenditure of this money.

Representative Stewart replied that the constitutional issue did not apply to the bill, as it might have to the toll-gate bill that the Committee on Roads and Canals had reported. The pending bill was not intended to repair the entire road:

For such a purpose, it was totally inadequate. None could be so ignorant or so absurd, as to suppose that thirty thousand or fifty thousand dollars could accomplish such an object.

The funds would “answer many valuable purposes”:

It would keep the road open, remove obstructions, and make it passable. In some places, the sides of hills had slidden down into the road, and blocked it up, insomuch, that travellers had to leave the road, and make a circuit around the obstacle, and the consequence was that the water from the adjacent hills, instead of running by the side of the road, was thrown into the middle of it, and ran a great distance, wearing the road away, and destroying it. In other places, the stone covering was worn through; the soil beneath thrown up; and the whole worked, by perpetual passing, into a quagmire, which could be passed no longer.

This had happened to such an extent, that, in some places, the mail contractors had been obliged to throw wooden causeways and bridges over these interruptions. The road, in other parts of it, was in pretty good condition.

Converting the road to the macadam plan “would require a very different sum from that which is now asked.”

In the next Congress, when the toll-gate bill came up again, the constitutional issues “would be fairly before the House. At present, it was wholly out of view.”

He did not agree with Representative Archer’s view that the three States, not just Pennsylvania, would have to consent to the repairs:

He must take the liberty of telling that gentleman that he had affirmed what was not the fact: for the Legislature of Maryland had not only given the same consent, but has assented to the erection of toll gates also, and the collection of toll . . . .

The power to make and repair this road belonged to Congress as much as the power to erect Post Offices, and to punish those who stopped the mail. All these powers were incidental to the power to establish Post Roads. Surely, if the word “establish” had so wide an extent as to cover the erection of Post Offices, it could not be denied to extend to the construction of a road.

Mr. S. asked, in conclusion, whether gentlemen would rather suffer a road, which had already cost millions, to go to utter ruin, than to appropriate thirty thousand dollars for its temporary repair?

Representative Henry C. Martindale of New York said he was devoted to the cause of internal improvements, and entertained no doubt on constitution grounds, but could not vote for the bill. His objection was practical. Large sums had been appropriated for repair. “Bills had passed the House, for this purpose, three or four times already, and a bill for repairing the road, and erecting gates upon it, had passed both the House and the Senate, and been returned by the President without his signature.”

Representative Martindale was willing to appropriate funds to build roads, “but, when this had been done, some other system ought to be adopted to keep them in repair.” He was not concerned by the claim that collecting tolls would lead to consolidation:

Gentlemen must be under a strange obliquity of mind, who could see all this danger in a turnpike gate, and one at all in our whole system of fortifications.

For himself, he saw much more danger of disorder and disunion in the denial of the power, than of consolidation from the admission of it; yet he could not consent to do such injustice to other States as to vote away millions annually to keep this particular road in repair.

He had voted for inserting \$50,000 in Representative Barney’s bill but \$30,000, as in the present bill “he thought too little to answer any valuable purpose.” He would not vote one more penny for the road until “some example was set of the establishment of toll gates for its permanent preservation”:

This road, in its present situation, has been long enough a waste of the public money. If we cannot erect toll gates, where is the use of giving this \$30,000. To use the expression of the gentleman from Maryland, it is a wasteful economy and a pernicious extravagance. To put this road in complete repair, would require, according to the estimates submitted to the House, \$160,000. This sum he was willing to vote, and then to put gates upon the road; but, if this could not be done, he would not vote another dollar.

Representative Mercer pointed out that repeated attempts had been made to pass a bill for erection of toll-gates, but without success. If the present bill were rejected, the House would have to spend more than twice as much time in the next Congress on the same issue, “even if they afterwards placed gates upon the road; for they could not ask toll until the road was in order.” As for the stricken toll-gate provisions in the present bill, “they would, in all probability, have been stricken out by the Senate, even if the House had retained them.” He hoped that Representative Martindale would reconsider his view.

Representative Hoffman reiterated his position, adding that he was “willing that, in this matter, others should differ from him without imputing to them any ‘obliquity of mind,’ and he hoped that in all future debates, this would be allowed on both sides.” He knew that \$30,000 would do something for the road, “but as he had never been willing to vote for the road itself, he could not vote for the present appropriation.”

Representative Wood said he “was bound to vote against the bill in every shape and form.” The power of internal improvement “was a power the most strictly local of any in existence; it involved local jurisdiction, local superintendence, local powers to keep it in repair.” The fact that the general government did not possess such a power “was as clear to his mind, as that the three angles of a triangle are equal to two right angles.” He could not, in conscience, vote for the bill, “but he was far from imputing to those who could, any ‘strange obliquity of mind.’”

Representative Martindale said that in using that phrase, he “meant to apply that expression only to those who held the constitutional power of congress to construct works of internal improvement, and who were, nevertheless, terrified at the erection of a turnpike gate.” He did not mean to imply that the phrase applied to those who doubted the constitutional power alone.

Finally, the House voted in the affirmative on the bill, 112 to 69, to pass the bill and send it to the Senate. Representative Buchanan voted aye.

### **To the Senate**

With adjournment pending on March 3, 1827, the Senate took up the Military Appropriation Bill. On February 27, Maine Senator Chandler moved to strike out the appropriation of \$170,000 for continuation of the Cumberland Road.

Maryland Senator Smith opposed the motion, explaining that the “appropriation was made for the completion of a great national work, which was to join the Western and the Atlantic States, and to bind them together by the ties of mutual advantage.”

Senator Macon pointed out that a provision in the 1821 Act authorized the surveys that were now to be completed:

There was a proviso in the bill which relieved Congress from any pledge to make the road. For his own part, he would willingly give up the whole five per cent. to the Western States, to get rid of the bargain.

He called for the reading of the Act of 1821.

Senator Ruggles, by contrast, said the funds were appropriated only to carry on work already authorized by law. “The work had thus far gone on without impediment, and the officers were on the ground.” He hoped Senator Chandler would retract his motion.

Senator Johnson said:

Mr. JOHNSON, of Kentucky, was sorry to perceive that the People of the West were obliged to contend, inch by inch, for every inch of ground they obtained on this road. For twenty years, they had been begging for little by little, and now, after the completion of the Cumberland Road had been settled as a principle, they were opposed by the same opposition as had been made at first. The Western Members were never backward in voting for Fortifications and other improvements on the seaboard, and it was a hardship that objects for the good of the Western States were uniformly opposed.

New Hampshire Senator Woodbury asked if the funds were to come out of the two-percent fund which, as he understood it, “had been long since exhausted.” He said it fell short in 1823 by \$200,000:

Had this arrearage been supplied, and any further amount accumulated, he had no objection to its being applied to the object in view. He was willing to apply money according to the contract, but not otherwise.

Maine Senator Holmes said two questions should be considered, namely “whether the fund would be adequate to the payment of the appropriation? and whether Congress should anticipate that fund?” If the fund was sufficient, “he should be in favor of the appropriation.”

The clerk read the Act of 1821, although the *Register* does not specify which law was read. It did not contain the proviso Senator Macon had mentioned. He said he “was sure there had been a proviso, by which Congress withheld any pledge to make the road.”

Moving on, he said that far from a hardship on the Western States, “he thought the hardship on the other side; as the other States were subjected to the burthen of assisting to make this road.” Any thought that opposition to appropriations for the Cumberland Road suggested disposition to oppose the Western States was erroneous.

Senator Chandler said that those who thought the general Treasury would be reimbursed from the two-percent fund “would be disappointed.” He thought the fortifications were necessary, but thought “the time would never come, when the Cumberland Road should carry the fortifications, or the fortifications the Cumberland Road.”

Senator Ruggles agreed that the two-percent fund had been expended on the section of road between Cumberland and Wheeling. The western people “did not consider that they have reaped any peculiar advantage from it.” The problem was the pace of public land sales. In total, the two-percent fund could reach \$2 million, but only after all the land was sold:

The importance of the work now in progress, to the People of the West, and the safety of anticipating the fund, were, he thought, strong recommendations to the appropriation. It was true, that the Western States had been forced to contend for every improvement, inch by inch; but there had, hitherto, been a majority in favor of this appropriation, and he hoped there would be now.

Senator Findlay of Pennsylvania said he was willing to vote to complete the road to Zanesville, “but no farther.”

Indiana Senator Noble “spoke at considerable length.” He began by informing Senator Macon that the proviso he was searching for was in “An Act to authorize the appointment of commissioners to lay out the road therein mentioned,” approved on May 15, 1820. It authorized funds for surveys to continue the Cumberland Road through Illinois, but with the proviso:

*Provided always, and it is hereby enacted and declared, That nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to make, or to*

defray the expense of making, the road hereby authorized to be laid out, or of any part thereof.

Senator Noble explained:

[It] was inserted for the same reason that the 2 per cent. was filched from the Western States to make the road through Pennsylvania and Virginia to Ohio. The gentleman from Pennsylvania was very willing now that the work should stop, because the road through his own State was finished.

Referring to the funds collected from the States west of the Ohio River, he continued:

The United States had taken the money and had undertaken to make the road; and now the benefits were withheld from the Western States, because they were not sufficiently strong to enforce their rights; but they would hereafter be able to claim them; and their fathers of the old States would be forced to yield them justice. He wished to know what authority the United States had to take the money of States of the West, and expend it to construct a road through two States, while the People in the forest were left to struggle through the swamps and morasses? Yet whenever any relief was asked by the West, they were met with constitutional scruples and difficulties.

Senator Holmes did not appreciate the tone of Senator Noble's remarks. "It seemed to be admitted that this appropriation was in character of a loan, and he thought persons seldom solicited loans either in the language of menace or of complaint."

Senator Noble objected to that characterization of his remarks:

[W]hen the Western People begged a boon the case would be different; but they claimed this appropriation as a right. They had paid their money, and it was a duty on the part of the United States to use means to bind together the different parts of the country.

Senator Chandler, referring to the estimate cited by Senator Ruggles, said he did not think any member of the Senate "believed the whole of those lands would sell for half the expense upon the Cumberland Road."

With that, the Senate voted 15 to 27, to reject Senator Chandler's motion.

Senator Cobb moved to strike out the appropriation of \$30,000 for surveys in aid of internal improvements under the General Survey Act of 1824. After a brief debate that was not reported in the *Register*, the Senate voted 19 to 26 to reject the motion.

On March 1, Senator Johnson of Kentucky moved for consideration of the House bill appropriating \$30,000 for repair and preservation of the Cumberland Road. The bill passed through a Committee of the Whole, and moved by a vote of 21 to 15 to be read a third time. "The bill was then read a third time, and passed."

President Adams signed both bills on March 2, 1827.

### **A Profit to the Nation**

When the first session of the 20<sup>th</sup> Congress began, President Adams sent his third annual message to Congress on December 4, 1827. He covered the usual wide array of topics, including progress under the General Survey Act of 1824. He explained that the Corps of Engineers might need more officers, depending “on the number and extent of the objects of national importance upon which Congress may think it proper that surveys should be made . . . .”:

Of the surveys which, before the last session of Congress, had been made under the authority of that act, he listed 12 surveys, including:

- Of the Board of Internal Improvement, on the Chesapeake and Ohio Canal.
- On the continuance of the National Road from Cumberland to the tide waters within the District of Columbia.
- On the continuation of the National Road from Canton to Zanesville.
- On the location of the National Road from Zanesville to Columbus.
- On the location of the same to the Seat of Government in Missouri.

He also listed a national road from Washington to Buffalo and several canal, harbor, and river projects.

Other reports, “upon objects pointed out by the several acts of Congress,” were being prepared and “may be completed before the close of this session.”

If the topographical knowledge resulting from these surveys were the only result, “that alone would have been a profit to the Union more than adequate to all the expenditures which have been devoted to the object.” However, “appropriations for the repair and continuation of the Cumberland Road,” other surveyed projects, “and for the completion of Canals, undertaken by individual associations, but needing the assistance of means and resources more comprehensive than individual enterprise can command, may be considered rather as treasures laid up from the contributions of the present age, for the benefit of posterity, than as unrequited applications of the accruing revenues of the nation.”:

To such objects of permanent improvement to the condition of the country, of real addition to the wealth as to the comfort of the people by whose authority and resources they have been effected, from three to four millions of the annual income of the nation have, by laws enacted at the three most recent sessions of Congress, been applied without intrenching upon the necessities of the Treasury; without adding a dollar to the taxes or debts of the community; without

suspending even the steady and regular discharge of the debts contracted in former days, which, within the same three years, have been diminished by the amount of nearly sixteen millions of dollars.

Reports from several officials accompanied President Adams's message to Congress. One report was from Secretary of War James Barbour, dated November 26, 1827. The report included a summary from the Chief Engineer, Major General Alexander Macomb, dated November 20, 1827, regarding the status of the road to Zanesville:

The continuation of the national road from the Ohio river to Zanesville, has been prosecuted during the year under the most favorable circumstances, and the results already afforded by such portions of the road as have been finished a sufficient length of time to permit the work to acquire the requisite solidity, have been such as to remove the prejudices which have so long existed against the mode of construction on the McAdam principle. Of the whole distance between the Ohio and Zanesville, twenty-eight and a half miles have received three coverings of stone, making a total thickness of nine inches, and as all the masonry necessary in this distance for bridges, culverts, and drains had been completed, this portion of the road may be considered as entirely finished, with the exception of those small items of work which are necessary on all newly constructed roads.

On a second portion of the road, embracing a distance of twenty-three and a half miles, the travel was admitted on the first day of July last, and will be continued until the ensuing spring, before the application of the cover of stone, in order to afford ample time for the settling of the numerous and deep fillings which it was found necessary to make. The interim will be employed in the collection of materials for the cover of the same.

On the 21st day of July last, the remaining distance of twenty-one miles was put under contract at more favorable rates than had been previously obtained; and the whole of this line, with the exception of about seven miles, is in an active state of progress.

Surveys for location of the road west of Zanesville had been completed to the boundary between Indiana and Illinois.

General Macomb also reported on how the \$30,000 appropriated by the Act of March 2, 1827, had been used for repair of the Cumberland-to-Wheeling section:

An agent for the superintendent of the same was appointed, who reported to this Department, in the month of September last, that contracts to the amount of \$17,000 would be completed by the first of October. In consequence of the subsequent decease of this agent, a successor has been appointed, but no report as to the condition of the work has yet been received from him.

In a letter on May 25, 1827, Superintendent Wever had reported to General Charles C. Gratiot, chief engineer on the Engineer Department in the Department of War, about the condition of the road east of Wheeling. An estimate for repair, Wever wrote, “could only approximate truth,” since it depended on the condition of each section and the plan for repair adopted. He divided the road based on its condition into three classes:

First class – 75+ miles – “such parts as have upon them, perhaps, on an average, about one-half of the original quantity of small stone”;

Second class – 32+ miles – “such portions as are nearly, but not quite, destitute of the cover of small stones”;

Third class – 21+ miles – “contains such pieces as are entirely destitute of the cover of broken stone, and such parts as are not only thus naked, but are in some spots, destitute of the pavement also.”

By preserving the original work unmolested, that is, permitting the pavement to remain as it is, only repairing it where its unity is broken, it is believed that the road can be put in very good travelling condition by putting upon the first class a cover of three inches; upon second class, a cover of four and half inches; and upon the third class, one of six inches in thickness, of metal of good quality, reduced to a size not exceeding four ounces in weight.

Based on this plan, Wever estimated the cost to be \$230,274.

A newer concept, however, was to reconstruct the entire Cumberland Road between Cumberland and Wheeling according to the McAdam plan. In February 1826, Wever had estimated the cost of conversion to be \$2,146 per mile or \$278,983 for the entire route. Upon further inspection, he estimated the plan would cost an additional \$50,000, for a total of \$328,983, or \$98,709 more than the three-class repair plan:

Notwithstanding this great difference of cost, I would most unhesitatingly and decisively give the preference to the McAdam plan. In doing so, I would be influenced by the fact, that, when done, the work would be more permanent, and could be kept in good order at a less expense, and the graduation would be moderated, which is a most desirable object. If the repair be made upon the old plan, the cover of small stone will grind and wear away rapidly, because of the stubborn, unyielding, and inflexible solidity of the substratum. There is not, there cannot be, in the present substratum, any of the yielding elasticity to heavy pressure so essential to the preservation and durability of artificial roads which are covered with metal.

All that said, “complete repair cannot be accomplished, either upon the old or new plan, with the sum appropriated (\$30,000).” If more of the road were in better shape, and the rest “was in tolerable travelling order,” or the \$30,000 could be expected to be the first of an annual appropriation, Wever would recommend applying the appropriated funds to the start of conversion to the McAdam plan:

But, as neither is the fact, and as almost every part of the road requires some repair, and almost every part will sustain further injury, unless some repair be speedily made, I would respectfully suggest, for your consideration, the propriety of first applying the appropriation to such objects as are indispensable to preserve it from that further injury, viz: to the opening of the side drains and culverts, next to the temporary repair of the third class of the road; and, lastly, to the second class; so as to save them, if practicable, from utter destruction, until Congress shall devise some efficient and permanent system for the preservation of this most important monument to the national beneficence.

Wever echoed the warnings of former Superintendent Shriver during construction of the Cumberland Road:

It is very much to be regretted, indeed, that this road had not been confided to the superintending of a qualified person as soon as it was made, and the requisite funds placed at his disposal, to make such constant and regular repairs as artificial roads require. Had this been done, a small sum, judiciously expended, would have not only kept the road in good repair, but would really have improved its condition. Constant and close attention is more particularly necessary to artificial roads, as soon as they come out of the contractors' hands, and for some time thereafter, than at any subsequent period. [*Repair Cumberland Road*, Letter from the Secretary of War Transmitting a Report of the Superintendent of the Cumberland Road, Relative to the Mode of Repairing the Same, January 14, 1828, Ho. of Reps, War Dept., 20th Congress, 1st Session, January 14, 1828, Doc. No. 57]

Another item accompanying the President's message was Superintendent Wever's letter of November 10, 1827, to General Macomb describing progress on the Cumberland Road between Canton (Bridgeport) and Zanesville. Wever wrote that three divisions east of Fairview, about 28½ miles had been opened to travel in June covered in stone "reduced to particles of not more than four ounces in weight":

This portion of the road has been, in pursuance of contracts made last Fall and Spring, covered with the 3d stratum of metal of three inches in thickness, and similarly reduced. On parts of this distance, say about five miles, made up of detached pieces, the travel was admitted at the commencement of the last Winter, and has continued on to this time. In those places where the cover has been under the travel a sufficient time to render it compact and solid, it is very firm, elastic, and smooth. The effect has been to dissipate the prejudices which existed, very generally, in the minds of the citizens, against the McAdam system, and to establish a full confidence in its superior utility and preference over the former plan of constructing roads.

The fourth and fifth divisions, and sections of the sixth divisions had been opened in July. They still lacked the final section of stone, but had been opened "in order that time should be afforded to the numerous and deep fillings to settle completely before the application of the cover."

The remaining road to Zanesville, a little over 21 miles, had been let on July 21. "This letting of the road was taken at more regular and fairer prices than any former one. The masonry was taken lower." He praised Commissioner Knight:

The entire location from the Ohio river to Zanesville, as made by Mr. Knight, the commissioner, was a most judicious, and, if the extremely irregular formation of the country be taken into view, may be considered a very extraordinary one.

If the intention was to continue the road beyond Zanesville, the next obstacle was the Muskingum River. "I would suggest the propriety of so increasing the appropriation as to meet the expense of a bridge across the Muskingum":

I will be excused for calling the attention of the Department to the interruption and exposure the traveler meets with at the Monongahela and Ohio rivers, and the delay and danger to which the great western mail is subjected at those rivers for want of bridges. If good roads are useful, bridges are equally so. If good roads afford security and expedition to the mail, armies, and the transportation of the munitions of war, good bridges do also greatly contribute to the same object. The road should be continuous, and no obstacle to the regular, safe, and speedy transportation of the mail, on the great leading routes of the country, should be suffered to exist, which the capacity of the Government can overcome.

It is of very great moment that a system or plan for the regular repair and preservation of the road should be early devised and adopted. To construct important and expensive works, and then permit them to fall into ruin, is certainly, to say the least of it, very unwise policy. Constant and regular attention is as requisite for the preservation of the artificial as the common highways of the country. That great monument of the wisdom and beneficence of the General Government, the road from Cumberland, through the Alleghany Mountains, to the Ohio river, has nearly gone to destruction for want of that provident care and constant attention which it required, and its great utility claimed.

In the course of a short time, the last small appropriation of thirty thousand dollars granted by Congress for its repair will have been expended, and but little comparative good will have been effected by the expenditure. The reason is simply this, and, however paradoxical it may appear, is nevertheless true, that the road has become, by long neglect, too bad to be mended. It must in a great degree, be renewed.

If Congress had appropriated \$25,000 or other similar small amounts a few years earlier, and the funds had been used judiciously, "the result would have been quite different":

The road would now be, as it was when first made, a good one. Indeed, it ought to be better, instead of being, as it now is, very nearly worn out.

The work being done now, under Wever's supervision, would share the same fate,

“unless better provision be made for its repair and preservation than has been accorded to that grand work.” He emphasized the importance of the road:

That road, which, for the facilities it has afforded to emigration alone, is worth more than it cost; that road, which has enabled the sad and dejected emigrant, forced from his kindred and friends by adversity, or the fraudulent hands of his fellow-man, to seek an asylum for his wife and children in a distant land, and caused him to turn his attention, perhaps for the first time in his life, to the General Government of his country, and bless its beneficence; that road, which, by its facilities of travel, has enabled the Government more speedily and more advantageously to dispose of the public lands; that road, which has been of immense advantage to the commercial operations of the country; that road, which has so greatly contributed to the rapid transportation of the mail, and the diffusion of intelligence among the people; that road, which has done nobody any harm, and every body good; that road, which, in time of threatened invasion by a foreign enemy, may be of more value than the fortifications of the seaboard, has been permitted to fall nearly into destruction for want of a system of repair. Will it comport with the wisdom, with the patriotism, or guardian care of that enlightened body, the Congress of this great Republic, the representatives of ten millions of freemen, to suffer a work of such great commercial and political importance to be entirely ruined, without an effort to save it? They will not, they cannot, consistently with the high responsibility of their station, permit this proud monument to the wisdom of their predecessors to fall into utter decay, and all other similar works to follow in its train. It would virtually be severing one of the strongest bonds of the Union.

If Congress would not appropriate the needed funds, “I would consider it highly expedient, nay, indispensably necessary, to erect toll gates for the collection of a toll adequate to this important object.” Wever, again echoing the concerns of Superintendent Shriver, was reluctant to make the recommendation, but “great necessity” called for it:

Tolls are vexatious, but, by proper regulations, may be stripped, in a degree, of their odious character. It is also very necessary that provision be made, by legislative enactment, for the prevention of injury and wanton mischief being done to this work, and for the punishment of such as may be committed.

He recommended that the War Department consider asking the States to enact laws penalizing actions that harm the road, subject to future congressional action:

The law ought to provide particularly for the punishment of the injury done by the locking of wheels and standing of teams on the road, malicious mischief and damage done to the masonry, and all other injuries. It should also contain a clause requiring the drivers of wagons and other carriages to keep on their appropriate side.

He favored the penalty provisions in the toll bill reported by the Committee on Roads

and Canals during the first session of the 19<sup>th</sup> Congress, “in its general provisions, and so far as they are applicable to the road on this side of the river, and slightly modified, in my opinion”:

To the exemption from toll of broad tired carriages provided for in the bill, I would also add the carriages and property of emigrants and drovers of all kinds. Then, for the purposes of emigration, trade, and commerce, the road would be essentially free. It is believed that a light toll, collected from other travel, would be sufficient to keep the road in good order. [*Message from the President of the United States to Both Houses of Congress at the Commencement of the First Session of the Twentieth Congress, December 4, 1827, Ho. of Reps., Executive, 20th Congress 1st Session, Doc. No. 2. The Senate version of the document provided a date of November 16 for the Wever letter.*]

Throughout the first session of the 20th Congress, the Adams Administration continued to provide information on the issues affecting the Cumberland Road.

On February 9, 1828, Secretary Barbour forwarded two reports dated February 1, 1828, from Commissioner Knight to General Macomb on the location of the road in Indiana. In the first report, Knight pointed out that under former commissioners, he had run a location on a straight line to the Mississippi River in 1820 that passed many miles south of Indianapolis and many miles north of Vandalia. The Act of 1825 had rendered that line obsolete:

These two seats of governments now being points in the location, it became necessary to respect the direct bearing between them, which would consequently pass over different ground from the old line, but crossing it in the neighborhood of the State line.

He ran random lines for study, but found “formidable obstacles, opposed to a straight location”:

1. The extensive low grounds bounding the water courses, liable to frequent and great inundations.
2. The great number of ravines which, in the neighborhood of streams, suddenly break the otherwise uniform surface plain of the country, and are often so narrow, that they are, very frequently, not seen until the observer arrives at their banks.
3. A hilly district of country in the vicinity of Eel river, (commonly called “the Walnut Fork of Eel”,) and Deer creek, one of its branches.

This hilly region is here a pleasant country of rich limestone land, and is settling very fast. A few miles south of this, where the old random line run, the hills are too abrupt for cultivation, poor and sandy. Northward the lands are good, but the uneven ground continues for some miles.

The most serious of the obstacles enumerated are the grounds liable to inundations. This is a general feature of the streams, but in different degrees. It was absolutely necessary to pay great attention to this circumstance, or otherwise no practicable route could be had.

Taking these and other factors into consideration, he adopted a route. The road would leave Indianapolis at the west end of Washington Street to Terre Haute, across the Wabash River, Sugar Creek, and Clear Creek, “and passing over good ground generally, terminates on the line which separates the States of Indiana and Illinois at a point specified by measurements from a notched elm tree, a distance of 76 miles:

The route is divided into thirteen sections, of not more than ten nor less than five miles each – and is marked on the ground similarly with that east of Indianapolis.

Overall the distance across Indiana on the adopted route east and west of Indianapolis was 149 miles. Commissioner Knight estimated that construction of the road would cost \$493,583 or \$3,307 per mile. Bridging and masonry of all types comprised the largest sum of this estimate, \$313,099, while grading amounted to \$180,484:

I have no doubt of this being a very full estimate; but it must be recollected that there are very many large streams to cross: some will be expensive on account of the quantity of embankment required to raise the road above inundation, and almost all will be very expensive on account of the remoteness of stone.

He characterized the land:

I have never passed through a greater extent of uniformly rich land than on the route through Indiana. It is well watered, as may be inferred from the maps, or from the estimates of the bridge work. It is somewhat unhealthy, especially along the water courses, but is less so than it has been. The country is settling rapidly, and is in very great want of good roads.

He added:

In pursuance of instructions from the Department, of April 25th, 1827, allowing me to employ an agent, whose duty it should be to commence at Zanesville and to proceed westward along the several contemplated routes for the continuation of the Cumberland Road, and to procure the signatures of persons to bonds relinquishing to the United States permission to pass through their lands, and also to use materials for the construction of the road, clear of any charges for the same, I procured the services of Lazarus B. Wilson, who has performed that service, as far as it was practicable, and to my satisfaction. The people have generally made the desired relinquishments.

The second letter, also dated February 1, 1828, covered the line of the road between the Ohio State line and Indianapolis. During the previous season, he had run a random line

over the distance to fix upon certain commanding points. In the current season, his goal was “to make minute examinations and surveys as were necessary to enable me to make the location.” He characterized the line:

The location is very direct, meeting with comparatively few impediments sufficient to justify material deviations from a straight line, and, with the exception of an unavoidable abrupt bluff at the east fork of White Water, there are, on this route, no curves of considerable flexure.

The route proceeded from the Ohio State line “over an undulating surface to the town of Richmond, a thriving and respectable village situate on the east side of the east fork of White Water, in Wayne county, and at about four and a half miles from the State line. After a curve to ascend a bluff, the line ran “nearly straight to Centreville, the seat of justice for Wayne county, ten miles from the State line”:

From thence, by a route remarkably direct to Indianapolis, over a country which is very thinly settled after the first twenty miles from the State line, and which has been already described. In this distance, two considerable swamps are avoided, by passing just north of them: the one called the Beaver Dam Swamp, is at the total 31½ miles; and the other at the total 51¼ miles from the State line  
.....

The route is marked upon the ground by mile and quarter mile stakes; and by marked trees in the same manner that the route was marked in Ohio.

In considering cost, he wrote:

It would be impracticable, in the usual sense of the word, to pave this road with stone any where, except in the neighborhood of the east fork of White Water, in Wayne county. That part between Centreville and the Ohio State line, a distance of ten miles, might be paved with lime stone a depth of nine inches, McAdamized, for about \$3000 to \$3,500 per mile. No other part of it could be thus paved for any reasonable sum.

There is, however, good gravel on a considerable part of the route; but on other parts, and particularly the middle part, that material is scarce; so much so, that I have not been able to form a tolerable estimate of the expense of procuring it.

Given the difficulties of estimating paving cost in an unsettled flat country, he suggested:

I have thought it would be the better way, first to clear off the timber the width of the 80 feet for the road, and then to grade and bridge it, then let the travelling on it. In the mean time the country would settle rapidly, and its resources as regards the materials in question would become developed, and accurate calculations could be made in lieu of assumptions and inferences; upon which latter, if estimates were now founded, they might turn out to be of no real

service. It is possible that the gravelling might be done for \$1500 to \$2000 per mile. [*Report of the Secretary of War, in Compliance with a Resolution of the Senate, of the Eighth Instant, Transmitting a Report of the Commissioner for Locating the Continuation of the Cumberland Road under Act of March 3, 1825. 20th Congress, 1st Session, Doc. No. 99*]

The House of Representatives adopted a resolution directing the Postmaster General to “communicate any information he may have recently received as to the present state and condition of the Cumberland Road, and to state whether any failure has occurred in the arrangements of the Department, for the transportation of the Great Western Mail, in consequence of the dilapidated condition of said road.” Postmaster General John McLean replied to Speaker Andrew Stevenson on May 10, 1828:

I have the honor to state that the contracts lately made for the transportation of the Great Western Mail, require it to be conveyed from this city and Baltimore to Cincinnati, in six days, and to Louisville, in Kentucky, in eight days. As a part of this arrangement, three days are allowed for the conveyance, on the eastern section of the route, to Wheeling, which, it is feared, from the bad state of the Cumberland Road, cannot be regularly performed. In many places, this road is represented to be so much out of repair as to be impassable to the mail stages. They are driven, in some instances, through farms, and, in others, through the woods, to avoid these obstructions. In consequence of these representations, the commencement of the contemplated expedition on this route has been suspended until the 1st June next, under the hope that, by that time, some of the principal difficulties may be removed. [*Condition of the Cumberland Road. Letter from the Postmaster General in Reply to a Resolution of the House of Representatives, Requiring Information in Relation to the Present State and Condition of the Cumberland Road, Ho. of Reps: P. O. Dep’t, 20th Congress, 1st Session, May 10, 1828, Doc. No. 269*]

### **The Red Flag**

By the mid-1820s, supporters of the road east of Wheeling and opponents in Congress realized that an end to their debates had to come. Both sides thought the solution was to convert the road to a toll road, with the toll revenue used to maintain the road. The debate turned, not on whether to erect toll-gates, but on whether the general government had the authority under the Constitution to erect and operate them. President Monroe, who vetoed the original toll-gates bill, objected to legislation that assumed jurisdiction by the general government of State land.

Legislators in the 20<sup>th</sup> Congress resumed debate on the future of the Cumberland Road. At the same time, the House and then the Senate were considering an internal improvement bill appropriating funds for projects resulting from the General Survey Act of 1824. The Cumberland Road came up repeatedly during debate on the internal improvement bill.

Unfortunately, as author Philip D. Jordan summarized, “By 1828 any National Road bill acted as a red flag.”

Indiana Senator Noble introduced a bill on December 24, 1827, for continuation of the Cumberland Road. He briefly commented on it, noting that “under the administration of Mr. Jefferson, the first bill for the construction of the Cumberland Road was passed, when Congress clearly held out to the people of the west that it should be continued.” His bill would “redeem the pledge then made, and take the preliminary steps towards a continuation of this great public work.”

On January 22, 1828, Indiana Senator Hendricks, who had been the secretary of Indiana’s first constitutional convention, brought up a bill to appropriate funds to complete the Cumberland Road from Bridgeport, near the Ohio River, to Zanesville, and continue the survey of the route from Zanesville to Jefferson City, Missouri. The bill covered the 23 miles east of Zanesville that were in an unfinished condition:

He did not think it necessary to argue upon the obligation of Congress to give this appropriation. That, he believed, had been fully established on former occasions. It was now necessary that the work should progress speedily, as the road, to a certain extent, had been made, and in its partly finished state would suffer damage, if the work were not gone on with.

Senator Chandler of Maine wanted to know how much of the two-percent public lands reserve funds had been applied to the road.

Ohio Senator Ruggles replied, “it would be difficult to answer the question”:

In 1807, the law had passed, authorizing the application of two per cent. on the sales of land, to the construction of the road. This two per cent. on the actual sales made in Ohio, had already been absorbed, and a large sum besides. But he did not consider Congress restricted in this matter. It was a great National work, and had been acted upon as such, and appropriations had been made to carry it on independently of the two per cent. The road had now gone beyond the Ohio river, and was progressing towards the State of Missouri, into which it would in a few years penetrate. To stop, seemed now out of the question.

The Commissioner of the Land Office, Senator Ruggles continued, estimated that when all the public land in Ohio had been sold, two percent of the total would be \$2 million. He did not know if that amount would be realized, but that was what the commissioner had predicted.

Regardless, the proposed appropriation was only to complete work that had begun under congressional authorization to continue the road to Zanesville:

He did not suppose there would be any opposition to an appropriation for such an object – as the time for opposing it, if ever, was at the first agitation of the measure. The greater portion of this great national work was completed, and

would only require some care on the part of the Superintendent. It was done in the best manner, and was covered with stone not over four ounces in weight; the surface had become consolidated, and made a firm and durable road. There was a balance of the work, of about twenty miles, from Bridgewater to Zanesville, yet to be completed, and, for that, this appropriation was to be made.

The labor must be done gradually, as, if the stones were immediately covered with earth, they would settle and make holes. For this reason, Congress had, formerly, made such appropriations as the different stages of the work required. But it was not necessary to provide a sum sufficient to complete the road, and cover all the little repairs that would be required. This section of the road was through a clay soil, and was very difficult to be worked upon, so as to form a solid and permanent work.

After briefly discussing the benefits of the road (for example, the cost of mail transportation had gone down from \$80 a mile to \$30), he concluded, "He hoped the bill would not meet with opposition that would require an elaborate debate upon it; and the time of the Senate might be spared.

Senator Chandler was not satisfied with the answer. He wanted to know how much revenue had been received from the sale of public lands, and how much expended on the road, "that they might know what to depend upon hereafter."

Senator John Branch of North Carolina "made some remarks in opposition to the bill, and reflected on the manner in which appropriations had been distributed among the several States." The *Register* did not elaborate on his remarks.

Georgia Senator Cobb did not want to discuss this subject, yet again, but had seen a document "which lay on the table, and which gave an enormous sum as necessary for the repair of the road." Repairs would cost "*only* four hundred thousand dollars if repaired on the M'Adam's system." In view of the cost to repair what was already built, he thought the Senate should "consider what the repairs of the road, when extended to the Seat of Government of Missouri, would cost." What "enormous amounts" would be required? "Why do not the friends of the whole system establish toll gates, and make those who travel upon the road pay for it?" He continued:

Congress has been going on for years in its lavish expenditures on this object; and now the effect of its extravagance was beginning to be made manifest. Mr. C. said he hoped an inquiry would be had into the estimates and expenditures for this object; and he believed it would be found that the latter had, in every instance, exceeded the former.

Senator William Henry Harrison of Ohio, the General and Adams supporter who would win election as President in 1840, addressed the comments of Senator Branch that had not been described in the *Register*:

Mr. HARRISON said, that he would not take to himself any portion of the imputation of uncharitableness, which had been alluded to by the gentleman from North Carolina, because he had never refused to vote for any appropriation, for purposes similar to this, let them be in what part of the Union they might. Let any rational project be brought forward, and he would cheerfully vote for it.

Senator Branch seemed to blame the western States “because internal improvements had not been made in his State.” If a national road or canal were needed in North Carolina, Senator Harrison assured Senator Branch that he would have the aid of all the western States:

The State of Ohio was now constructing a great National Canal, to which she looked for highly beneficial results. She did not derive any great benefit from the Cumberland road, and had not asked much aid. The United States at large would derive more good from it by far, than his State, or indeed the Western States separately . . . .

Nevertheless, Senator Harrison, a Virginia native who had moved in the mid-1790s to his new wife’s hometown of North Bend, Ohio, knew from experience the impact of the road on the State:

Had the gentleman from North Carolina known the country before the road was commenced, and seen it latterly, he would have been at no loss to feel the importance of this work. Formerly, when a person went to the Western country, it was looked upon as though he had cut himself off from the world. Instances frequently occurred of aged individuals who went early to the West, returning to visit their friends before they died, who never expected to see them again. All this has now changed; the communications had become frequent and easy; and not only old family connexions were renewed, but new alliances were frequently formed, having a tendency to unite with a kindly feeling the distant portions of the country.

My friend from Georgia, said Mr. H., says that we of the West are the cause of saddling the Government with a vast expense for the construction and repair of the road. In reply, I can only say, the advantages are equal to the expenditure. He did not think it necessary to argue the constitutional question, which he agreed with his colleague had long since been settled: and in conclusion, he would again assure his friend from North Carolina, that he would give his cordial aid to any measure which should be proposed for the benefit of that State.

Senator Branch “made some further observations in opposition to the general principle,” adding that he hoped the constitutionality of such appropriations would be considered, expressing a hope “that the time would come for stopping the progress of this tremendous exercise of power.” Again, the *Register* did not elaborate on his comments.

Maryland Senator Smith pointed out that the bill was asking only to complete the Cumberland Road, initiated under President Jefferson, “as far as it has gone; and are we

to stop short? Why, sir, it is a great national work, which will be spoken of in the history of our country, as one of the means which a wise Government made use of to draw together the distant sections of the vast nation.”

As for whether the two-percent fund would cover the cost, “suppose it will not; are we to relinquish a great national work on grounds like these? Certainly not”:

And while this complaint is made, Congress is taking the very course to prevent the construction of the road out of the two per cent. by giving away the lands all over the Western country, and thus taking the surest means of destroying that fund. If this system of donations is stopped, the means afforded by two per cent. on the sales of land may prove adequate to the work.

If upkeep was such a burden, he observed, why not give the road to the States:

Maryland passed an act agreeing to take the road, if the United States would cede it to her. But Congress refused to cede to her the 30 miles that runs through her territory; and since Congress was averse to giving up the road, he hoped they would allow it to progress. The expenditure was nothing in comparison to the object.

Senator Smith also addressed the complaint that most States did not benefit from the road to the western States:

Well, sir, some things are useful to some parts of the country and not so to others. The West do not want fortifications, while the Atlantic States do. And two fortifications are now erecting in the State of North Carolina . . . . And did not Congress give a sum of money, a year or two since, for the Dismal Swamp Canal? I know that the gentlemen from Virginia spoke and voted against it; but I dare say they chuckled when it succeeded in spite of their constitutional objections. Congress had also subscribed to make a Canal from the Chesapeake to the Delaware; indeed they had given to every portion of the country, where it was wanted, their assistance . . . .

And so we have gone on, to clear harbors, make roads, canals, &c. – and shall we now stop, and refuse to complete less than 30 miles of the Cumberland Road?

Senator Smith said he had not heard Senator Branch’s remarks that were not summarized in the *Register*, but he apparently referred to a memorial from his constituents. The Maryland Senator said that he had told Senator Branch that if he was being pressed by his constituents, “a bill drawn up upon it, would pass the Senate.”

(The Dismal Swamp Canal opened in 1805 as a toll facility. On May 18, 1826, President Adams signed “An Act for the subscription of stock in the Dismal Swamp Canal Company.” It directed the Treasury Secretary to subscribe, in the name of the United States, for 600 shares of the company’s capital stock, and to ensure the funds were used

“in the completion of the canal, and not in the payment of any debt or debts now owing to the company.” First, though, the Board of Engineers was to ensure that the plan for the canal “will answer, as far as circumstances will permit, as a part of the chain of canals contemplated along the Atlantic Coast. The board was to submit a report on its findings and whether the sum appropriated, \$150,000, would be sufficient to complete the contemplated work before the Treasury Department acquires the stock.)

Senator Macon expressed his view that under the Constitution, the general government’s powers were limited. “But by implication and construction you go on and make the Government harder and harder to manage, and create jealousies and heart-burnings among the People.” Everything, now, was “national or anti-national.”

He recalled Senator Chandler’s inquiry about the two-percent fund:

The gentleman from Maine has alluded to the two per cent. on sales of lands, which was to have been applied to the construction of this road. But that was when the lands were at two dollars an acre. Since that time, they have been reduced to \$1.25; and there was another bill before the Senate, which proposed to reduce that still lower. Besides, we are continually giving those lands away . . . . But so we go on, doing more and more to make the Government a complicated concern, and still going astray from its original design.

Senator Macon disagreed with those who thought the constitutional issue had been settled. He “thought it would never be settled until it was fixed.”

He was not objecting to roads in general. “I never doubted, said Mr. M. that a good road was a good thing.” His point was:

I am willing to give the two per cent. to the States, to make their roads; and then I wish to have done with them. I don’t want that Congress should have any thing to do with such works as this in the several States. Let them do them themselves.

I have often heard of great National works, and that they were free from tolls to all the People of the country. I know it is a very pleasant thing to travel over a fine road for nothing. But I should like it better had it cost the Government nothing; but been made by the enterprise of the States.

He speculated that the road was developed by the General Government as a toll-free facility because people “had less change to pay their tolls with than they have now.” He also commented on the union-building aspect of the road:

I don’t believe that we can bind the country together by legislation, unless we adhere to the Constitution. And the more you stretch the Constitution, the more you create heart-burnings among the different States; because the People never will believe that they are treated alike; and they can’t be, in a country so large as this is.

To illustrate what happens when Congress stretches the Constitution, he referred to the table in the House chamber where bills and reports were placed:

Look at your table, nearly ready to break down with applications for the extension of our supposed powers to roads, canals, and every description of works. Let Congress adhere to the true meaning of that instrument, and they will get rid of these difficulties.

In closing, he said he wished to adhere to the letter and spirit of the Constitution:

If you go on in your present career, and destroy the Government, what will your State Governments do? They will set about looking up another sedition law, and the consolidation will follow. The Federal Government has established gaming shops. I mean the banks and lotteries; and in these and other games, our liberties and our Constitution are likely to be gambled away.

Senator John Tyler of Virginia agreed with Senator Macon. Tyler was Governor of Virginia (1825–March 4, 1827) before taking office as a Senator on March 4, 1827. (He would become Vice President and then President of the United States in 1841 following the death of President Harrison.) Senator Tyler said:

The preservation of the Constitution was the heighth [sic] of expediency. That instrument was the charter of American liberty; destroy it, and that liberty was gone; sap it by gradual encroachments, and its destruction, in the end, is rendered as certain as if it was assailed by the bayonet.

He could hardly believe, he said, that Senators, who were selected “for their gravity, their wisdom, their attachment to the Constitution,” were so beguiled by the allure of internal improvements for their State that they “embrace it without stopping even to glance at the Constitution, the charter of their rights, and those of the States. If it be so, it is time to arrest this monstrous evil.” Senator Macon had “shown, most satisfactorily, the evils by which we are now surrounded.” Federal funds authorized for State improvements were little more than patronage, a practice he considered an “old, wrinkled hag, corrupted and corrupting.”

Referring to the pile of memorials on the table that Senator Macon had cited, Senator Tyler said that Macon’s description of the evils resulting from such bills brought “thrills to the heart of the patriot, wherever uttered.” The Constitution, which had granted Congress the “power to lay and collect taxes, duties, imposts, and excises, for objects specifically enumerated in the Constitution, has been tortured from those objects, and devoted to the purpose of advancing sectional interests.” The result was “a feeling engendered, which has the effect of arraying State against State, and brother against brother. These are the bitter fruits of latitudinous construction, to counterbalance which, no good, however great, will ever be found to be sufficient.”

Virginia had been, “over and over again, reviled, and efforts have been unceasingly made to ridicule her for her advocacy of principles at war with the latitudinarian principles of this day.”

Senator Tyler rejected the idea, suggested by Senator Smith, that Senators from Virginia had experienced “secret pleasure” from the appropriation for the Dismal Swamp Canal after voting against it:

My colleague could not have esteemed that as a boon, which assisted in sapping the foundations of this Government. I will answer positively for Virginia, in relation to this subject. Her constituted authorities would have rejected, without one moment of hesitation, the largess, had it been offered to them, and they would have been sustained in such rejection by the People.

Let our mountains still uplift their untamed peaks to the clouds – let us have to wade through the mire of our roads, and brave the mighty floods of our streams, in the best way that we are able – yet we will not barter the Constitution of this land for any boon which may be offered; in violation thereof, we will not be tempted to countenance a temporary expediency, for that great, and prominent, and safe policy of preserving the Government, as it came from the hands of those who made it, and thereby, of perpetuating the blessings of liberty to our posterity.

In closing, Senator Tyler apologized “for having occupied your time thus long.” In his defense, he cited “the importance of the subject,” on which he probably should say much more. Instead, he concluded:

Let this Government avoid all interference with the internal affairs of the States. Let it revolve in its own orbit, leaving the State Government to revolve in theirs, and no imagination, however vivid, can paint the glories which await us as a nation – but, let it go on, as it has of late gone on, addressing itself to local interests and feelings, and thereby engendering feuds and animosities, and our destiny may easily be foretold.

Senator Smith explained his reference to chuckling by saying “he did not intend to impute inconsistency or want of principle” to Virginia’s Senators. “He merely intended to imply that, although the Dismal Swamp Canal would benefit their State, such was their ideas of the Constitution, that they would not advocate it.”

Missouri Senator Benton pointed out that whatever the constitutional issues, Congress had started the road a quarter century earlier and, “as a mere question of expediency,” had an obligation to continue it. Debating the issue of internal improvements was pointless “because this road had been in progress for a quarter of a century – and because it was made under a compact which had induced every successive Congress to approve it, and make appropriations for its continuance.”

He agreed that “the best roads had generally been made by the owners of land either to them or through them”:

Now, said Mr. B in the States through which this road is to run, after it crossed the boundary of Ohio, the United States is the sole land-holder, and is bound, both by interest and by equity, to make a road, to render these lands accessible.

Moreover, as a result of the sale of public land and its development where the road had been completed, “the advantage derived from this great work had been much greater than the expenditure”:

Thus it will be seen, that the labor and enterprise of the people of the West on their plantations, roads, bridges, &c., are redounding to the interest of the United States; for, whenever a project is started for a road or a canal through the public lands, their value becomes immediately enhanced in a very considerable degree.

He concluded that “sufficient has been said to show that the United States is bound to make this road, both on considerations of justice and policy; and that this bill stands upon the very best footing.”

Senator Cobb considered the power of appropriation to be dangerous. He could not see “one tittle of reason in support of the right of an individual State to grant a power to the Federal Government which was not to be found in the constitution”:

And giving to Congress the power of appropriating money, was far more dangerous than to admit the original power itself of the General Government to make Internal Improvements, independent of the will or permission of the States . . . .

The power to raise money and appropriate it was not less important, than it was restricted; and every exercise of it ought to be strictly within the terms of the grant in the Constitution. This was a subject of great jealousy when the Constitution was adopted. The most populous States were jealous of every power of which they divested themselves in granting them to the General Government; and it was expressly declared, that every power which was not given to the General Government, by the Constitution, was retained by the States, and could not be wrested from them.

After a brief discussion of the blockage of Savannah harbor, the Senate adjourned.

On January 23, Tennessee Senator Eaton was the first to speak when the Cumberland Road bill again came up for discussion. He began by stating that “many gentlemen had argued erroneously upon this subject, because they had predicated their remarks on wrong facts and data.” This bill was not subject to “the abstract questions of the constitutional power of Congress” or “a case in which that question could be legitimately agitated”:

The bill now before the Senate proposed nothing more than the fulfillment of a contract on the part of the United States, entered into many years since, the early stages of which had gone on uninterruptedly. The mists of constitutional scruples had been newly raised, and thrown around this object at a time when they could be least expected.

In addition to dismissing the constitutional question, he disagreed with those who cited the two-percent fund as the basis for the work. Senator Eaton said the fund had nothing to do with the matter. What did matter was the plan commenced in 1802 when President Jefferson, “than whom no man was more scrupulously regardful of the exact letter and meaning of the Constitution,” signed the Ohio Enabling Act. “Thus it will be seen, that the law agreed that Congress should make roads to and through the State”:

If the words were not clear, the question might be made to rest on the subsequent acts of Congress, in which the same provisions were made in favor of Indiana, Missouri, and Illinois. But there they stood in the law, utterly unquestionable as to their purpose and bearing.

In return for the roads, Ohio agreed not to “exercise her sovereign power to tax the domain of the United States lying within her borders.” The three other Cumberland Road States west of Ohio had made the same promise.

Senator Eaton recalled the road’s legislative history beginning in 1806, which required State consent before the general government could begin construction of the road. When the States consented, “Congress went on to make appropriations for the work.” As a result, in Senator Eaton’s view, “no violation of the Constitution has ever taken place in the laws passed by Congress for the continuance of the Cumberland Road”:

If Congress had a right to admit new States into the Union, and also the right to subject those new States to any conditions not hostile to their Republican character, then this compact was a valid one, and the faith of the Government was solemnly pledged to advance in the plan which they had commenced.

He asked if any Senator present would not agree “that it was a great consideration to unite the two extreme portions of the country by a substantial means of friendly and commercial intercourse?” No stronger bond of union existed “than that which arises out of a community of interests,” namely the transaction of business.

Moreover, the country was now more secure “against the occurrence of a war than at any former period of our political existence.” In the event of an attack on the Atlantic States, “the soldiers of the West will form a strong reserve to aid in all emergencies; for they are always ready.” Should war occur, “will it not be of vital importance to have the means of bringing together the whole physical energies of the country,” thanks to the Cumberland Road?

The road also was “important in a fiscal point of view,” including the reduction in the price of transporting the mail, as Senator Ruggles had stated. “It was also of great importance as to individual expense, and the facility it gave to our internal commerce.”

In sum, the Cumberland Road was “a great national object,” conceived by “a contract with the State of Ohio, which you are bound to fulfil, and which, also, if my arguments have not failed, you are deeply interested in carrying into effect”:

The road now wants repair. That it must be made no one doubts; yet it has often been proposed in vain. Indeed, in every instance where this road has been discussed we of the West have fought for it inch by inch. In other States 2 per cent. had been devoted to roads and Canals, and 3 per cent. has been taken by the States. But in Ohio the whole amount has been paid to the Government, so that she is under no obligation to the United States – which constitutes for her a very strong claim to share in the advantages to be derived from this road, and strengthens the equitable title which she derives from the compact entered into when she became a sovereign and independent State.

Senator Chandler recalled that the day before, he had asked how much the general Treasury had received from land sales compared with the cost of the road. The expenditures thus far, at \$1.8 million, far exceeded the revenue collected from land sales. “And I ask, said Mr. C., whether we have not done our share of the contract and whether we are to go on after the 5 per cent. fund is expended?” If so, he would vote against the bill. Because he could “not see how Congress was bound to make the repairs to the road,” he moved to strike the appropriation of \$180,000 from the bill and insert \$80,000 instead. He thought that would be enough for repair and as for the extension, “he was willing that Congress should make it as well as it could be made with the five per cent – and not better.”

Senator Eaton pointed out that contracts had been made for completing the road to Zanesville, a remaining distance of about 30 miles. If the appropriation were cut to \$80,000, the amount would be sufficient only “to finish 13 miles; and all that had been done on the remaining portion would have been entirely thrown away.” With that, Senator Chandler withdrew his motion.

Senator Hendricks took the floor and, as he had done the day before, said he wanted to avoid the constitutional question. “It must be known to every gentleman in the Senate, that the constitutional power has been settled by every Congress for upwards of twenty years.” Responding to Senator Chandler’s concerns about the source of funding, Senator Hendricks conceded that land sales revenue probably had not been sufficient to cover expenditures thus far. However, the section from Cumberland to Wheeling was the most difficult portion of the Cumberland Road. “Farther West the soil was better adapted to the work, and it could be done cheaper.” If so, the work should continue. “And the compacts had, as far as compacts could do it, established the right of the United States to make roads through the States.”

If Congress could not make a road or canal, as Senator Tyler had suggested, it was incapable of almost anything. The country had agreed to build the road, and that agreement was a fact and it was binding.

Senator Hendricks also wanted to address Senator Cobb's concerns about the estimates of cost for the Cumberland Road:

The estimates made by Mr. Shriver were remarkably correct. But in some instances, the difficulties of the route, the hilly nature of the country, and other obstacles, had caused the expenditure to exceed the estimates. He made this declaration frankly, because he did not wish that a measure based on just principles, should reap advantage by concealment. The tract of country through which the road was now progressing, was the worst through which it would pass. It was a broken, hilly country, resembling the mountainous districts of Pennsylvania and Maryland. But the plains of the States beyond the Ohio, to Mississippi [sic], were far less difficult, and would call for small appropriations.

He also questioned Senator Cobb's call for installation of toll-gates:

But, sir, are we responsible for the condition of the road? Have we not endeavored, for years, but in vain, to fix upon it toll gates, to provide, in this way, for its regular and permanent repair? And has not the opposition to this measure universally come from those very same gentlemen who oppose the appropriations to carry on the work? There is, said Mr. H., a bill now before Congress, the object of which is to provide for the erection of toll gates, and we shall see, when it is taken up, whether the gentleman from Georgia will go with us in its favor.

In any event, unlike the southern Senators, Senator Hendricks did not want the western road extension to revert to the States, which were in no position to build it:

It peculiarly required the direction of the General Government, for it could no more be expected of the States, that they should construct roads for the national welfare, than they should build ships of war or erect fortifications. Pennsylvania [his original State] never would have been induced to make this road. She would rather have turned her attention and resources to local improvements; and so it would have been with every other State. In every point of view, the road was of great importance. It had already saved the country near half a million, and had, by the encouragement given by it to agriculture, increased the wealth of the country to an amount far greater than the sums that had been expended in its construction.

Senator Cobb said that as he had pointed out, expenditures had exceeded revenue from land sales in the affected States. "I asked, said Mr. C., why gentlemen did not go the whole, and, if they could make the road, why they did not also erect toll gates?"

He also responded to Senator Hendricks's question about support for the toll-gates bill:

Why, said Mr. C., I told the gentleman yesterday that I would not. I said, then, that I was entirely opposed to the system on constitutional scruples; and I now inform the gentleman that he will find in me a steady opponent, whether to measures for the construction of the road, or measures for its repair.”

According to the *Register*, “Mr. HENDRICKS said a few words in reply,” but did not report what those words were.

Senator William Smith of South Carolina, the next speaker, was a strict interpreter of the Constitution who rejected many congressional actions, including all internal improvements. According to the online *South Carolina Encyclopedia*, “His style was boisterous, and his speeches were laden with sarcasm and invective against anyone who happened to be his unfortunate opponent.” He served in the Senate from 1815 to 1831, and so was well aware of the internal improvement debates, including debates over appropriations for the Cumberland Road. The *Register*’s summary of his statement began:

Mr. Smith, of South Carolina, was unfortunately opposed to appropriations for this road, and not only this, but to appropriations by Congress for all roads, not excepting military roads, the constitutionality of which he doubted.

He disputed Senator Hendrick’s comment that the constitutional issue had been settled and that it no longer needed to be considered:

But I think not. It is true that Congress has appropriated for these objects from year to year, under one pretext or another; but I never supposed it was designed that we should continue, from year’s end to year’s end, to give large sums for these objects. 180,000 dollars was given towards this road; and 30,000 dollars for surveys. I know that the road is very convenient for people coming from the West, and do not doubt its great advantages to the States through which it runs.

But my principle is, let every State make its own roads; and, if they reap advantages, let it be from their own industry and perseverance. This would be far more consistent and credible than to ask, from session to session, appropriations of money from Congress.

He thought the arguments used by supporters to secure appropriations were “a little curious.” For example, they argued “with very grave aspect” that having made the road so far, “it would be unjust not to make it a little farther”:

Their reasoning seems to be, that, having put “our hands to the plough,” we must, on no consideration, look back, but that the whole Western country must be intersected by this road at the expense of the whole country.

Supporters also referred to the compact with the States, “but I ask if there is any thing in the compact with these States which stipulated that the road shall be 80 feet wide, or that it shall cost 14,000 dollars per mile?”

As for Senator Eaton's call for facts, Senator Smith pointed out the fact that the two-percent fund was supposed to pay for completion of the road:

I ask, will it be possible that it can defray the expense to which the Government has already gone? Will it pay 14,000 dollars per mile, and 635 dollars per mile as salary to the superintendent? I believe not. I believe that, at the time the road was first projected, had it been proposed to pay 636 dollars per mile to the superintendent, it would have prevented its construction. I know not what the superintendent does, or what he has done, but I know that the pay appears to me enormous. Of all public objects, perhaps none are more efficient in promoting the expenditure of public money than such a work as this. And that seems to be its principal recommendation.

Superintendent Wever had said in his report that building a road and letting it go to decay is a bad policy. "And he goes on to state that that great monument to the munificence of the Government – the Cumberland Road – had nearly gone to decay." Money had been appropriated, "but little good has been effected in making repairs":

I should like to know whether the money appropriated has ever been applied effectually. I should think not; for every year we have applications for the repair or the improvement of this road.

And, Senator Smith said, that was the declaration of the engineer, who "tells you that your great and splendid road is in ruins."

With the road not completed as its supporters wish, they are recommending different methods to keep it in repair:

It has been recommended to build it with stone, and cover it with gravel; but all will not do. It is swept away by the torrent. And it is now proposed to cover it with iron. Gentlemen smile, but it is so. [Mr. Ruggles said not iron but metal.] Well, sir, I will look at the report. It is there recommended that the road be graded at an angle of five degrees, and covered with metal of a good quality. It is true, it is not explained what kind of metal this is to be. But if I understand the English language, it may be gold or silver, as it is pretty clear it cannot allude to lead.

[Some one here remarked, that, by the word "metal," was meant "limestone."]

This is the first time I ever heard that limestone was metal.

These engineers, he continued, were traveling the country to identify more roads and canals:

Upwards of sixty of these gentlemen are now in employment. And any Senator who will look at the documents on his table, will be convinced that it is money thrown away. And we still go on, laying stone upon stone, and heaping metal

upon metal, as I sincerely believe to no practical effect beyond the distribution of the public money to men who want it.

He understood the benefits flowing to Ohio:

I am not disposed to deprive the People of the West of any of their rights, or interfere in their convenience. More especially would I avoid interfering in the peculiar *public benefit* to which the gentleman from Ohio so gallantly alluded in the debate of yesterday. He said that alliances were formed by means of the convenience afforded by the Cumberland Road, between the young people of the different sections of the country; and that it was the happy instrument in causing many happy marriages. But I would ask, if we are to pay so dear for these alliances? Poets have sung to us that bolts and bars can not confine true love – and yet, forsooth, our modern lovers must have a smooth road paved with “metal of good quality,” to bring them together. This was a cold and phlegmatic kind of love, and he believed no lady would consent to give her vote for it.

He thought the Cumberland Road “has been as injurious as it has been expensive.” In response, those favorable to the project contended that the expenditures on the Cumberland Road were justified because it was a war road. He rejected that idea:

I have heard of no alarming enmity existing between the East and the West. Yet you have been expending the money of the Government on a war measure. Sir, we suffered sufficiently during the last war; and yet you are no sooner comfortably settled in the enjoyment of peace, than you prepare for war at a great expense. This is a principle which is continually cried up in the country, but I do not agree to it.

He addressed the compact that requires, according to some of his colleagues, continued appropriations for the road. “Well, sir, admitting this is the law, if its operation is injurious or inexpedient, why is it a solemn compact more than any other law? and why may it not be repealed if it is an improper law?” The compact already had been satisfied for Ohio. He pointed out that a survey had been conducted to extend the road, but Congress later had specified that the road must go through the State capitals, resulting in additional costly surveys:

If there was a compact by which Congress was obliged to make a road to and through the State of Ohio, I do not mean to go farther, so far as depends upon me. Nor do I believe that the continuance of this road into Missouri, Indiana, or Illinois, is incumbent on Congress, or is authorized by the Constitution.

He had said early on that he would not touch on the Constitution, but supporters of the road had another defense he wanted to address:

There is yet another point of defence, in which the friends of the bill flatter themselves they are well sustained. It is, that this road is made under the power given by the Constitution to regulate commerce. Some of the gentlemen seem to

go entirely upon this supposition. If this argument be admitted, where will the system stop? Will it not branch off to the Northwest Territory, or go to Santa Fe? In either case, it could be doubly defended by its friends, as a *war road* and a *commercial road*. How fallacious, however, is the policy, if we take it on the former ground, of opening a road of eighty feet in width into an enemy's country; for, if it is a war road, I presume we are going to fight Mexico. But, I ask, are they a warlike people? are we not in profound peace with them at the present time?

To these questions I presume it will be answered, that we are not in hostility with Mexico, but that the road is to be a commercial one. And so we see that, whether one way or another, the friends of the road have always a ready defence. We are to have a road eighty feet in width from Cumberland to Santa Fe, built of stone and paved with metal; that part, I presume, nearest the Mexican frontier, with gold from the mines of Mexico. And then, sir, do you suppose these gentlemen are going to be satisfied? Not at all. New projects will start up, and new inventions be seized upon, to keep up the flow of money from your Treasury into the pockets of engineers, contractors, &c.”

And if the new roads ever stopped, “then Congress must turn about and expend twenty millions to repair what they have already done.”

He concluded:

On every consideration that has presented itself to me, I am opposed to this system of expense. Are the Representatives of the People willing to pay, in the time of peace, a subsidy for the purposes of war? A subsidy for the encouragement of commerce, or a subsidy for the establishment of post roads? I believe they are not. These sentiments I have offered to the Senate as the ground upon which I opposed the bill.

As Sky pointed out, Senator Smith's remarks “crossed verbal swords” with the next speaker, Indiana Senator Noble, who began:

Mr. Noble said he would bear testimony to the humor with which the speech of the gentleman from South Carolina had been characterized, although, at the same time, he must differ from him in point of fact, and in many of the arguments upon which his witticisms had been founded.

Turning to the origin of the Cumberland Road, Senator Noble continued:

It was under the auspices of that great man, the father of Virginia – although the gentleman from Virginia, who spoke yesterday, says that he had rather wade in the mud than make good roads to travel upon – that this great work was first set a-going. He was no violator of the Constitution, and understood its construction probably as well as men of the present day.

Now, sir, by a compact with these Western States, Congress is bound to do this work. The Government cannot avoid it; its pledge has been given, and it must be done. Mr. Jefferson saw how those States were situated. He saw that there was no outlet towards the East to that country lying on the Western waters, and that, in case of a war, the two sections of country would not be in a situation to help each other. If Mr. Jefferson had not set on foot this plan, those rugged rocks which I clambered over when a youth, would have remained, and the face of the country would still have been darkened by those endless forests through which I used to follow the paths of Indians; for we never should have settled that country – we could not have done it – if it had not been for this road.

Anyone can simply state that the compact is not valid. “If he does, I will refer him to the fourth article of the second section of the Constitution, where it is laid down that new States may be admitted into the Union, and that Congress may make rules to regulate their admission. Is there any thing clearer than that?” The provision of roads to and through the new States was written into their enabling legislation. “We agreed to the compact, sir. We gave you a consideration for the benefit you were to bestow upon us.” The statute establishing the compact did not fix a time for fulfilling the compact. “Will you, then, after making a compact, refuse to do what you promised to those States who have been struggling for years in the forest, extending your dominions . . . .?”

Congress had entered into the compact so that “we might have all the communication with the commercial cities that our talent, our wealth, and our enterprise, entitled us to.” Sky described the remaining remarks as “thundered to Smith”:

Sir, you can’t stop the progress of civilization. Do all you can, the Western world has got the start of you, and will defy illiberality to overtake it or stop its progress. You may make us wade in the mud, and swim our rivers and creeks, by refusing to aid us in making roads and canals; but it will not do. It is out of your power to keep down the enterprise of our citizens. I ask you to pass this bill, the principle of which was advocated by the Sage of Monticello, and defended in the councils of the country by Mr. Madison.

Looking back to the earlier years of the road, Senator Noble pointed out the support of Representatives John Randolph and Henry St. George Tucker of Virginia for road improvements. By contrast, he continued:

I would ask the Senate, if the statesmen of Virginia, of the present day, need be referred to as a standard of faith on this subject . . . . Every part of the country, at that time, seemed to think that the Western States had a right to this road.

He then concluded:

We are told now, however, that it is an unjust and unconstitutional project; that a great deal of money has been spent; that the road is good for nothing; that it is out of repair, and all this. The gentleman from Virginia has been particularly warm in his attack upon the constitutionality of the work. But when we come to the

idea that Virginia is the only safekeeper of the Constitution, let me tell the gentleman that the whole of the western part of the State of Virginia is in favor of it. I only ask you to assist those who were struggling in the forests during the last war, without roads and without assistance. I ask you to fulfil the compact you have deliberately entered into, that you may keep your faith and your consciences clear, and that the West may not have cause to complain of the injustice of the Government.

Senator Henry M. Ridgely of Delaware supported the bill, citing many of the same arguments as Senator Noble. “He thought that, when the Senate considered coolly the objects of this bill, they could find no reasonable ground upon which to oppose it.” Moreover, “He saw no reason why it had become a constitutional question.”

He pointed out the enabling acts for each of the western States, including the provisions setting funds aside for roads to and within the new States. He summarized the Act of 1806 authorizing the Cumberland Road to be built with the consent of the States:

How can there be any objection to complying with these terms? How can gentlemen reconcile a failure, on the part of the United States, to justice or to public faith? The compacts were entered into with those States while they were yet Territories; they were submitted to the Territorial Conventions, and were agreed to. It was no hasty piece of work; it was done deliberately, and repeated to each State, so as to show that the policy of the measure was deemed worthy of being followed up from year to year. I ask, then, what objection can we offer to the fulfilment of these agreements? I ask more – if the faith of the United States is not pledged?

He pointed out, too, that the present bill was not for the original section, but the extension as provided for in subsequent legislation. He said the sums appropriated for this work seemed like “a large sum of money.” He acknowledged as much. “But it is to comply with a contract in which the Government have entered, and he doubted not, that, even were it not so, it would be more than paid for by its beneficial effects upon the country at large.”

He added:

He thought the gentleman from South Carolina [Mr. Smith] had misquoted and misunderstood the letter of the Superintendent of the road, Mr. Wever. [Mr. R. then read some passages of Mr. Wever’s letter, in order to support the opinion which he had just expressed.] It was to be supposed that Mr. Wever understood his subject; and he estimated the cost of the completion of the road to Zanesville, at one hundred and seventy-five thousand dollars. The bill appropriated the sum of one hundred and eighty thousand dollars, in order to enable the engineers to go on with the surveys beyond the Muskingum river.

(Bracketed interjection in the original.)

Being from Delaware, he said that his views were disinterested. "I own not a foot of ground in any of these States," but saw the enabling acts for admission of the new States "as comprising a pledge on the part of the United States which, by withdrawing the work, at present would be violated in a most unjustifiable manner."

Senator Harrison said he had intended to respond to Senator Smith of South Carolina, "but it has been so ably done by the Senator from Delaware, that he would not at that late hour trespass upon the Senate, further than to ask the yeas and nays on the question of engrossing the bill."

With that, the Senate voted, 25 to 18, to engross the bill.

After the vote, Senator Macon introduced a resolution:

*Resolved*, That the Committee on the Judiciary inquire into the expediency of relinquishing to the States through which the Cumberland Road passes to the Ohio river, whatever claim, if any, the United States may have to the same; and that the said committee also inquire into the expediency of relinquishing to the States concerned, the claim of the United States to the whole of the five per cent. reserved from the sale of the public lands in the United States.

His said his goal was to give up the road and the revenue "so as to get rid of the disputes which annually occupied Congress on this subject."

The following day, January 24, the Senate debated the Macon Resolution briefly before agreeing to it. The engrossed Cumberland Road bill then was read a third time and passed without a recorded vote.

In the end, as Jordan put it, Senator Macon "set in motion machinery to relinquish the road to the states through which it passed. Fortunately the Committee on the Judiciary, to which Macon's resolution was referred, took no action. The road was saved as a Federal enterprise, but not for long."

### **Internal Improvement Bill, 1828**

During the first session of the 20<sup>th</sup> Congress, the House of Representatives did not take up a standalone Cumberland Road appropriation bill. The House did, however, consider an internal improvement bill.

The bill appropriated funds for a series of projects, such as removing obstructions at Lovejoy's Narrows along the Kennebec River in Maine and \$30,000 "for defraying the expenses incidental to making examinations and surveys under the act of 30th of April, 1824." The \$30,000 for the surveys would prove to be controversial. On February 15, 1828, the Committee of the Whole voted, 45 to 101, to reject a motion by Representative William D. Martin of South Carolina to strike out the \$30,000 for the surveys.

That same day, Representative Charles E. Haynes of Georgia offered an amendment to amend a provision appropriating funds to complete the Cumberland Road to Zanesville and continue the survey west of that city:

Mr. Haynes, after referring to the original agreement made at the admission of Ohio into the Union, and which gave origin to the Cumberland Road, moved, as an amendment, to insert the following after the 9th line:

*Provided*, There shall be remaining in the Treasury so much of the five per cent. fund, reserved by the act of the 30<sup>th</sup> April, 1802, from the net [sic] proceeds of the sales of public lands lying in the State of Ohio to be applied to the laying out and making public roads leading from the navigable waters emptying into the Atlantic to the Ohio, to the said State, and through the same, and not otherwise.

Mr. H. declined entering into the constitutional argument as to the power of the House to make internal improvements, or to make such an agreement with the State of Ohio. Nearly two millions of dollars had been expended on the road, while the Ohio fund did not amount to more than half a million. He mentioned this, merely with the intention of bringing back the public attention to the state of the facts.

South Carolina Representative McDuffie, chairman of the Ways and Means Committee, said he was well aware of the situation and “had been opposed to the whole course of legislation on this subject.” He explained that the committee had “acted on the principle that an implied obligation grew out of the course pursued by Congress for the last two or three years, in relation to this work. Contracts had been extended to a certain point, and these he was willing to fulfil, but should oppose the entering into any new contracts to extend the road West of Zanesville.”

Representative Haynes clarified that Representative McDuffie, while “deeming the course wrong, was nevertheless willing to persist in it to a certain point, whereas he was for stopping short at once.” He called for the reading of the 1802 Enabling Act.

The *Register* reported that, after that was done, “the question being put, the amendment of Mr. Haynes was negatived without a division.”

As usual, the debates touched on whether the Constitution allowed Congress to appropriate funds for internal improvement. The question came up during consideration of the bill on February 25. Virginia Representative Archer opposed the bill, which he said “extended to a greater number of objects than had been embraced by any bill before.” He agreed that “discussion, at this time, would be unavailing.” He did not, however, despair:

On the contrary, he thought he saw, in the depth of the gloom which involved the question, the outbreak of the light which was to redeem it; he thought he saw, distinctly,

the cause of the prevalence of mistake on this subject, in the abstract cast which had been given to the discussion.

The general government, by its very nature, “was obligated to be prodigal”:

It was at a great distance, and other legislative bodies intervened to intercept responsibility. Its proper objects of expense were large, in a great degree indefinite, and not easily subjected to accurate calculation. Its very means of raising money, in an indirect mode, not challenging the notice of the People, facilitated extravagance.

The only restraint was “the limitation on the objects to which its expenditures might be applied.” The power of internal improvement, however, took “away this bridle from its extravagance”:

There was no end to the expenses, on this single object. Where was the limit, in time or money, in reference to the works of Internal Improvement, which this country presented? If there were a limit, before the list had been gone through, the renewal of expenditure must commence from their decay. Where was the limit, too, to the jobs, abuses, and corruption, in the execution and management?

He did not want to get into those details at this time; he was willing to wait. The right time would be when the people saw “annual appropriations . . . to remove sawyers from the Mississippi, or sand banks from the Ohio.” (Sawyers are trees flowing along a river that endanger navigation.) Then, people “would open their eyes to the abuse, and be led, in that way, to inquire into the validity of the power . . . . It was in the mirror of experience that the frightful enormity of this power was to be disclosed.”

Instead, he turned to the debate before passage of the General Survey Act of 1824. “Our forebodings were met, incessantly, by the declaration, that only the definite and limited class of national objects were claimed.” The violations of that pledge “had been gross, open, wanton, shameless.” The bill had stated that the surveys would be “to designate objects of national importance.” And yet the very bill under consideration on this day included appropriations for “two creeks in Ohio.” This was where his optimism came from:

When survey had been some time longer piled on survey, to no good purpose, the People would open their eyes here, too. For this period, also, he was willing to wait; confiding [sic] that the best of counsellors, experience, by instructing us that the exercise of this power was inconsistent with the economy and purity of the Government, would lead us farther to see that it was unwarranted by any interpretation of its authority.

Representative Charles Miner of Pennsylvania thought the “solemn protests against the exercise of this power ought to be met,” because if Congress did not possess the power, “to exercise it was usurpation.” He was concerned that several State legislatures had challenged the general government’s authority to make roads and canals. He read a

resolution of the Georgia State legislature opposing protective tariffs and internal improvements. It ended, "They are constrained, too, to say that this State ought to oppose, in every possible shape, the exercise of the power, on the part of the General Government, to encourage domestic manufactures, or to promote internal improvement."

He did not intend to discuss the tariff, but on the subject of internal improvements, he thought the people ought "to know the reasons for our construction of the Constitution that they might compare them with the arguments of those who denied the right."

The best way to understand the Constitution was to go back to the time of its adoption "to inquire how it was then understood; to ascertain what were the evils suffered; what was the remedy meant to be applied; what were the sentiments of those who wrote and spoke in favor of its adoption."

The Constitutional Convention, he explained, grew out of a meeting at Annapolis, Maryland, in 1786. The commissioners at the meeting called for a convention to be held in Philadelphia "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union." In considering the Constitution, Representative Miner said, that express purpose "should be constantly present to our minds." He cited President Monroe's observation about the "characteristic line" dividing the authority of the State and general governments:

Internal legislation, or the management of those concerns, which are entirely local, shall belong to the States, and that those which have a foreign aspect, and in which they have a national concern to the Confederacy.

He also quoted:

Mr. Jay, one of the wisest and best men this nation has ever produced, in an address to the People of New York, urging them to adopt the Constitution, says, "the Convention concurred in opinion with the People, that a National government competent to every national object, was indispensably necessary." Mr. Madison, in one of the numbers of the Federalist, says, "from a comprehensive and fair construction of these several modes of expression, is to be deduced the authority under which the Government acted. They were to form a National Government adequate to the exigencies of Government and the Union."

Representative Miner asked:

Is it not very reasonable to suppose that some discretionary powers would be vested in the General Government? A Constitution was forming for a vast People, and for future ages – was it possible to foresee all the exigencies that might arise? Must not something be left to patriotic wisdom, to sound and enlightened discretion?

He quoted the Constitution as to “the objects” why it was formed: “To form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare.” This list of objects, he said, “would seem to imply the existence of some discretionary power to effect them.” He then quoted from Article 1:

In the 8th section, art. 1, the powers of Congress are declared: “Congress shall have power” – to do what? “To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare, of the United States.” The preamble to the Constitution had already been recited; the general welfare is there spoke of. Here, when we come to a strict enumeration of the powers of Congress, the “general welfare” is again introduced. These words must have some meaning, or they are mere verbiage; useless, worse than useless; and, if they have any meaning, it must be either that power is given, or an end set forth to be effected, which, of course, carries the power to effect that end. It would be unjust to the great and good men who framed the constitution, to suppose they used words in any part of that instrument without the most careful consideration.

Representative Miner quoted multiple legal and constitutional scholars and authors, concluding that it “is impossible to point out all the objects to which your power may be extended. They must necessarily be left, in some degree, general and undefined.” The general principle was clear “for exercising this discretion: whatever is entirely local, belongs to the States; whatever is foreign, or general in its aspect and tendency, belongs to Congress.”

With that understanding, he addressed the key question: “Is a system of internal improvements [a] matter of general concern. Is it a proper object of national regard?” Given that the general government was the only entity with the revenue to build a national system of internal improvement, he said, “The conclusion would seem obvious and irresistible, that great public works, for National purposes, should be accomplished by the power that holds the National purse.” The general welfare “ought not to depend on the whim, caprice, interest, or party feelings, of any State or party”:

I deduce, therefore, the power of making roads and canals for National purposes, from those of regulating commerce, making war, and possession, on the part of the National Government, of the rich sources of revenue necessary to their accomplishment.

He added that, “to ensure the adoption of a grand system of Internal Improvement, was one of the leading motives and objects of forming the Constitution, and especially of Virginia in adopting it.” This was, he admitted, “taking bold ground.” To prove his point, he quoted from two sections of the Federalist Papers. He began with paper No. 34, written by Alexander Hamilton as one of a series of sections “Concerning the General Power of Taxation.” Hamilton made the point that the objects requiring a Federal role “are altogether unlimited” while those requiring State action “are circumscribed in very moderate bounds.”

At the time, the States were burdened with debts from the Revolutionary War, but that would not always be the case. “Constitutions of civil government are not to be framed upon calculation of existing exigencies, but upon a combination of them, with the probable exigencies of ages, according to the natural and tried course of human affairs.” When the debts were retired, “the only call for revenue, of any consequence, will be for a mere support of their respective civil lists; to which, if we add all contingencies, the total amount in every State ought not to exceed two hundred thousand pounds” or, as Representative Miner put it, less “than a million dollars, to supply all the demands of all the States!” He asked:

Can it be for a moment imagined, then, that the States were expected to make roads and canals to connect this vast empire in the bonds of amity and indissoluble union, by the ties of mutual intercourse, friendship and interest? To suppose it, with such a revenue, would be absurd . . . . It must be apparent, then, if a system of internal improvements was contemplated at that time, that the General, and not the State Governments, was expected to accomplish the work.

Next, he cited paper #14, written by James Madison (and quoted earlier), on “Objections to the Proposed Constitution from Extent of Territory Answered.” It addressed the objection that a republican government was best suited to a small area, not one of the vast extent of the United States. Madison wrote:

Let it be remembered, in the third place, that the intercourse throughout the Union will be daily facilitated by new improvements; roads will be every where shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation, on our Eastern side, will be opened throughout, or nearly throughout, the whole extent of the Thirteen States. The communication between the Western and Atlantic Districts, and between the different parts of each, will be rendered more easy by those numerous canals, with which the beneficence of nature has intersected our country, and which art finds so little difficult to connect and complete.

In other words, Representative Miner explained:

A comprehensive system of roads and canals was then in contemplation. It is urged upon the People that they should adopt the Constitution, that this system may be carried into effect. Fifteen thousand pounds is supposed to be the average of necessary revenue for each State. Can any one for a moment doubt but that it was expected and intended that the General Government should make these roads and canals? Why press the accomplishment of these works, as a reason for adopting the Constitution, unless the powers proposed to be vested in the General Government were supposed adequate for their accomplishment? The conclusion is irresistible.

He closed his speech by saying:

I felt, sir, in rising, that I was trespassing on the patience of the House, and fear that I have done myself little justice, and made myself illy understood. It was not my design to discuss the expediency of internal improvement. But I thought that there were some general principles of construction, applicable to this, and some other controverted points, which ought, at this session, to be brought into the view of the House, and the public. Some points of the Constitutional argument, which have been fully considered heretofore, I have purposely, but slightly adverted to. I add no more.

Representative John H. Bryan of North Carolina thought that Representative Miner “had construed the Constitution too broadly, in contending that Congress could promote the general welfare by any act of legislation which might be deemed conducive to this end.” Of the Constitution’s reference to the power to lay and collect taxes, duties and imposts, Representative Bryan said:

I suppose that these expressions were intended to be a limitation upon the power of appropriation by Congress; were intended to designate the objects for which taxes should be imposed, and to which their proceeds should be applied. The Constitution declares, that “Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare.” In the editions of the Constitution laid on our tables, there is a semicolon after the word “excises;” but, in the original roll in the Department of State, which I have examined, it is a comma, which restores the original reading of that important instrument. The true, as well as the grammatical construction of the sense, then, is, that the power of imposing taxes is to be exercised for the purpose of paying the debts and providing for the common defence and general welfare. The power of appropriation, thus limited and modified, may, in my opinion, sir, be exercised so beneficially for the great purposes of the Union of these States, and in strengthening that union itself, by increasing its value to each of its members, that it would be [a] matter of regret if it should be disclaimed, unless for most imperious reasons. No American can regard without feelings of pride and gratulation [sic], the monuments of utility and greatness, to which its exercise has already given birth.

(According to a National Archives transcription of the Constitution on display in the Rotunda of the National Archives Museum in Washington, the punctuation after the word “excises” is a comma. <https://www.archives.gov/founding-docs/constitution-transcript>)

As an example, Representative Bryan pointed out that the Cumberland Road, “united the Atlantic and Western States, by an easy communication, and which may vie in magnificence and utility with many of the proudest works of antiquity, owes its origins to the exercise of this power, during the Administration of Jefferson.” The Chesapeake and Delaware Canal and the Dismal Swamp Canal were other “truly national works . . . which open a line of interior communication between the Northern and the Southern sections of the Union, of great value to the operations of commerce in time of peace, and indispensable to those operations in time of war”:

I think it will be found, sir, if gentlemen will search our statute books, that, under almost every Administration of this Government, works of Internal Improvement have received the aid of the National Treasury, and of course, the successive sanctions of the eminent statesmen who have filled the Presidential Chair. General Washington was a devoted friend to the system, and viewed it as one of the strongest bonds of union. His capacious mind, as early as 1784, contemplated the union of the waters of the Chesapeake and Albemarle Sound, and the Dismal Swamp Canal may boast of him as its projector.

He recalled the history of the Cumberland Road, adding that President Jefferson and President Madison signed legislation appropriating funds for road construction:

If, then, the question could be settled by precedents, and the authority of statesmen, eminent for integrity and talent, and having peculiar opportunities of knowing what powers were intended to be conferred by the Constitution, being themselves participators in the events which led to the formation of that Constitution, and partaking, also, in the deliberations of the convention which formed it; it would seem to have been fully and conclusively settled.

(Thomas Jefferson, as noted previously, did not participate in the Constitutional Convention. He was in France at the time.)

Representative Bryan did not rest his case only on precedent. “It will be admitted, that, if this power be necessary and proper for the full execution of any of the granted powers, or necessarily incidental to either of them, it may be fairly and legitimately exercised.” He contended that Congress had the power to appropriate funds “for objects conducive to the general welfare; provided they are in accordance with, and subservient to, the powers expressly granted, although these objects are not specified in the Constitution.”

To understand the Constitution, he said, “it seems to me, sir, that we should not call in the aid of the acute philologist, and indulge in verbal criticisms, but should rather scan it with the liberal eye of the statesman, anxious to enforce its full and faithful execution according to its spirit and the intention of its authors.” As an example, he said that if “establish” meant “to fix and make permanent,” it would “prevent a State from ever altering a road which had been established by Congress as a post road, which would be as great an inroad upon State rights as the construction of a road.”

Instead, the power was vested in the Congress. He asked, “Was it intended that the General Government should be dependent upon any one State for the fulfilment of the duties with which it was charged for the benefit of the whole?” Can a State refuse to permit transportation of the mail, obstruct a mail route, or annul a constitutional power that the people have granted? “If a State cannot do this, then the General Government have a right to open and construct a post road, if necessary, for the transportation of the mail.”

The Constitution conveyed not only “specially defined powers” to Congress, “but, out of abundant caution, has conferred upon Congress the right ‘to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.’” For example, in carrying out the authority to establish post offices, Congress provided for the punishment of offences against post office regulations “and have protected the mail against robbery, by the punishment of death in certain cases.” The Constitution did not call for the death penalty for robbing the mail; Congress deemed the penalty necessary and proper for transportation of the mail.

He cited the discussion, mentioned earlier from the *Annals*, on February 16, 1796, in which Representatives Madison and Baldwin, both members of the Constitutional Convention, supported a resolution to survey post roads from Maine to Georgia. Representative Bryan quoted the dialogue as reported in the *New York Journal and Patriotic Register*:

“Mr. Madison moved that the resolution laid on the table some days ago be taken up, relative to the survey of the post roads from Maine to Georgia, (which being read,) he observed, that two good effects would arise from carrying this resolution into effect – the shortest route would be determined on, and persons having a stability of roads, would make improvements upon them.

“Mr. Baldwin was glad to see this business brought forward; the sooner it could be carried into effect the better. In many parts of the country there were no improved roads – nothing better than the original Indian track, &c.

“It was properly the business of the General Government to undertake the improvement of roads, for the different States are incompetent to the business, their different designs clashing with each other.

“[Mr. Bourne and Mr. Williams made a few observations.]

“Mr. Madison explained the nature of the resolution. He said it was the commencement of an extensive work. He wished not to extend it at present. The expense of the survey would be great. The post office would not object to it.”

Representative Bryan said, “This being a contemporary exposition, and from such a venerated and enlightened source, must be considered, I presume, as entitled to very great weight, if not decisive of the question.”

As further backing, he pointed out the authority to build roads in support of wartime activities; “they are auxiliaries in war too important to be neglected”:

The old Congress, in conducting the war of the Revolution, occasionally passed resolves directing their military commanders to open roads, for military purposes, and thus used this very power as a war power. On the 10th of May, 1776, a resolution passed, directing General Washington to “open a road

between Newbury, in Connecticut, and Canada, as it will facilitate military operations and promote the public service.”

This and other examples illustrated “that this power of opening roads, &c. was familiarly exercised as a power incident to carrying on war, by those very statesmen, many or most of whom afterwards assisted in forming our present Constitution, and who thereby gave to the General Government the war-making power, with its necessary and proper incidents, of which they had admitted this to be one.”

He also cited a law signed by President Jefferson on February 15, 1809. Representative Bryan explained, “As I deem this act a very clear exposition and establishment of the doctrine for which I have the honor to contend, I shall cite that section of it which authorizes the construction of the canal at large.” The first of the law’s two sections involved fortifications. He quoted the second section:

*And be it further enacted*, That the President of the United States be, and he is hereby, authorized to cause the canal of Carondelet, leading from Lake Pontchartrain, by way of Bayou St. John, to the City of New Orleans, to be extended to the River Mississippi, and made sufficiently deep throughout to admit an easy and safe passage to gun boats, if, upon survey thereof, he shall be convinced that the same is practicable, and will conduce to the more effectual defence of said city; and that, for the purpose of defraying the expense thereof, there be, and is hereby, appropriated, the sum of twenty-five thousand dollars, to be paid out of any moneys in the Treasury, not otherwise appropriated.

Representative Bryan explained the significance of the provision:

This act, sir, affirms, to its utmost extent, the principle for which I contend. It directs a canal to be constructed, during peace, as a preparation for war. Sir, it must needs be that a Government which can involve the nation in war must not only have a right, but be under a most sacred obligation, to put on the armor of defence before it rushes into conflict.

(The Carondelet Canal had opened in crude fashion in 1794 and was completed in 1796. The extension to the Mississippi River as called for in the cited legislation was blocked by engineering challenges.)

His overall point was that “not one of the specially defined powers can be executed by merely appropriating money.” Referring to the “necessary and proper” clause, he said, “we are reduced to the necessity of striking out from the Constitution a very important clause, occupying a very conspicuous station, or of endeavoring to give it a suitable and consistent operation.” He concluded:

I have earnestly endeavored, sir, upon this important question, to construe the Constitution faithfully; and I trust I shall ever be actuated by such a desire, unmingled with any other motive; and in obedience to such a rule of action, I profess myself ever ready to renounce an opinion, upon a constitutional

question, whensoever the force of argument justifies and requires it. I hope I shall never refuse to prostrate the pride of opinion before the Genius of the Constitution.

Representative McDuffie informed Representative Bryan that the pending bill “was an improper bill on which to prosecute a discussion like the present.” It consisted of “certain works which the Government had always constructed, such as light-houses, and other similar objects. No new principle was involved in the bill.” The principle raised by Representative Bryan could be tested on other bills. “He hoped, therefore, that the debate might not be continued . . . .”

The next day, February 26, after “considerable debate” on the Haynes Amendment, which he had modified:

*Provided*, There shall be remaining in the Treasury so much of the two per cent. fund arising from the sale of public lands within the States of Ohio, Indiana, Illinois, and Missouri, respectively, reserved by the several acts for their admission into the Union, for the construction of a road leading to said States, under the direction of Congress, and not otherwise.

After what the Register described as “considerable debate,” Representative Haynes withdrew his amendment..

The House debate continued:

The question then recurred – Will the House concur in the amendment of the Committee of the Whole on the state of the Union, to fill the blank, at the end of the following item, viz:

For the completion of the Cumberland Road to Zanesville, in the State of Ohio” –

With the following, viz:

One hundred and seventy-five thousand dollars” . . . as follows:

“Which said sum of money shall be replaced out of the fund reserved for laying out and making roads under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on an equal footing with the original States.”

The House voted, 128 to 54, in favor of the amendment.

Representative William Drayton of South Carolina moved an amendment to the section of the bill appropriating \$30,000 for surveys:

*Provided*, That no part thereof be expended upon any surveys, excepting such as have been already contracted for, or where the surveys hereafter made are preparatory to the construction of roads or canals, for the transportation of the mail, or for military purposes.

He explained that, "It seems to me, Mr. Speaker, that, in considering the amendment which I have offered, the sense of Congress may be ascertained as to the extent of its power in authorizing the construction of roads and canals." Before launching into a lengthy explanation, he explained, "I shall endeavor to establish that Congress does not possess the general power to construct roads and canals for national objects, but that its power to construct them is limited to cases in which an express grant for that purpose is contained in the Constitution, or where their construction is a necessary means to carry into execution a power which has been expressly granted."

Discussion of his amendment continued at length on February 28 and 29 at the end of which:

The question was then taken on Mr. Drayton's amendment, and decided almost unanimously in the negative.

Representative Thomas J. Oakley of New York moved an amendment to the same section:

*Provided*, That only so much of this appropriation hereby made as shall be necessary for the completion of such surveys and examinations as have been already commenced, shall be expended.

He explained "that from the intimations around him, he perceived an intention to continue the debate, and expressing his conviction that the question could not be reached during the present sitting, moved that the House adjourn.

The House took up the amendment on March 1, debating the question at length. From then until March 7, the House was consumed by debate on other matters, including the tariff bill. On March 7, the House delayed the tariff bill for another lengthy debate on the Oakley Amendment. At the end, the House voted 72 to 101 to reject the amendment, then voted 111 to 60 to concur with the Committee of the Whole to fill in the blank in the provision with \$30,000.

Representative McDuffie moved the bill to a third reading, but he was interrupted by Representative Jennings of Indiana, who "made a short speech, the object of which was, to remonstrate against the application of what is called the two per cent. fund, derived from the proceeds of the public lands, being included in the general fund for internal improvements, inasmuch as it had been pledged for a special object, viz. the continuation of the Cumberland Road":

The question was now loudly demanded, and having been put by the Chair, the bill was ordered to its third reading to-morrow.

The bill came up for a third reading on March 8, but Representative Wood of New York interrupted the call for a vote by saying that while he supported some provisions, he could not, on principle, vote for a bill that contained the survey provision “which he had heretofore uniformly opposed, and which he still believed not to be among the constitutional objects of congressional legislation.”

Even the title of the bill – “An Act to procure the necessary surveys, plans, and estimates, upon the subject of roads and canals” – bothered him:

The title of the bill, said Mr. W. is a novelty in our statute book – it would seem to indicate that roads and canals were to be regulated by the General Government. He could not admit that the power over these subjects, as a substantive power, was possessed by the General Government. Notwithstanding the act of 1824, and other acts appropriating moneys for the improvement of roads in particular cases, it did not appear that the power over the subject of internal improvements had ever been formally and deliberately avowed to be a substantive power of the General Government.

He did not agree with those who thought the votes on the four resolutions introduced in 1818 supported the claims of those who supported the power. Although the House had voted in favor of the power to appropriate funds for internal improvements, it had rejected the three resolutions claiming power to construct post roads and military roads and canals. “He therefore considered the question an open one, and not fairly and deliberately settled by any precedent construction, were preceding construction as binding here as they were in courts of law.”

He went through the usual arguments in support of the power. For example, he dismissed the claims based on the power to establish post roads:

Mr. W. contended that the power relating to post roads merely involved the power of designating on what existing roads the mail should be carried; that the power was the same under the Confederation as it now is, and had always received the same construction; that this had been the uniform practice, and that the United States had never found it necessary to make any road for that purpose.

He also dismissed the claims related to military authority:

He did not conceive that the military power of the General Government furnished any ground for this claim: that, if a road was only entitled to the appellation of a military road because it was used for military purposes, no road could, *a priori*, or until it was used as such, be called a military road . . . . If it should ever be necessary to lead an army where there was no road, the General Government would, unquestionably, in such case, have a right to form a road, as necessary to the exercise of its legitimate power – from the necessity of the case.

Moreover, he questioned the premise of the General Survey Act of 1824:

Sir, said Mr. W. this is not the business of military engineers. It is their province to examine the military position of the country . . . and to form all military works necessary to the security or success of the army . . . . It is less necessary to burden this corps with the duties of civil engineering, inasmuch as there are a considerable number of civil engineers in the country, well versed in the duties of their profession; and which number is annually increasing by additions from our literary institutions, and military.

The act of 1824 is calculated to prevent the States and private associations from embarking in internal improvements, by exciting a hope that Congress will relieve them from the burden; to create jealousies between the States; and to lead to a waste of the public moneys. All these difficulties would be avoided, and the country improved, to better effect, if the whole subject of roads and canals, and topographical surveys should be left to the States, to be performed by civil engineers, to whom, in his opinion, it exclusively belonged.

He did not object to appropriations for the improvement of rivers and harbors on the seaboard and lakes:

That, although he approved of these appropriations, he could not vote them in connexion with the clause he deemed unconstitutional; that, if he must take the poison with the food, however exquisite it might be, he must be excused from the feast.

Chairman McDuffie of the Committee of Ways and Means was offended by these comments and those of other critics. He, therefore, took a few moments to respond:

Heretofore, appropriations for the objects embraced in this bill have been included in the bill making appropriations for the military service. This course was liable to the very objection, erroneously made, to the course now pursued by the committee – that members were compelled, either to vote for appropriations which they believed to be unconstitutional, or against the ordinary estimates for the military service. The Committee of Ways and Means have, therefore, reported a separate bill for internal improvements, in order that those who are opposed to the appropriations may have an opportunity of recording their opinions upon this measure, unconnected with any other. I profess, sir, to be wholly incapable of perceiving any distinction between appropriations for removing the obstructions in the mouths of the rivers of the United States, running into the lakes, and any other national work of internal improvement.

As for criticism of the title of the bill, he said he was responsible for it. “I have always been of opinion, sir, that it is a matter of no small importance to call things by their true and proper names.” These measures had previously been cited in the title of the military appropriations bill, but now were mentioned in the title of a separate bill. “I should be glad to know of the member from New York, whether his conscience would be at all relieved on the score of constitutional scruples, by changing the title of a bill making appropriations – disguise it as we may – for internal improvements.”

The House then voted, 124 to 57, in favor of the bill. An attempt to change the title “was negatived, without a division, and the title, as reported by the committee, was agreed to by the house. So the bill was passed, and sent to the Senate for concurrence.”

### **The Senate Takes Up the Internal Improvement Bill**

The Senate had considered internal improvements legislation earlier in the session, but on April 8, Senator Smith of Maryland, chairman of the Committee on Finance, introduced the House bill, “together with sundry amendments,” for consideration:

The principal amendment under consideration was a proviso that the appropriation of 30,000 dollars for surveys should be expended on no other surveys but those already commenced. He observed that a majority of the committee had agreed to this amendment. Surveys had already been made of certain works, and if this amendment passed no new ones would be commenced until those now in progress were completed. He had not agreed with his colleagues on the committee, in recommending this amendment, and it was for the Senate to consider whether it was expedient to deprive those States to which surveys had not been extended, of any of the benefits of this appropriation, until those were completed which were already commended.

A brief discussion followed introduction of the House bill. Senator Johnston of Louisiana opposed the committee’s amendment, in part because the surveys underway were mainly in the larger States; “it was unjust to cut off those smaller or more remote States that had hitherto asked no assistance”:

He was also against the amendment, because the other House had fully discussed this appropriation, and had decided in its favor. From that fact, it was obvious that they would not adopt the amendment, even if it should pass the Senate.

Senator Smith dismissed that argument. He “did not think the Senate had any thing to do with the decisions of the other House,” although he “went with the gentleman from Louisiana, as to the effect of the amendment.”

Senator Ruggles opposed the restriction because it was inconsistent with the intentions of the 1824 Act:

He thought the best manner of employing the graduates from West Point, during a time of profound peace, was in surveying the unexplored parts of the country, and developing its resources. He thought, also, that injustice would be done by breaking off the surveys at the present time.

Senator Webster asked why the committee reported the amendment even though the chairman opposed it.

Senator Albion K. Parris of Maine summarized the view of committee members (not reported in the *Register*), but observed that many surveys “had been made for other than

national objects, and many for the benefit of individuals or corporations.” He believed that completing the current surveys, before starting new ones, was the best approach. “It was also believed, that if the numerous surveys now projected, were progressed with, it would require that the Engineer corps should be enlarged.”

Senator Webster spoke “at considerable length” in opposition to the amendment:

He thought it would have been better to move to repeal the law of 1824, or to have struck out the appropriation. As to the complaint that these surveys had been exercised for States, for individuals, and corporations, he saw no objections to such an exercise of the power, as it mattered not whether objects of public utility were proposed by corporations, which had very often more regard to public good than to private interest.

He agreed with the sentiment that the amendment would harm States that had not applied for assistance:

The Engineer corps could not be employed better than in exploring the country and opening its resources. He wished to see the great work go on, and that no impediments might be thrown in its way.

Senator Smith opposed the amendment, citing Maryland’s experience:

The Baltimore Rail-road Company had received aid from the United States’ Engineers, which was of great value; and he understood that similar aid was wanted in South Carolina. He should feel great regret were this amendment to cause it to be withheld from that State, or any other which might be in need of it.

Maine Senator Chandler “thought they had better go on and complete what had been begun; he wished, after that was done, the work might go on as usual.” He offered an amendment to the amendment to insert the following words at the end, “until the surveys already commenced are completed.”

Senator Louis McLane of Delaware agreed with Senator Chandler, “and proceeded to reply, at some length, to certain remarks of Mr. WEBSTER.” He, too, supported the 1824 Act, but wanted “to confine those surveys to the limits fixed by that act – to national objects only.” He wanted to restrict the surveys “to its original grounds, and restrict it to its constitutional province.” He did not want Congress to authorize surveys that were not national in scope. “They had been carried much farther, and local objects had been surveyed which were never embraced in the law of 1824”:

He did not lay this fault to the Secretary of War; but members of Congress had made representations to the Secretary, on which he thought himself authorized to detail a party of Engineers to make surveys. Thus he had been deceived, and the United States’ officers engaged in duties not authorized by the law under which they acted. He thought that, if a State projected a work of a local nature, and

required the science of the United States' Corps of Engineer, their aid ought to be given; but then the State to pay the expense of it.

Senator Webster opposed the Chandler Amendment because it would not restrict surveys to national objects. "If all those surveys were to be completed, whether national or local, how did the amendment confine them to national works? Mr. W. spoke at some length in demonstration of the difficulty that existed in fixing upon what works were really national or local.

Senator Smith introduced a list of surveys underway, contending "that it did not contain a single object which was not of a national character." Senator McLane, however, remarked that the list included "several which he maintained were not of a national character."

With that, the bill was laid on the table.

On April 9, the Senate voted 21 to 21 on the amendment. Vice President Calhoun, serving as the Chair, voted yea, thus breaking the tie in favor of the amendment. He explained his vote:

The Chair has no doubt if the system is not confined to the provisions of the law of 1824, it will, and ought to run down. He then observed that this was no new opinion – that when the law was framed, he was the head of the Department of War, and had made a report upon the subject; and concluded by a remark which was not clearly understood by our Reporter, in which a message of the President of the United States was mentioned.

So the amendment was adopted.

Senator Smith again brought the bill to the floor on April 10, along with several amendments the Committee on Finance had approved. The Senate approved some of the amendments, but the fifth amendment was the subject of debate. It proposed eliminating the following provision:

For the completion of the Cumberland Road, continued to Zanesville in the State of Ohio, one hundred and seventy-five thousand dollars; which said sum of money shall be replaced out of the fund reserved for laying out and making roads, under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri into the Union, on an equal footing with the original States.

Senator Benton moved to strike the amendment, "observing that a bill for this purpose had passed the Senate at an early period of the session." He moved to insert that earlier bill in place of the provision in the internal improvement bill:

Mr. B. went at considerable length into an argument against the principle of allowing the Executive to originate bills, taking, thereby, its legitimate powers

from the legislative body. He thought, on such subjects as that now before the Senate, in particular, the legislature ought to originate bills. He thought the evil was gaining ground, and wished to stay its course. The question, therefore, which his motion would propose, would be, whether the legislative or Executive discretion should be exercised in originating bills.

On motion of Senator Parris, the Senate agreed to divide the motion, with the first vote on taking the Cumberland Road provision out of the bill following by a second vote on inserting the earlier Senate bill.

Senator Smith opposed the amendment:

The remarks of the gentleman from Missouri did not apply to this bill, as all the appropriations had been sanctioned by former acts of Congress. He did not see that censure could rest any where. It was true that many things had been put into the bill which did not belong there – such as provisions for light-houses – yet he did not consider that it displayed, in any degree, the exercise of a power to originate bills on the part of the Executive. He should vote against striking out.

Senator McLane also rejected Senator Benton's opinions:

He presumed the subject of the Cumberland Road had been reported upon by the Committee on Roads and Canals, and that this part of the bill had not originated with the Committee of Ways and Means. He thought there could not well be any difference between the views of the Department and those of the gentleman from Missouri, as they had the same object in view.

Senator Benton clarified that he “certainly agreed in an issue to extend the road to Zanesville”:

It had been proposed, he said, at a very early period, in a report made by Mr. Jefferson, to extend the road to the Seat of Government of Missouri; but he had reason to believe that, as the line of the road had not yet been indicated, it was intended to divert it from the course originally laid out. The people of Missouri and Illinois were very anxious to ascertain the route which the road was to take, in order to lay out their farms accordingly; and it was for that reason that he had framed the bill to which he had alluded, and which passed the Senate. The people of Kentucky and Alabama had no reason to doubt his friendly disposition. He was willing to advocate roads through their States, but he wished also to save his own. He, therefore, had proposed this amendment.

On the first question, the Senate voted to strike out the provision from the House bill (count not reported). The second question was whether to insert the bill the Senate had approved on the Cumberland Road.

Regarding the second question, Senator William Rufus de Vane King of Alabama argued that inserting the standalone bill was unnecessary. The Senate bill had been

transmitted to the House, which had not acted on it. “By not inserting the bill now proposed, the objection would be got rid of, that this bill was encumbered with objects which ought not to be inserted in an appropriation bill.”

Ohio Senator Ruggles said that he would regret voting to strike out the provision in the bill if the previously approved bill were not inserted. “He, therefore, hoped the motion to insert would be agreed to.”

Senator David Barton of Missouri “did not think this amendment would come under the general objection of mixing up incongruous matters in an appropriation bill.”

Senator Parris, however, “thought the adoption of this motion might possibly produce an awkward state of affairs.” If the House passed the earlier Senate bill, “there would be two appropriations made for the same object”:

There were many portions of the bill which he was in favor of; but he had been opposed to that for the Cumberland Road from the commencement. He, therefore, wished that it might be separated from this bill, because he wished to give his vote on it separately. He thought it ought to stand on its own ground; and, as it would be passed in the other House, he thought there was no necessity of inserting it in this bill.

Senator Benton explained that he had introduced the separated bill “to remove the embarrassment of which the gentleman from Maine had spoken”:

As the season was now far advanced, he was anxious that this appropriation should be made at once; and if the road to the capital of Missouri could not be located, he was anxious that the road to Zanesville should be completed; and, although it was against his principles to vote for a bill composed of incongruous materials, in this case he was forced to do it.

Senator Littleton W. Tazewell of Virginia questioned whether the motion was in order. “He supposed that a bill that had been acted upon and disposed of, could not be acted upon again during the same session.” The Chair ruled the motion in order “as there was a distinction between acting upon an original bill which had been disposed of, and an amendment proposed to another bill”:

The question was then taken on inserting the bill in relation to the Cumberland Road, alluded to by Mr. BENTON, as an amendment to the bill under consideration, and the motion was rejected – ayes 18, noes 22.

The Committee of the Whole reported the bill to the Senate that same day, with the first question being on the amendment adopted to confine the appropriation for surveys to those already underway. After some discussion, the Senate voted, 24 to 23, in favor of the amendment.

The Senate resumed consideration of the bill on April 11. Senator William Smith of South Carolina opposed the bill “as he had yet to learn by what delegated power this Senate could sustain the principles upon which it was founded.” He spoke at length about his concerns, eventually turning to the Cumberland Road. He pointed out that the legislature of Indiana had sought a million acres of public land, which Congress had approved, “for her own roads and canals, now asks for lands enough to make a permanent road, bridges, causeways, &c. through the States of Kentucky, Indiana, Illinois, and Missouri:

A road through four different States, to cost this Government \$8,000,000, at the request of Indiana, that asks, at the same time, through another legislative memorial, for the speedy extension of the great Cumberland Road through that State also, for the purpose of encouraging emigration, that the population of the State may be increased! We should think this conclusive evidence of the unlimited and gross extravagance to which this system is approximating with rapidity.

The State wanted Congress to “beat up for volunteers, at a most exorbitant bounty, to go to Indiana to increase her population, and thereby increase her census, to give her more weight in this Government, or it will be deemed illiberal and unjust!” After discussing other projects, he returned to the Cumberland Road:

Mr. S. remarked, that, when the bill to make an appropriation for the repairs of the Cumberland Road was before the Senate, he stated the average cost of that road had exceeded 13,000 dollars. It was contradicted by one gentleman, who attempted to prove from documents that it did not exceed \$6,000 per mile. In defence of what he had then stated, as well as to lay before the Senate an official statement of the cost of the roadmaking system, in which the United States had so largely embarked, he had collected certain documents of 1827.

In a Report from the Treasury, 6th January, 1827, relative to the cost of that road, it appeared it had cost, up to that period, from Cumberland to Wheeling, a distance of only 130 miles, \$1,710,298.93, which gives an average of 13,156 dollars per mile, on the whole distance. The sum paid to Commissioners and a Superintendent for that 130 miles, is 78,430 dollars 47 cents, which will average 604 dollars 31 cents per mile, for superintendence only – a sum sufficient itself to make a good road.

Casper W. Wever, the Superintendent, in an official report of the 25th of May, 1827, to the Chief Engineer, gives his estimate of 328,983 dollars 68 cents, then indispensably necessary for the repairs of the 130 miles, which will average 2,522 dollars 95 cents per mile, for repairs only!

Mr. Wever, in another official report, 16th November, 1827, to the Chief Engineer, says: It was of great moment that a system or plan for the regular repairs of that great monument to the wisdom and munificence of the General Government should be established by Congress. And then goes on to say, the

road had become too bad to be mended, and must, in a great degree, be made anew. And then further added, without constant repairs it could never be travelled!

So incredible are the facts relative to the cost of this road that it had become necessary to prove to the Senate, by their own official documents, the truth of their own acts. And, indeed, so extravagant are the facts, that, without such proof, it would appear like an idle dream, that a road cost the Government 13,156 dollars per mile, to construct it, and 2,522 dollars per mile to repair it, in one year, and before that year had expired, had become impassable until it should be made anew. And to insure its future usefulness, the Government must set apart a separate fund, to be drawn upon forever, at the will and pleasure of a superintendent whose interest it was to be perpetually making and mending. Yet, true as this is, and with all its enormities, it is only a foretaste of what is to come, if we are to pursue this system; and more especially when the Government shall have fully embarked in constructing canals, of which there were as many as thirty in the plans and surveys now exhibited to the Senate, some of them 500 miles in length. Among them are the James River and Kanawha Canal, and the Chesapeake and Ohio Canal . . . .

He discussed other projects as well as the reason why he opposed a system of internal improvements to be developed by the general government. He said that when he took his oath to protect the Constitution, “he did not go into the Secretary’s office, and turn over the musty documents that had lain there for forty years, to teach him the knowledge of that Constitution he had sworn upon the holy Evangelists to protect.” He did not believe that oath covered the General Survey Act of 1824. “Nor did he resort to the brigades of engineers, with all their science of mathematics, and differential calculus, to inspire him with their touch, but to the Constitution itself, to learn its provisions.”

Because some of his colleagues relied on past authorities, he cited one:

General [Alexander] Hamilton, who was anxious to support it, doubted, and recommended an amendment of the Constitution, to provide for it. But he had too much good sense to sacrifice the Constitution to convenience; and remarked that “the degree in which a thing was necessary could never be the test of the legal right to adopt it.”

That brought Senator Smith back to the Cumberland Road:

Mr. Jefferson is said to have recommended the construction of the Cumberland Road. But all the advocates of the road system place that road on the ground of compact. Besides, Mr. Jefferson, at the time he recommended it, expressed his doubts, and, like General Hamilton, advised that the Constitution should be amended. Yet he lived to look back upon it as the greatest error of his political life, and to regret it with bitterness of soul.

He referred to President Madison's veto of the Bonus Bill in 1817, "for which he assigned reasons, recorded in your annals, that will bear the scrutiny of the profoundest statesman, and convince the most visionary opponent." His successor, President Monroe, confirmed that he would have vetoed the bill if President Madison had not done so.

Senator Smith recalled the three resolutions, out of four, that the House had rejected in 1818:

These resolutions put the question into every shape, and protected the rights of individuals, yet not one succeeded. A number of gentlemen who voted uniformly against all those resolutions, and against every modification in which they were, on that occasion, so variously placed, are now among the zealous supporters of this system, with their votes recorded against the constitutional power. Some of these gentlemen are now with us, and voting for this bill. What was unconstitutional ten years ago, is constitutional now.

Five years after the Madison veto, Senator Smith said, President Monroe "wrote a book" and sent it to Congress regarding his veto of the bill to establish toll-gates on the Cumberland Road, "in which he demonstrated, with unanswerable arguments and illustrations, that Congress did not possess the power to construct roads and canals":

That message is also recorded in your annuals with President Madison's negative, where they will remain as monuments of the true construction of the Constitution, and of wisdom, that will outweigh all your theories of constructive power, and necessity, and convenience, put together.

Prior to the General Survey Act of 1824, the idea that the general government could build roads "had never received the legal sanction of the Government in a single instance, except the Cumberland Road, and some Territorial roads, both of which its friends had considered exceptions."

Even before the Act of 1824, the former Secretary of War "had a number of those objects of internal improvement examined and surveyed . . . by virtue of his inherent power as Secretary of War, and which were called national objects." That designation raised a concern for Senator Smith:

The term National was a new word that had crept into our political vocabulary, and growing pretty much into use. It was a term unknown to the origin and theory of our Government. The first article of the confederation says, "The style of this confederacy shall be The United States of America." A part of the Federal Convention styled it a National Government. It was, however, made a question, and Mr. Ellsworth moved to expunge the word National, and place in the room of it "Government of the United States," which was agreed to by the unanimous vote of the Convention.

(The *Register* included a footnote attributing this anecdote to Robert Yates, a New York Supreme Court Justice (1777-1798) who kept notes of the debates while representing his

State at the Constitutional Convention. In early July, he quit the convention in protest because instead of modifying the Articles of Confederation, the convention was drafting a Constitution that would establish a stronger central government than he favored. His edited notes were published in 1821, providing one source of information about the debates, although James Madison denounced the account as biased and inaccurate. Yates would oppose ratification during the New York convention called for that purpose. Another early source regarding the debates came from Luther Martin, an anti-federalist delegate from Maryland who left the convention 2 weeks early and opposed ratification of the Constitution. In November 1787, he presented his account of the convention, slanted by his opposition, in a speech to the Maryland State legislature. A written, expanded version of his speech was printed in a pamphlet titled *The Genuine Information, Delivered to the Legislature of Maryland, Relative to the Proceedings of the General Convention, Lately Held at Philadelphia*. [Larson, Edward J., and Winship, Michael P., *The Constitutional Convention: A Narrative History from the Notes of James Madison*, The Modern Library Paperback Edition, 2005]

The “guarded caution” to eliminate “national” from the Constitution “is now exploded, and the word has become technical.” He denied the legitimacy of the term “and considered it an insidious word, when used as descriptive of our Government,” but he would adopt it on this occasion:

And without wishing to impugn the private or political character of any functionary of the government, he would ask, who clothed the Secretary of War, or the President of the United States, with power to designate any road a National road, or any canal a National canal?

. . . Until Congress became road makers, every portion of the community made their own roads.

He went through, and dismissed, several provisions of the Constitution that were said to provide authority to Congress to appropriate funds for roads, including the clause “to establish Post Office and post Roads”:

But here the power, as in the case of regulating commerce, must depend upon the phraseology of the sentence, and the practicability of the object to be accomplished. If neither of them justify this implied construction, the power cannot exist. It is said, the word “establish,” means to construct. When a majority of a political assembly were bent upon their object, they could give such definition to a word as best suited to their purpose. But the word “establish,” as settled by all lexicographers, means nothing more than to fix, to settle, to make permanent. Congress itself, in all its post road laws, had confirmed that definition. And surely their own legal definitions are good authority. The title of the bill now before the Senate for the purpose is “A bill to alter and establish post roads.”

This was the usual bill listing many existing routes for transportation of the mail:

The act for that purpose of 2d of March, 1827, by its title is “An act to establish sundry post roads.” Its enacting section is, “That the following be established as post roads.” This act established 270 new post roads. Some of them more than 300 miles in length. And taken together, not less than 10,000 miles in length. When Congress pass a law to construct a road, they say so in so many words; as in an act of the same date of the above, the title of which, “An act to authorize the laying out and opening certain roads.”

If “establish” meant to build, “it then becomes imperative on Congress to construct every post road in the Union.” At present, established post roads totaled about 100,000 miles, “which, according to the cheapest estimates of the post roads heretofore constructed, would cost the government 500,000,000 dollars, with an average increase of 5000 annually.” That amount was far beyond the general government’s resources.

When Senator Smith finally concluded his remarks against the bill, the Senate voted, 22 to 10, to order the bill to a third reading.

On April 22, Senator Noble moved that the Senate consider the bill for continuation of the Cumberland Road through Indiana. “Mr. NOBLE spoke at great length in support of the bill, and the claim of the State of Indiana to have the road extended through that State.” After a brief debate, the Senate voted, 26 to 15, to engross the bill.

On April 30, 1828, Senator William Marks of Pennsylvania moved to take up the bill to erect toll-gates for preservation and repair of the Cumberland Road “and the amendments reported by the Committee on Roads and Canals having been agreed to”:

Mr. MARKS further supported the bill, and argued that the road would be ruined if suffered long to remain in its present condition. It would be little better than to allow the road to return to its wilderness state, to neglect repairing it through another Winter like the last.

There were three options. “The United States could make appropriations for the repair of the road; they could erect toll gates; or to turn over the whole matter to the States in which the road lies”:

If the latter course were pursued, there was no certainty that the States would undertake to keep the road in repair, as they looked upon the road, having been made by the General Government, as a work of a national character, and Congress as bound to provide for its repairs.

The question was whether Congress would allow the road, on which nearly \$2 million had been spent, “to fall into decay for want of repair, or would take measures to perpetuate the benefits of the road.” He thought every gentleman would agree something had to be done “to prevent the road from going to destruction.” Some argued that Congress did not have the power to do this, “but, he considered, that, as it had been decided by repeated votes, that Congress had the right to make the road, it could hardly be maintained that Congress had not the right to repair it.”

Senator Branch “objected that the Senate had no power to originate a bill for the levying of taxes,” a constitutional responsibility assigned only to the House.

Senator Marks argued that a toll was not a tax because “all the money collected from tolls would be expended in repairs upon the road.”

Senator Benton objected to consideration of the bill at this late date in the session. Because he had several resolutions on the subject that he wanted to introduce that “he thought would meet the views of the friends of the bill,” he suggested laying it on the table until the next day.

Senator Smith urged the Senate to act on the bill on its merits. Whether by tolls or appropriations, the Cumberland Road was going to be repaired. If the Senate rejected the toll option that would be saying they would approve appropriations. He did not care which option the Senate chose. “One way or another the road would doubtless be repaired, as it could not be supposed that they would allow all the expense which the road had cost to be lost for want of repair.”

Senator Macon thought “the Senate was going rather too fast.” He asked if the bill would have to originate in the House. Vice President Calhoun, the Chair, said he thought the issue “did not turn upon the constitutionality of the bill, but upon the practice of the Senate.” He said that the next time the bill came up, “he would submit to the Senate whether or not it came within the rules of order.”

On May 1, the Senate took up a resolution to adjourn on May 26. Several Senators were concerned that a May 26 adjournment would not allow sufficient time to consider the important pending bills, such as the tariff bill. Senator Noble was concerned that “there was a bill now before the Senate which would take up nearly all the time between this and the 26th of May.” He was referring to the House tariff bill. He pointed out several matters that were pending, including:

And what was to become of his [Mr. N.’s] road in Indiana, if a sudden adjournment took place? He, for one, did not wish to be exposed to the editorial remarks, and the newspaper paragraphs, which this resolution, if passed, would give rise to. It would be said, that the moment this Tariff bill came up from the other House, this resolution for an adjournment was presented; and that it was done to prevent the passage of the bill, while some long winded member spun out the session to its close.

Kentucky Senator Johnson said he considered “the gentleman’s language indecorous”:

I will not, said Mr. J., sit in my seat, and hear the gentleman from Indiana speak of Senators as long winded. It is not fit language to be used here. I, for myself, will not be denounced as speaking to delay the business of the Senate.

Senate Noble pointed out that he had not accused any member of being long winded. He had merely said that the newspapers and political parties might say it if the tariff bill did not pass.

Consideration of the resolution on adjournment was postponed.

Meanwhile, Senator Benton introduced his three resolutions:

*Resolved*, That no right of soil or of jurisdiction over the ground on which the Cumberland Road runs, was acquired by the United States, by the acts of Maryland, Pennsylvania, and Virginia, granting their consent to the making of said road.

*Resolved*, That it is not expedient for the United States to exercise a permanent superintending care over the repair and preservation of the roads made by it within the limits of the different States.

*Resolved*, That the repair of the Cumberland Road, and of all other roads made, or to be made, under the authority of the United States, be left to the States through which the same may pass.

After the resolutions were read:

Senator SMITH, of Maryland, suggested to the mover (Mr. BENTON) that the resolutions being of an abstract character, and not likely to lead to any practical results, and the session being now far advanced, it was better to postpone their consideration, and proceed with the bill for erecting toll gates on the road to which the resolutions referred.

Senator Benton denied that the resolutions were abstract, saying “they were intended to settle great questions – questions which had agitated Congress for seven years, and were again to agitate it in the discussion of the bill, to which the Senator from Maryland, [Mr. Smith,] had called his attention.” The experience of the past 7 years proved that no vote in the Congress on such bills would settle these important issues:

The end and object of them was to fix upon the authority which was to be charged with the care, repair, and preservation of this road. This was a very different question from the question of making the road, and the sooner it was known whose business it was to take care of the road, the better for all parties concerned, for while the States were waiting for Congress to do it, and Congress was waiting for the States, or for the people of the vicinage to do it, the road itself was going to ruin; and injuries upon which a few days work timely applied, or a few dollars timely expended, would have checked and prevented, afterwards required, as our statute book would prove, some thirty thousand dollars to repair.

. . . Mr. B. then went into an argument of great length and research in support of his resolutions, the intrinsic interest of which deserve an ample report, but of

which nothing but the general outline and essential substance, can here be attempted.

In the *Register's* summary, he began with his creed that the general government had the power "to make roads and canals of national importance, such as where [sic] designated by Mr. Gallatin in his report of 1807, and such as he (Mr. B.) himself had specified in a proposed amendment to the survey bill of 1824 . . . ." The Federal power was subject to the assent of the States through which the roads or canals would pass, as Maryland, Pennsylvania, and Virginia had assented to construction of the Cumberland Road. However, Congress did not derive its power from State assent, but "it was decent and becoming to consult the wishes of the State in all such cases, because its assent would do away all that class of objections to the exercise of this power, which were founded upon a real or supposed violation of State sovereignty, and a real or supposed violation of State territory."

Having stated his creed, he recalled his first vote, during his first term as Senator, on a toll-gates bill for the Cumberland Road in 1821. "The bill came up from the House of Representatives, and went through the Senate with little or no discussion. All, or almost all, seemed to be for it." No one objected on constitutional grounds or grounds of inconvenience or inexpediency to impede progress of the bill:

Many such barriers and objections rose up in his (Mr. B's) mind, but he recollected that he was the youngest Senator from the youngest State in the Union; that he had just got in after a hard struggle to keep him out, and he considered it neither decent nor becoming in him, thus fresh from the prairies of Missouri, to harangue the conscript fathers of the republic upon constitutional law. So he said nothing. Others said but little. The bill was put to the vote. The vote was taken by yeas and nays. He found himself to be the first to say nay, and among the few to say nay; for when the result was announced only seven votes were found in the negative.

In that way, the bill had "floated through the Senate, as it had done through the House of Representatives, upon the swelling tide of an overwhelming majority, and went up to the President, Mr. Monroe, to receive the final touch in the impress of his approbation." Instead, he dealt it a death blow. The House had tried to overturn the veto, but received "on this second trial not even a simple majority of the votes, instead of the majority of two thirds, which the emergency required."

Putting aside his first acquaintance with a toll-gate bill, he turned to the present:

Mr. B. then adverted to the early period at which the Gate bill, now before the Senate, had been brought in, the long time it had lain on the table, and the suddenness of its resurrection in the forenoon of yesterday. It had been brought in at the very commencement of the session, had lain on the table an hundred days – about as long as Napoleon reigned the second time in France, and called up at a time when he was looking for a different subject.

As the bill was being read, he debated what to do:

It seemed to him, that to reject the bill would settle nothing; to pass it would settle nothing; either vote would be the decision of an individual case, depending upon its circumstances, and any number of bills could be brought in afterwards, depending upon new circumstances, and not coming within all the facts and reasons of the prior decision.

He decided to introduce his resolutions, which were not abstract at all, but “as practical as the bill itself, and more so, for they would have more general and more decisive results.” The goal was not to defeat the bill, but to set the conditions for consideration of this bill and all future bills on the subject.

He went through each resolution, at great length as the *Register* had stated:

Mr. B. concluded with declaring that he submitted the resolutions in a friendly spirit to the road making power; that he considered their adoption as necessary to the further success of the system; that the system could not carry the load of odium which the setting up of gates, or the further appropriation of great sums to the mere repair of these roads, would bring upon it; that a direct vote upon his resolutions was necessary to decide a question which was suffering for decision, to wit: whether the individual States or the Federal Government should be charged with the business of repairing and preserving these roads; and that he should consider any attempt to avoid the decision, by moving to lay the resolutions upon the table, or to postpone them, as an unfortunate attempt to avoid a serious question which must be met, sooner or later, and the sooner the better.

Senator Elias K. Kane of Illinois “replied to Mr. Benton, and moved to lay the resolutions on the table; on which question, the yeas and nays having been ordered, it was decided in the affirmative.”

The resolutions were placed on the table.

The next day, May 2, Senator Smith “reported the bill making appropriations for Internal Improvements, (which had been returned from the other House, the amendments made by the Senate not having been agreed to) and moved that the Senate recede.” The Senate quickly agreed to recede from the first and second amendments “of minor import.”

On the third Senate amendment, which would limit surveys to those underway, “a long and interesting debate took place,” as the *Register* put it without elaborating. The *Niles Weekly Register* of May 10, 1828, summarized the debate:

Messrs. Johnson and Webster addressed the senate in favor of receding from the amendment. Mr. Smith, of S.C. spoke in reply to Mr. Webster. Mr. McLane followed in reply to Mr. Webster, declaring that though the committee of finance

had recommended that the senate recede from the amendment, he was now determined to adhere. Mr. Webster replied to Mr. McLane. Mr. McLane, rejoined. Mr. Branch animadverted upon the remarks of Mr. Webster. Mr. Chambers spoke in favor of the recession, and in reply to those who opposed it. After some remarks from Messrs. Smith, of Md. Johnston, of Lou. Harrison, Foot, Webster, McLane, Branch, Chambers and Benton –

The question was taken on the motion to recede from the amendment, and decided in the negative.

The vote was 23 to 24. The Senate also voted against receding on any other amendments to the House bill.

In the House, Representative Mercer moved on Saturday, May 3, that the Committee of the Whole discharge three bills involving the Chesapeake and Ohio Canal Company for consideration by the Committee of the Whole on the State of the Union. The *Register* reported that Representative William Armstrong of Virginia “demands that the question be taken by yeas and nays, and it was so ordered.”

Representative Mercer, at “the suggestion of some of his friends,” amended the motion to include several other measures, including:

- A bill for the preservation and repair of the Cumberland Road;
- A bill for the layout and making a national road from Washington to New Orleans;
- A bill for the layout and making a national road from Washington to the Northwest frontier of New York and Pennsylvania;
- The bill from the Senate, for the construction of the Cumberland Road from Bridgeport to Zanesville, in Ohio; and for completing the surveys of that road from Zanesville to the seat of Government, in Missouri.

After brief debate, the House voted first on the three bills involving the Chesapeake and Ohio Canal Company. By 108 to 67, the House agreed to discharge the bills:

The hour allotted for morning business having expired –

Mr. MERCER moved to postpone the orders of the day, with a view to taking the question on his former motion, with respect to the bills on the Cumberland Road: but the motion was negated.

On Monday, May 5, Representative Mercer moved to discharge the remaining bills, including those involving the Cumberland Road. Representative George R. Gilmer of Georgia “demanded a division of the motion, so as first to take the question on those bills only which referred to the Cumberland road.” Some discussion followed:

The question was then taken on the three bills, and decided by Yeas and Nays – Yeas 153, Nays 58.

So the Committee of the Whole were discharged from the consideration of the bills relating to the Cumberland Road, and they were referred to the Committee of the Whole on the state of the Union.

The hour allotted to morning business expired before the Committee of the Whole could vote on the other bills proposed for discharge.

Later that day, the House considered a message from the Senate on the internal improvement bill, insisting on the 3d and 5<sup>th</sup> amendments to the bill. Representative McDuffie moved that the House insist on its disagreement with both amendments and request a conference with the Senate to resolve the differences.

Representative Wright opposed the motion because of “the risk of its failing entirely, if the House once put it out of its power”:

He recited the various objects of Internal Improvement contained in the bill, apart from the subject of surveys; urged the necessity and value of many of these works, and referred particularly to the condition of the work at Oswego Harbor, and that at Buffalo; the latter of which had already been suspended for some time, and would go to ruin unless this appropriation bill should pass.

Representative McDuffie said he did not believe the bill would be endangered. “There was no reason to suppose that the Senate would refuse a conference, and then the whole subject of the bill would be open for final arrangement.”

Representative Charles A. Wickliffe of Kentucky shared Representative Wright’s concern that if the Senate laid the motion on the table, “it would then be wholly beyond the power of the House”:

He then referred to the sixty-nine objects of improvement which had been partially surveyed, and quoted a document from the War Department, to show that completing the surveys of these alone would cost \$457,000. He thought the Engineers might very well be employed on the surveys which had been commenced, without beginning new ones within the present year.

Ohio Representative Vance responded:

Mr. VANCE corrected an error into which Mr. W. had fallen, in quoting the document; referred to the deep interest felt in Ohio and all the Western country, on the subject of these surveys, and their determination rather to lose the bill than surrender the principles it contained. He could assure gentlemen, that, on the subject of Internal Improvement, the people of the West meant, in no instance whatever, to give up a single inch of ground. The prosperity of the entire valley of the Mississippi rested on the system of which this was a part, and it would be impossible for that part of the Union to exist at all, as connected with the Union, unless they were allowed to participate in some part of the expenditure of its resources.

Representative Wickliffe explained “the manner in which he had fallen into a mistake in understanding the document which he had quoted.” (The *Register* did not explain the mistake.)

Representative Rudolph Bunner of New York responded to Representative Vance by denying that rejection of the Senate’s amendment related to the principle of a system of internal improvements:

The House might recede from its disagreement to these amendments, without at all giving up the ground it had taken in relation to that system. The only reason they were bound to give for receding was a wish to preserve the public works from perishing, after large sums of money had been expended upon them. Those gentlemen who were the real friends of internal improvements could not better prove themselves to be so, than by consenting that the House recede.

Representative David Woodcock, also of New York, “disclaimed all apprehension of the loss of the bill.” Like his New York colleagues, he and his constituents were “deeply interested” in the provisions in the bill affecting his home State, as well as “the particular feature of the bill which was sought to be stricken out”:

New York asked no money from the General Government to carry on her works of internal improvements, but she did ask for the skill and science of the corps of Engineers to survey the public works in which she wished to engage. He had this day received application from his constituents for the survey of a Railroad from Hudson to the Lakes. This would be a great national convenience, and was requisite as a measure of military defence – the canal being frozen in the winter time, and of no use during that season. He hoped, before the House surrendered this item of the bill, they would at least ask a conference.

As the House was nearing adjournment for the day, Representative Thomas Metcalfe of Kentucky began to speak on the subject, finishing his remarks on May 6 in opposition to the Senate amendment on surveys. After discussing the survey provision (to be summarized later), Representative Metcalfe addressed Representative Wright’s comments. He thought the New York objects in the bill ought to advance, but they were not affected by the Senate amendments. “And, without imputing intentional illiberality to the gentleman, I can but infer that his quarter of the country is to be accommodated, if the amendment of the Senate does prevail.” That would not be the case with Kentucky, which was seeking a survey that would be prohibited if the Senate prevailed:

But the most conspicuous part of the gentleman's argument is, that which relates to the two unpaid Engineers; and what is worse, the friends of the Engineers are money out of pocket to the amount of travelling and other expenses, on a visit to this place, or somewhere else.

(The *Register* had summarized Representative Wright’s comments without mentioning this payment issue.)

And would the talented gentleman, as distinguished a statesman as I know him to be, have this grave national measure, which has been the subject of political controversy for twenty or thirty years, to turn upon the affair with the two gentlemen Engineers? I regret that they have not received their pay for services already rendered. But it would be better for the friends of the system to remunerate them for all the losses they may sustain, than to allow that part of the gentleman's argument to have much weight.

He also commented on Representative Brunner's declaration that the friends of internal improvements could best show their devotion to their cause by allowing the Senate's amendment to prevail:

I know not by what process of reasoning the gentleman has conducted himself to that conclusion, but I am sure of the sincerity of his professions: for he urged the doctrine upon us with as much zeal and fervor, as if he had been animated with all the vigor and fire of youth. But, with great deference and respect, I must give it as my opinion, that the most substantial part of the gentleman's argument, was that which he let fall with such tremendous force, like a bolt from the vivid lightning's flash, upon the face of his unfortunate desk.

Representative Metcalfe concluded by urging his colleagues to stand firm against the Senate amendments.

On May 6, the House again took up the internal improvements bill to consider "a resolution offered by Mr. McDuffie that the House insist upon its disagreement to the 3d and 5th amendments of the Senate to the bill making appropriations for internal improvements."

Representative Thomas Chilton of Kentucky, who had entered the House for the first time on December 22, 1827, said he was hesitant "to throw myself upon the indulgence of the House" again, but he had "the misfortune to differ from" some of his personal and political friends on this subject. While his colleague, Representative Metcalfe, was "attending to public sentiment on the subject," Representative Chilton would instead show "why this proposition interests me. In it, sir, I feel a deep interest."

He wanted to be clear that he "shall not indulge in the illiberality, which a reflection upon the motives of others would display." Everyone had their own motives for their actions:

They act differently, often indeed, because, with motives of equal purity, they view the same objects in different lights – and place discordant construction upon the same prediction of facts. In this case we have an apt illustration. My colleagues, who will vote to recede from our disagreement to the amendment proposed by the other branch of the National Legislature, I am satisfied, are not less the friends of the West than myself. They, however, anticipate one result, and I another, from the decision of this question . . . .

He had submitted requests to the House for three surveys for Kentucky:

Having submitted those propositions for surveys – having sought the means of making them – and having voted for this specific appropriation for that purpose – should I not, situated as I am, act unworthy of myself, were I to seize upon and withhold the very and only means, by which my own designs can be accomplished? I am sure I should.

He was not acting out of sectional feelings alone, but rather “my real friendship to a well regulated and equal system of internal improvements.” As recently as that morning, he sometimes voted against “motions to change the attitude of several bills connected with this subject,” but he did so only “to prevent the order of business from being deranged, and to do equal justice to the favorite proposition of each gentleman, by giving to none a preference.”

Turning to the matter at hand, he said:

I have heard it said, that the fate of this bill hangs suspended upon the decision of the present question. I hope not, sir. I humbly trust that the other branch will not obstinately refuse to progress with works already begun, merely because we insist upon surveying others, to be commenced at some future period.

He could not surrender the principle involved. Daily experience convinced him of the importance of extending the survey and increasing their number:

But a few days since, a bill, having substantially the same object in view, passed this House. Amendment after amendment was proposed and adopted; and thousands after thousands, and, indeed tens of thousands of dollars, were appropriated. I looked on in silence, and with sorrow, to see that such appalling drafts were made upon the Treasury, and yet that not one dollar of it was given for the benefit of the West, which, for want of internal improvement, may be viewed as a neglected Eden. Sir, the general system of internal improvement was conceived in the wisdom of other ages, and gotten up in better times . . . .

And shall we curtail – shall we destroy a system, having the sanction of so many sages – productive of so many benefits – and which has, for ages, withstood the scrutiny of its friends, and opposition of its enemies – all the time dispensing good? If so – for what? I must acknowledge I know not why. I hope in God that we shall not, at least, cease to persevere, until Kentucky shall be permitted, to some humble extent, to participate in its benefits.

Consider the millions expended for roads, canals, harbors, lighthouses, buoys, dry docks and more projects for other parts of the country, “while in Kentucky, we have many streams and rivers which are rendered dangerous of navigation by obstructions, if not useless, for want of your aid.” Was he expected to “sit down contentedly, and feast upon a comfort so cold, as the assurance that my constituents are to be neglected for an hundred years yet to come?”

A question had been raised about “what we should hazard by receding.” It was not a question of hazard, Representative Chilton said, but “a question of unequivocal surrender”:

Can it be, that the paltry sum of \$30,000 (for paltry it is in comparison with its object,) is to be so carefully husbanded, as to throw into the shade the Cumberland Road, and the various other improvements contemplated by this bill? Is it to be said, that \$30,000 is so vitally important to the completion of surveys already commenced, that nothing but defeat can follow an attempt to apply a solitary dollar of it to any other purpose or undertaking? I trust not.

He made clear that he wanted the surveys already begun to be completed. At the same time, he was “equally anxious to commence and complete others” in the western States. They had been “overlooked long enough” and wished to be “placed on higher ground, and to have our names recorded upon the catalogue of those who bask in the sunshine of Executive patronage, and the smiles of the Government.” His constituents felt “an anxiety in relation to the improvements recommended by me”:

They are blessed with a fertile soil and pleasant country; and ask only the fostering care of Government to enable them to enjoy themselves at home, and to bless others by their industry.

He appreciated the polite attention of his colleagues:

This subject will be disposed of as the superior wisdom of others may direct. My colleagues will vote according to their convictions of duty. I, too, shall do the same, let the consequences be what they may.

The House voted on the main issue, namely its disagreement with the Senate amendments. By a vote of 100 to 81, the House rejected them. Separately, the House requested a House-Senate conference to resolve differences between the two approved versions of the bill.

On May 7, the Senate agreed to appoint members to a conference committee (Senator McLane, Tazewell, and Nathan Sanford of New York).

Early on May 8, 1828, took up an engrossed bill amending an Act confirming incorporation of the Chesapeake and Ohio Canal Company, and a Maryland law on the same subject. It was read a third time, passed, and sent to the Senate for concurrence.

The House then took up unfinished business on a bill authorizing a subscription of stock in the company. As reported in the *Register*, Representative Wickliffe of Kentucky was the first speaker. He began by saying he intended to vote for the canal stock subscription because he “believed that it was better for the Government to vest its funds in the stock of private associations, engaged in the cause of internal improvements, than to undertake to make the improvements by agents.”

However, he actually had taken the floor “for the purpose of replying to some remarks formerly made by those who called themselves the exclusive friends of Internal Improvement.” He pointed out that he had voted for the General Survey Act of 1824:

I gave my vote, on that occasion, from an honest conviction of duty; but with the express understanding, that the objects of a national kind could not be very numerous. My impression was, that they could scarce be over eight or ten, and I think it was so declared by those who advocated the passage of the bill on this floor.

If those who voted for it at the time had realized the Act of 1824 would be used to conduct surveys of minor, local improvements, they might have voted against the bill. He read a list of 91 surveys from the War Department’s schedule, which included “survey of Ashtabula Creek, Cunningham’s Creek, and many other Creeks, Lake Memphramagog, and a host of small lakes and streams, or similar importance.” (A footnote in the *Register* indicated that the list included “a survey of a route for a Canal to ‘unite the waters of the Connecticut river with Memphramagog lake, in New Hampshire.’”)

With that list in mind, he had voted to support the Senate amendment limiting the \$30,000 to surveys already underway. “I had not then an opportunity of explaining the reasons which influenced that vote, although the obligations to do so were increased by the remarks of two of my colleagues, who addressed the House, and seemed to treat the subject as one peculiarly affecting the interest of Kentucky, and thereby placed me in the attitude of hostility to the interests of my State.”

He had voted to limit the surveys to those underway because, “I must draw the line of distinction between objects which are strictly of a National character, connected with the general interests of the whole country, and such as are of mere private, local, and neighborhood consequence.” To date, the War Department had expended “no less than \$110,000 on the surveys of roads and canals” under the General Survey Act of 1824. Under other acts “making specific appropriations for reconnoissances and surveys,” an additional \$48,000 had been expended, bringing the total to \$158,000:

If this was the whole expense we might content ourselves, under the hope that the labor and advantage to the country bore some proportion of the amount expended. To this must be added the increased and increasing expenditure of a growing corps of engineers, and, worse than all, a little army of civil agents, blood suckers, hangers-on, and dependents, who feed from the public crib, and whose pay and emoluments, and very existence, depend upon Executive discretion and official will – “Non resistance and passive obedience.”

In total 91 surveys had been undertaken, with only 37 completed, including preparation of estimates of their cost:

And the aggregate of these estimates amount to 32,858,000 dollars. Now, sir, if the balance of these ninety-one objects will cost at all in proportion of these thirty-seven, the whole number cannot be completed under seventy, or one hundred millions of dollars. Such being the fact, I put it to the House to say, whether it is not the course dictated by prudence, to apply the surplus revenue of the country to the commencement and completion of some of those ninety-one objects, which have been already commenced, rather than to go on and survey new objects, and whether the surveys hereafter ought not to be confined to objects of a strictly national character rather than be farther extended to merely local and neighborhood objects?

He cited roads on the survey list, totaling over 3,000 miles, that had not yet been built:

Washington to New Orleans,	1100 miles
Baltimore to Philadelphia,	90 miles
Washington Buffalo,	250 miles
Black Swamp, Cadiz, Wheeling, &c.,	150 miles
Miami Rapids to Detroit,	70 miles
Cumberland Road, from Zanesville to St. Louis,	625 miles
Zanesville, (Ohio) through Maysville Lexington, (Ky.) to Florence (Alabama),	600 miles
Cumberland, (Md.) to the District Of Columbia,	130 miles

As an example, he cited the survey proposed for a road from Cumberland, Maryland, to the District of Columbia, calling it “a striking instance of the abuse of this power under the law of 1824.” In a debate supposedly on the Chesapeake and Ohio Canal, he said:

What is called the Cumberland road commences at Cumberland, in Maryland. On the present route we have, with the exception of about twenty-five miles, an excellent turnpike road. The whole distance is about 130 or 140 miles. It is proposed to make another road, on the Virginia side of the Potomac, by which you may save ten or fifteen miles in the distance of 140 miles. If this canal is completed, no man would think of making this new Cumberland road.

Speaking sarcastically, he continued:

Certain I am Congress would not undertake it: for this road, so much needed, of such national importance, there have been no less than six different routes surveyed – round, about, through Leesburgh and Winchester, Virginia. Sir, can any man believe that it was ever contemplated to do more than survey it? We are asked to commence a turnpike road of 120 miles in length, to save a distance of about fifteen miles.

He summarized, saying “it is time for us to finish some of these projects before we embark on new ones.”

(The Engineer Department was surveying the road between Cumberland and Washington. To avoid the mountains east of Cumberland, the department was considering routes through Virginia.)

After further discussion of the bill to subscribe to 10,000 shares of stock in the Chesapeake and Ohio Canal Company, the House voted, 117 to 73, to engross the bill for a third reading.

On May 14, Senator McLane reported the results of the conference:

1<sup>st</sup>. *Resolved*, That the Senate adhere to the fifth amendment.

The fifth amendment involved appropriation of \$175,000 for extension of the Cumberland Road to Zanesville.

2d. *Resolved*, That the Senate recede from all that part of the third amendment, after the word “expenses,” in the first line and that the same be modified in such manner to read as follows: “For defraying the expenses incidental to making examinations, under the act of 30th April, 1824, \$30,000, provided that this appropriation shall not be construed into a legislative sanction of any examinations or surveys which shall not be deemed of national importance, and within the provisions of the aforesaid act of 30th April, 1824.”

The Senate agreed to the first resolution, without a recorded vote. On the second resolution, the Senate agreed to the change, 27 to 12.

That same day, Representative McDuffie reported to the House:

The managers, on the part of this House, of the conference with the Senate, on the subject of the disagreeing votes of the two Houses on the amendments proposing votes of the two Houses on the amendments proposed by the Senate to the bill making appropriations for Internal Improvements, submit the following report:

The managers agreed to recommend to their respective Houses the following compromise, viz: That the House of Representatives do recede from its vote, on the fifth amendment of the Senate: and that the Senate do consent to modify the third amendment, by striking out all after the words “defraying the expenses,” in the first line, and insert ‘incident to carrying on the examinations and surveys for Internal Improvements, under the act of the 30th April, 1824, thirty thousand dollars, provided that this appropriation shall not be construed into a legislation sanction of any examination or survey, which shall not be deemed of national importance, or within the provisions of the aforesaid act of the 30th April, 1824.

The House agreed to the report, “and the Senate having come to the same agreement, the bill was passed.”

On May 19, 1828, President Adams signed “An Act making appropriations for the improvement of certain harbours, the completion of the Cumberland road to Zanesville, the securing the lighthouse on the Brandywine Shoal, and the making of surveys.” The first appropriation was for the Cumberland Road:

For the completion of the Cumberland road, continued to Zanesville, in the state of Ohio, one hundred and seventy-five thousand dollars: (a) which said sum shall be replaced out of the fund reserved, for laying out and making roads, under the direction of Congress, by the several acts passed for the admission of the states of Ohio, Indiana, Illinois, and Missouri into the Union, on an equal footing with the original states.

For the most part, the other appropriations constituted a standard river and harbors bill, but in addition to the funds for the Cumberland Road, it appropriated funds to complete the road from Detroit to Maumee (\$5,900) and continue the road from Detroit to Chicago as far as the boundary line of Indiana (\$8,000). In addition, it appropriated funds to pay the balance due to the commissioners for laying a road from Detroit to the Saginaw River and Bay, and a road from Detroit to Fort Gratiot (\$302.69). It also appropriated \$30,000 for surveys under the General Survey Act of 1824 as agreed to by the conference committee, that is, minus the limitation to surveys already underway. With the exception of the appropriation for the Cumberland Road to be repaid from the two-percent fund, all other appropriations “shall be paid out of any money in the treasury not otherwise appropriated.

This appropriation was the only funding made available for the Cumberland Road during the first session of the 20<sup>th</sup> Congress.

### **Maysville Road Debate**

As mentioned earlier, Representative Metcalfe took the House floor on May 5 during discussion of the Senate amendment on the use of \$30,000 for surveys by the Engineer corps. Given the late hour, he allowed his remarks to be interrupted when the House voted to adjourn. *The Register* began reporting on his remarks on May 6 by printing the remarks he had delivered the day before prior to adjournment.

He began by explaining that he rarely spoke to the House, in part because “too much speaking in this House is seriously prejudicial to the best interest of our country.” The House had passed the bill in the form he preferred with \$30,000 for unrestricted surveys. The Senate had returned it “by imposing the restriction upon the application of this thirty thousand dollars for the making of surveys.” The House, “by an immense majority,” had rejected the amendment and returned it to the Senate, “confidently believing that the Senate would recede, and allow it to pass, as the immediate Representatives of the People indicated to be their wishes”:

But, contrary to our just expectations, they have insisted on their amendment. And I am not certain but what they have done so under the influence of feelings and prejudices, originating from some of the public prints; or by a toasted, and, perhaps, other volunteer orators of the West.

He said he was not referring to “the general charge of abuse and corruption, which I now look for as a matter of course against the Administration.” However, “very recently Ohio and Kentucky have been specified, as particular theatres upon which this corrupt display has been made,” particularly related to a planned road from Zanesville, Ohio, to Maysville and Lexington, Kentucky, and on to Florence, Alabama. In view of claims about his home State, “Silence, on my part, now ceases to be a virtue.” On the contrary, his silence would be a “gross dereliction of duty”:

I am not only called upon to do what I can, to sustain a measure, involving principles, which, I believe, to be of vital importance to the West, and especially to Kentucky, but to vindicate my State and my constituents, against all the impudent and bare faced calumnies, which have been so wantonly cast in that direction; and more especially, as I know that I am marked out as one of the designated victims of them.

If the charges involved only himself he might disregard them, but “as a Kentuckian, will I repel it – I will not say with indignation and scorn, however appropriately such terms might be applied to the slanderous imputation, that Kentuckians are to be bought and sold, like sheep in the market, by the reconnoissance of a road – no matter if it did take place ‘just before the coming on of an important election.’” He added, “How little is understood of the character of Kentuckians, by those who would sully them with such scandalous imputations.”

Before “exposing the authors of this slander,” he expressed regret that his Kentucky colleague, Representative Wickliffe, agreed with Representative Wright that completing the surveys underway would be better than initiating new surveys:

I am persuaded that my colleague and myself do not put the same construction on the amendment of the Senate, or he would not assume the attitude which he has taken, in relation to it. If I understand correctly the effect to be produced by that amendment, it will be, to withhold from us an Engineer, to make a minute survey of the grand leading mail route from Zanesville, in Ohio, through Kentucky and Tennessee, into Alabama.

[Mr. WICKLIFFE rose, and said, that he did not so understand it and it would not, in his opinion, have that effect.]

Representative Metcalfe explained his view:

On that point, then, my colleague and myself are at issue, in our respective opinions. The amendment confines the application of this fund to the completion of surveys already commenced. A reconnoissance merely of this road has been

made, and reported upon, for the purpose of enabling us to decide, whether the object is one of sufficient national utility to justify the expense of a survey, preliminary to further progressive steps for the accomplishment of the work. If this is not the fair interpretation of the amendment, I am, at least, supported in that view of it by other gentlemen. It is safest, at any rate, to make the matter clear, and not liable to be misunderstood.

He appears to be referring to a survey that James Darnaby and William Ellis, Jr., conducted in 1827 of the existing road along an old buffalo trace between Maysville and Lexington, to be described later.

With that, he turned to “a historical sketch of the origin, progress, and termination, as far as it has gone, of this terribly corrupt transaction, towards the States of Ohio and Kentucky; from which the conclusion has been drawn, that the Honorable Secretary of War, rather than not to have his friend about him, would even engineer them into Congress.” He began to read documents – not reported in the *Register* – that would allow the House to judge for itself.

His initial presentation concluded at this point on May 5.

On May 6, he resumed “for the purpose of exposing the authors of the slanderous imputations to which I have alluded, no matter when, where, or by whom, such sentiments might have been spoken, or written; and he was happy to say, that no such imputations had been uttered on that floor,” referring to the House.

The first application of an engineer to survey a new post road from Zanesville to Alabama had come in early 1826 from a Representative of an Ohio congressional district. A representative of a second Ohio district had presented the letter requesting the survey to Representative Metcalfe for signature – “and both these gentlemen, said Mr. M. are known to be very decidedly Anti-Administration.” The request was in the handwriting of Judge Jonathan Thompson of Ohio and signed by Members of Congress from Kentucky, Ohio, and Tennessee:

In all, there are twenty in number, eleven of whom (including the writer of the article,) are Anti-Administration, or were so considered.

His Kentucky colleague, Representative Wickliffe, also signed the letter.

Secretary of War Barbour understood the value of the proposed road, but could not spare an engineer at that time to conduct the survey. The signers of the request understood that “many and urgent demands had been made on the Corps of Engineers,” which prevented the survey from taking place at that time. “And it does seem to me, that nothing but some strange derangement, or excessive depravity of mind, could have originated the imputations of abuse and corruption in this instance, either in relation to the Secretary or the petitioners.”

In Ohio and Kentucky, “the subject was taken up . . . as was very natural, and certainly not improper in such cases, by many of the most respectable citizens, along where the

road was expected to run.” They formed a committee to consider the next steps. Representative Metcalfe denied any knowledge of this committee before reading its proceedings in a Maysville newspaper “and received a letter from the Chairman, an intelligent sage and patriot of the revolution, notifying me of what had been done, and asking me, as their representative, to give them my views, as to the best mode of proceeding in the business.” He did so “most cheerfully, as in inclination and duty I was bound to do,” with the result that on January 22, 1827, the State legislature passed “an act to incorporate the Maysville and Lexington Turnpike Road Company” to build an approximately 60 miles road to replace the old buffalo trace.

In addition, the legislature passed a resolution asking the State’s Senator and Representatives “to use their best exertions to procure the passage of an act, by which some individual might be authorized to subscribe and pay for the stock reserved to the United States, by the provisions of the said act.” Although the law and resolution had been introduced by Anti-Administration members of the legislature, they had been adopted unanimously; “consequently, this was no party measure; it was the spontaneous express of the sentiments of the whole of the Representatives of the people of Kentucky.”

Everyone understood the importance of first conducting a survey:

But no one of the Representatives in Congress from that State was, or could have been, ignorant of the fact, that Congress would not, until a survey of the road had been made, appropriate a single dollar for its construction. Could it have been expected by any one, that the enlightened representatives of this nation would vote away the public treasure to such an object, without having first ascertained what it would cost, by those who were most capable of making the estimate? Or whether the location was such as to suit the national purposes, and meet the approbation of Congress? Besides, some defects were supposed to be contained in the act; and it was obviously too late in the session to have it acted upon in Congress, at all.

Under the circumstances, he took “the natural and proper steps to carry into effect the wishes of the Legislature, as expressed to me in their resolution.” He wrote to Secretary Barbour on February 27, 1827 (“hastily written. From my seat in this House”), to underscore the importance of the requested survey. In the letter, Representative Metcalfe explained that he and other western members of Congress had applied to President Adams for an experienced engineer to make a survey to determine the location of the improved road. “And we had the pleasure to hear, informally, that an officer would be assigned to that duty, as soon as one could be spared from the engineer corps.” The letter continued:

Maysville, next to Louisville, is the most commercial town in the state. From that place to Nashville the road will pass through many flourishing towns and villages in the interior of a fertile and populous region, crossing not less than five or six navigable rivers. The mail stages now run daily from Maysville, through Lexington and Frankfort, to Louisville, except in the winter and spring seasons, when the road becomes so intolerably bad, that, to run the stage, is utterly

impracticable. The transportation of the mail, either in the stages or on horseback, in the present condition of the road, is slow, hazardous, troublesome, and expensive. The road system of that State is, to say the least of it, very defective. The hills, rocks, wheelruts, and gullies, must continue to obstruct and retard the progress of the mail until those obstacles are removed. When removed, the increased velocity of the stages will be at the rate of about 30 miles a day; the mail will be much less liable to damage or accidents; double as much weight may be carried at a load; and the comfort and safety of passengers will be consulted.

The State did not have the power to designate how the mail would be transported, including on which roads. The State had chartered a company to build the road. However, “desirous in this instance to have the road run in conformity to the national views and interests, I have respectfully to suggest whether it is not due to the subject, that an engineer be appointed to make the survey before any steps are taken under the provisions of the said act of incorporation.” He also commented on “how difficult it is for the corporation to proceed advisedly to the work until the General Government shall have indicated the appropriate route for the transportation of the mail; of the baggage and munitions of war, the marching of troops, &c”:

The act of incorporation designates the various points by which the road is to pass; and it will be highly encouraging to the corporation, to know that the location, as indicated by their charter, will be fit and suitable for the national purposes.

It also called on contributions from all parties in subscription of stock, “and appeals to Congress to appropriate a sum to be subscribed in like manner.”

He urged the Secretary to appoint an engineer “to survey so much at least of the road as is embraced in the said act of incorporation, and in pursuance of its provisions.”

Representative Metcalfe indicated he was being slandered for writing the letter. Now that he had read it to his colleagues, “I have given you the ground upon which this son of the Ancient Dominion, in the exercise of his discretion, and in conformity to what every rational mind will admit to have been his solemn duty, caused this reconnoissance to be made. And is this the proof which has been adduced, of abuse and corruption in the disposal of this pittance of patronage?” He continued:

It is true, that, if he had resisted the application of twenty Members of Congress, eleven of whom were anti-administration, backed, as the application then was, by the Legislature of Kentucky, unanimously, and certain road committees, composed of some of the most respectable citizens of your country, he might have been charged with partiality, and denounced as an enemy to the West. And, sir, this sentiment would have been echoed and re-echoed to the remotest corners of the republic, until its reverberations would have settled around, and been heard beneath the dome of this capitol.

But, why should I attempt to vindicate this supposed truant son of Virginia, when the only charge against him, that he wanted firmness to incur the displeasure, by resisting the just claims of the West? And, therefore, say they, down with him”:

But allow us, Mr. Speaker, to participate in the skill and science of your Corps of Engineers. The road from Lexington to Louisville, passing through Frankfort, the Seat of Government of that State, and some of the finest country in it, is not less entitled to the patronage of the General Government, than the one of which I have spoken. The mail stages pass and repass every day in the week upon it, and it possesses all the claims to your notice that any other road possesses. At this very time, a railroad is contemplated on a part of it and a part of it is already turnpiked. Besides, sir, there may be, and I believe there are other objects of sufficient national utility, even in Kentucky, to justify us in asking you for an Engineer.

He explained the grounds for seeking this “pittance” on behalf of his State. First, Kentucky “is one of the States of this Confederacy, interested in the prosperity of the whole, as the others are interested in her prosperity.” Second, the State paid \$1 million into the Treasury every year. “A large portion of this sum supplies the deficits occasioned by the expenditures which are made any where else except in Kentucky.” Many of those projects were “not more national in their character, and not of equal public utility to those which she contemplates calling upon you to aid her in making.” Whether the Secretary of War provided an engineer for the survey, “they expect to be treated, as they treat you, with due courtesy and respect. And not to be turned off either with imputations, or insinuations, of corruption, or corruptibility, in consequence of the pittance which she may ask for the reconnoissance or survey of a road, or even for an appropriation to construct it.”

On this subject, he added a last thought:

But, sir, after the exposure which I have made of the authors of the slanderous imputations to which I have alluded, I will only add, that so far as Kentucky, or her sons are concerned, no man will dare to hold up his head among gentlemen, and cast such a reproach upon them. And no real gentleman will attempt it.

Based on the speech as presented in the *Register*, Representative Metcalfe had not identified the authors of the slanders.

An Act of the State on January 22, 1827, had chartered the Maysville and Lexington Turnpike Road Company to build a road to replace the meandering path between the two cities along a former buffalo trace – a 60-mile segment that was seen as part of a nationally significant route for carrying the mail from the Cumberland Road at Zanesville to Alabama. An earlier effort to create a turnpike company in 1817 had been unsuccessful. The 1827 Act chartering the company called for a capital stock of \$320,000, with \$100,000 set aside for purchase by the United States government. Company officials hired Darnaby and Ellis to survey the buffalo trace and suggest ways to shorten or improve it.

Professor Craig Thompson Friend, in a book about the Maysville road, discussed the 1827 survey, which began in Lexington:

In 1827, Darnaby and Ellis found no alternative to the steep, winding course of the road down the bluffs behind the river town; their solid line overlays the dotted line of the old buffalo trace. Their arrival in Maysville marked the end of their surveying duties. They prepared their map for submission to the company's commissioners and headed home. The new cut, the route by which Darnaby and Ellis proposed to redirect traffic between Maysville and Lexington, immediately became known as the Maysville Turnpike. Of course, minor deviations were incorporated into the design, but no longer would the meandering track of an ancient dirt trail direct human travel. Instead, a grand thoroughfare promised ease and convenience to travelers . . . .

Expectations were that, based upon the survey, Maysville and Lexington Turnpike Road Company's other employees – engineers and chain-bearers – would lay out a thoroughfare fifty feet wide, twenty feet of which would be “of firm, compact and substantial materials, composed of gravel, pounded with stone or other small, hard substances.”

Professor Friend explained that the company was controversial, especially in view of the recent Relief Crisis on relieving farmers hurt by an economic downturn:

Not all residents were pleased with the plans for a new turnpike. After reincorporation of the Turnpike Road Company, in 1827, rhetoric became particularly acerbic. A “few monied capitalists in the town of Lexington” were behind the plan, warned a Paris citizen. With the memory of the Relief Crisis still resonating, others questioned the morality of a turnpike corporation: “It has heretofore been often urged by old fashioned Democrats, that chartered monopolies are deadly to the interest of the public, and the people have been a thousand times told that they were, in creating such soulless mercenary institutions, forging chains for themselves.” By June 1830, a discontent grumbled in the *Kentucky Gazette* that the improvements program for the beaten path was but a “petty scheme for squandering the people's money away.”

Critics were especially suspicious of Henry Clay, who was “only the most visible and vocal advocate of the project.” One critic suggested sarcastically that someday Clay would rival King George, King Louis, and all the Czars of Russia by building this road “in order that we may ride and roll along in our silver carriages, seeing we are very fat and rich, and the common roads of the country are rough, uneven, and jostle our bodies so much that we often become so fatigued in our rides for recreation and health, that we cannot take our wine and coffee, with as much pleasure as we could desire.” [Friend, Craig Thompson, *Along the Maysville Road: The Early American Republic in the Trans-Appalachian West*, The University of Tennessee Press, 2005]

Representative Metcalfe, as a primary backer of the project in Congress, was among those abused by the critics, as he explained during his speech to the House. At the

request of the State legislature, he had introduced a bill to appropriate funds for the road in the 1826-1827 winter session of the 19<sup>th</sup> Congress, but too late to secure action on the measure. However, his efforts to secure a survey by the Department of War were successful. On March 28, 1827, Secretary Barbour ordered a survey of the road from Zanesville through Maysville and Lexington in Kentucky; Nashville, Tennessee; to Florence, Alabama. The survey began at Maysville on May 12, 1827. As professor Friend pointed out, “a team of surveyors from the U.S. Engineering Department moved southward along the beaten path as Darnaby and Ellis plodded northward.”

In 1828, Representative Metcalfe – nicknamed Old Stone Hammer because of his career as a builder – was a nominee for Governor. He resigned from the House on June 1, 1828, to campaign. Following his victory, he took office on August 26, 1828, and served until September 4, 1832. Governor Metcalfe, a Whig, was a proponent of internal improvements in the State and would take steps to complete the Maysville to Lexington turnpike.

On February 29, 1828, Lieutenant Colonel Stephen H. Long of the Topographical Engineers, provided his report to the Chief Engineer Macomb on the survey of a national road from Zanesville, Ohio, to Florence, Alabama. Colonel Long, aided only by Lieutenant T. Trimble, completed the survey in July 1827, but the report was delayed when Colonel Long “was rendered unfit for duty for several months, by a severe and protracted illness, occasioned by exposures incident to the service.”

Colonel Long wrote:

Our examinations have been conducted solely with a view to the discovery of a route for the contemplated road, that would best subserve the public welfare, and to the development of facts evincing its practicability on terms compatible with the interest and convenience of the community. In reference to the former consideration, shortness of distance and facility of construction, have been regarded as governing principles; and, in reference to the latter, a faithful representation of the circumstances attending each route, as related, not only to the difficulties and facilities of construction, but of transportation thereon, has been attempted.

Although they identified alternatives for the route and estimated costs, Colonel Long added a caveat:

It cannot be supposed, nor was it intended, neither indeed was it necessary, that the details furnished by a preliminary examination, like that in which we have been engaged, should be attended with undeviating accuracy, nor were we supplied with the means of attaining it, in reference to any of the items contained in the tables connected with this essay.

Based on costs thus far for the Cumberland Road west of Wheeling, the report provided aggregate costs for several alternatives, all within the range of \$2,145,523 and \$2,288,795. Colonel Long stated:

We are the more encouraged in this undertaking, in consequence of the practical results already afforded in this country, in reference to works of this nature, and especially of those attending the construction of the National Road westward of Wheeling, and have no hesitation in expressing our belief that the estimate we propose to give will not be very wide of the truth.

The report concluded by taking the liberty “to suggest the propriety of an immediate location and graduation, or preparing the bed of the road, on the part of the United States, with the view of facilitating its final completion, on the part of the several States through which it may pass, in case the General Government should withhold the means necessary for its entire accomplishment.” [*Road – Zanesville, Ohio, to Florence, Alabama*, Letter from the Secretary of War, Transmitting a Report of the Reconnoissance of a Route for a National Road from Zanesville, Ohio, to Florence, Alabama, March 18, 1828 (Read, and laid on the table), 20th Congress, 1st Session, Ho. of Reprs. War. Dept., Doc. No. 209]

As noted earlier, Representative Wicklife had expressed his concerns on May 8 about the bill on subscription to the Chesapeake and Ohio Company stock, but he also used the occasion to reply to Representative Metcalfe’s remarks on May 5 and 6:

My remarks were adverted to, on that occasion, by my colleague, [Mr. Metcalfe] and my name introduced into the debate, in connexion with others, as furnishing the cause which superinduced the Secretary of War to send a brigade of engineers to Kentucky. If my colleague supposes the letter referred to by him, to which my name was attached, had any influence with the Secretary of War, in the movement which he made last summer, on this road, I humbly conceive he is mistaken. It is true that twenty-one [sic] Members of Congress, myself as one of them, did, in the Winter of 1825-6, make application to the Secretary of War for a survey of the route between Zanesville, Ohio, and Nashville, &c., but it is also true, that, although that subject was pressed upon the attention of the War Department, it remained unanswered until some time last Spring. What reason may exist, for this apparent neglect, remains yet to be explained. It has been attributed, here, to the great scarcity of the United States’ Engineers, and their multiplied engagements in other parts of the Union. This might have satisfied me if I had not known, at the very same season, a Corps of Engineers were despatched, on a subsequent application, into the State of Indiana.

He had supported the Senate amendment on the survey appropriation “with a view to bring the resources of the Government into action on the works which had been already surveyed, and the estimates of which had been submitted to the House, and the completion of such surveys as had been commenced. I desired that the surplus resources of the Government should be expended on objects which must be pronounced by every one to be national.” He wanted to “check the waste of the public treasury upon objects not within the competency of Congress, and certainly not of sufficient national importance to demand the aid of the General Government.”

He explained these points to counter the impression left by Representative Metcalfe:

If any remarks of mine, or any act of mine, reflected upon his conduct, here or elsewhere, I was, and am still, unconscious of it. I meant then, and mean now, distinctly to mark, with my disapprobation, the conduct of the Administration, upon the subject of surveying Roads and Canals, without a due regard to the letter or spirit of the act of 1824.

As to the particular survey of a road through Kentucky, about which my colleague says he has been assailed, I can only account for the supposed injustice which was done him, from the circumstance that the Administration deferred the survey until a period just preceding our late election in Kentucky.

This circumstance was seized upon by one party in the State, as furnishing the evidence of the great merit and devotion of this Administration to the Western interests.

By the other party in the State, it was referred to as an act designed by the Administration to have an effect upon the elections in Kentucky; and the fact of the previous application of the whole Delegation of Kentucky being neglected for twelve months, while surveys of less magnitude had been commenced the preceding Summer in Indiana, preceding the elections in that State, was calculated to produce the impression, that the time selected for marking of this survey was inappropriate. It was this state of things which probably gave rise to many of the injurious remarks of which my colleague has complained.

After returning to the reasons he had supported the Senate amendment limiting the use of survey funds to surveys underway, he resumed addressing Representative Metcalfe's comments:

The road in Kentucky, to which my colleague [Mr. Metcalfe] has alluded, is one which was to have been commenced the present season; and I had not supposed it possible that I could have been understood or represented as in any manner opposed to it. Sir, I never did oppose it. My colleague supposed the amendment of the Senate, for which I voted, by its terms, prohibited the Department from expending any portion of the fund on the road through Kentucky; he seemed to regard that as one of the roads, the survey of which was not yet commenced. It is not so regarded by the Department; for it is put down upon the list as one already in progress, and will come within the express provisions of the Senate's amendment. I am not to be deterred from the discharge of a public duty, because I saw in this list of new surveys contemplated by the Executive two or three little streams in my own State. Was I to remain silent for that reason?

He was referring to the Barren and Licking Rivers in Kentucky that were to be surveyed "as national works of internal improvement." He said, "finish first the road through Kentucky which you have begun; it is of more importance to us than a survey of those two small streams, which have scarcely attracted the attention of the Legislature of the State, further than to declare them navigable, and regulate the height of the mill dams across them."

After discussing a few other examples, he said he viewed the Chesapeake and Ohio Canal “as important in every point of view, and shall hail its commencement as a new era in the history of this Republic.” He congratulated Representative Mercer “upon the bright prospects which seem to attend his labors in its behalf”:

Let me, however, invoke the member from Virginia, who is at the head of the Committee on Roads and Canals, by the weight of his character, by the influence of his station, by the responsibility he owes to those who have acted with him, to put a stop to this waste of public money, in the surveying of routes for Roads and Canals; in which it would be inexpedient, if it were competent for the General Government to engage. It is the only way in which he can save it from utter prostration.

Representative Mercer declined to respond:

Mr. MERCER made a brief reply, in which he implored the friends of internal improvement not to enter into a general discussion of the subject of surveys, but to confine themselves to the subject immediately before the House, and come to a speedy decision as to the fate of the present bill. He had hoped not to be obligated to enter into debate on the question, but had anticipated answering any inquiries which might be addressed to him on the subject.

During the third reading on the next day, May 9, Representative Metcalfe took to the floor. “Before the debate on the third reading of this bill yesterday was precluded by a call for the previous question, I made several unavailing efforts to get the floor, mainly for the purpose of answering some of the remarks which had just then fallen from my colleague, [Mr. Wickliffe.]” He said that in his own remarks, he had not referred to his colleague “except to express my regret at the stand which he had unexpectedly taken in favor of the amendment of the Senate, respecting the surveys – an amendment which I opposed, not only on principle, but because of the effect which I thought might be produced by it, in preventing a survey of the grand leading Mail Road through Kentucky, the reconnoissance only of which had been made.”

They had, he thought, respectfully agreed to disagree on the amendment, and he considered the matter settled until Representative Wickliffe rose the day before to discuss other parts of Representative Metcalfe’s speech that had nothing to do with his colleague. “But, said he, ‘it did so happen that the reconnoissance was made just before the election, and that my correspondence with the Secretary was seized upon by my friends, to prove my vigilance in discharging my duties,’ which he admitted to be just”:

“Seized upon!” By whom? I may be ignorant of what passed on the subject in my District. During the greater part of the time of the canvass, I was far from home, and do not remember to have heard much on the subject – except that I noticed an editorial article from a press in my District, in reply to an assault which had first been made upon me by an editor in my colleague’s [Mr. W’s] District, respecting this correspondence with the Secretary – that editor having seized upon this proof of my vigilance to disparage me.”

All he had done was respond to the Kentucky legislature in contacting the Secretary of War to seek a survey:

If he had ordered an Engineer to perform that duty upon the first application, and just before the coming, on [sic] of an important election in Ohio, which took place the year before it did in Kentucky, would he not have been charged with having done so upon grounds too light, and for the purpose of engineering his Ohio friends into Congress? But as the application had been made without distinction of party, by members living on and off the Road, both in Ohio and Kentucky, the Secretary had to run the risk, in either case, of engineering into Congress some of his political enemies, as well as his friends.

Representative Metcalfe said that by releasing the documents he had read on the House floor, he had vindicated himself and all others involved in seeking the survey of the road from Maysville to Lexington. As a result, “nothing but the most glaring depravity of mind will cause any man to renew any such charges or imputations. No gentleman can, or will attempt it.”

The discussion moved on, but near the end, Representative Wickliffe regained the floor to discuss issues related to the canal. In addition, he responded to the comments earlier in the day by Representative Metcalfe. The two men, Representative Wickliffe recalled, disagreed on the Senate amendment about the \$30,000 to be appropriated for surveys. He recalled that he had been among those signing the letter to Secretary Barbour leading to the survey of the Maysville to Lexington road in 1827. “I was represented by two of my colleagues as opposing the appropriation of the 30,000 dollars, as if this expenditure was intended for the benefit of Kentucky.” He had corrected the record, adding, “If there is any cause of complaint, I have it against him.”

They had both voted for the House version of the bill, but differed on the Senate amendment:

My colleague stated that the amendment which I advocated, according to his understanding of it, would prevent the survey of the very road, the survey of which I had, with others, solicited. In this I knew he was wrong. The survey had, in the opinion and judgment of the Department, been commenced. You will find it on the list referred to by me yesterday, of course under the amendments advocated by me, would be completed.

Does my colleague complain that I ascribed to his superior industry and vigilance this survey in 1827? In this have I done him injustice? No, sir, if I had represented his district, under the same circumstances, I should have pressed this survey. I said his single effort was more fortunate in 1827, than the united effort, in 1826, of twenty-one members of Congress.

His colleague, Representative Metcalfe, “expresses a hope that I will manifest my disposition to do him justice,” which Representative Wickliffe had done. “But he must not infer from this, sir, that I will support him for Governor of my State. No, sir; this

I cannot do”:

At this point our roads fork – mine runs through the hickory grounds. I have not said, here or elsewhere, that his constituents were sold and bought by the survey of this road. No, I know but few of them, and if they be Kentuckians, such as I believe and hope they are, they will “not stay sold, if they have been sold.”

(Representative Wickliffe was a Jacksonian, supporting “Old Hickory,” hence the reference to hickory grounds. Representative Metcalfe was an Adams supporter, soon to be a Whig.)

In his remarks the day before, Representative Wickliffe said, he had not “imputed impropriety to my colleague, or charged his constituents with being corrupted.” He had simply placed the facts on the record to let the public judge. “Sir, this House is no place to answer newspaper charges and the ‘slang-whang of stump-orators and town scribblers.’” Everyone in Congress had been similarly abused. Because he supported General Jackson, “I have been denounced, as having abandoned my principles and former friends, and joined in an unholy crusade against the liberties of my country.” All he had wanted to say was that “I was satisfied we had already surveyed and commenced surveying, more objects than it was within the power or ability of the United States to complete.” Although some might think he opposed internal improvements, he confirmed he would vote in support of the stock purchase.

The house voted, 107 to 71, to pass the stock purchase bill for the Chesapeake and Ohio Canal Company and sent it to the Senate for concurrence.

### **Report on the Cumberland Road, 1828**

On December 2, 1828, President Adams sent his fourth and final message to Congress. Having lost his reelection bid, he surveyed some of his accomplishments, including those in public works. The report of the Engineer Department, he said, presented “a comprehensive view of the progress which has been made in the great systems promotive of the public interest, commenced and organized under the authority of Congress . . . .”

The first of what President Adams called the cardinal system was the network of fortifications “commenced immediately after the close of our last war”:

The next of these cardinal measures of policy is the preliminary to great and lasting works of public improvement in the surveys of roads, examination for the course of canals, and labors for the removal of the obstructions of rivers and harbors, first commenced by the act of Congress of 1824-04-30.

The War Department’s annual submitted by Secretary of War Peter B. Porter, who had taken office on May 23, 1828, included a report, dated November 19, 1828, from General Gratiot about the Engineering Department’s activities. Under Civil Constructions, he reported on the Cumberland Road:

Continuation of the Cumberland road from the Ohio river to Zanesville, Ohio. – The construction of this work has been continued on the principles explained in the last annual report. No full report of the operations during the past year has yet been received; but it is known that contracts have been made for its completion, which will be effected during the present year, the sum appropriated by the act of the 19th of May last being sufficient for that purpose.

Repairs of the Cumberland road between Cumberland and Wheeling. – The sum of thirty thousand dollars, appropriated for this purpose by the act of the 2d March, 1827, has been expended in repairing those portions of the road which most required it, leaving yet more than one-half of the road unrepaired. The propriety of asking for an additional appropriation for this object is therefore respectfully submitted.

The surveys ordered to be made for the purpose of continuing the location of the national road from Zanesville to the seat of government of Missouri have been diligently prosecuted during the year, and the location effected as far as Vandalia, in Illinois, in addition to which an experimental survey has been made of the country between the latter place and St. Louis, at which point the operations have been suspended for the season.

The report from Superintendent Wever on activities in Ohio arrived after General Gratiot's report, but was dated November 18, 1828. Secretary Porter provided it to Congress on December 11. The report began:

The work was commenced on the 4th day of July, 1825. In that year, 28 miles and 157  $\frac{6}{10}$  [six/tenth] poles of the road, together with the requisite masonry, were put under contract, which were entirely completed in the year 1827. The road has a cover of metal, of nine inches in thickness, composed of stone reduced to particles not exceeding four ounces in weight, and applied in three successive strata of three inches each. The first stratum was compacted with a heavy roller. Upon the second stratum, the travel was admitted and continued until the stone were sufficiently consolidated for the reception of the third layer. The cover on this part of the line of road has become entirely compact, impervious to water, very smooth and elastic, with the exception of a few short pieces. To the most skeptical, a clear and most satisfactory demonstration is afforded, by this portion of the road, of the decided superiority of the McAdam system of constructing roads over any and all other systems which have been used in this country.

On July 21, 1827, he had let the contract for the balance of the line to Zanesville, a distance of 20 miles:

After the letting, it was supposed that some advantage might result from a change of about seven miles of the location. The work was accordingly suspended until the necessary examinations could be made. Those examinations satisfactorily demonstrated the propriety of the change. One hundred and fifteen

poles of distance were abolished, the grades improved, and the expense of construction increased but little, if any. This examination was made at the suggestion of Mr. [Jonathan] Knight, the commissioner of location, whose pressing duties further westward denied him the time to attend to it himself. No detriment to the service resulted from the suspension. That portion of the line is not in as forward a state of progress as the other parts.

In the spring, he had put under contract the main street of Zanesville, “extending from the eastern boundary of that town to the east bank of the Muskingum . . . making the whole distance now under operation, and in a state of progress towards completion”:

On the whole of this distance, in its graded and bridged state, the travel was admitted on the 15th day of last June, and would have been admitted earlier, but for the almost steady rains during the last Winter and Spring. Much material for the cover has been carried to the line, and reduced to the required size; and it is believed that the road may be completed, with a cover of metal of nine inches in thickness, by the 1st of next September. If the last appropriation of Congress had been made in the early part of the last session, this part of the road could have been completed by this time.

Contracts could not be made for the cover of the road, until the funds were appropriated; and as the appropriation was not given until late in the Spring, the contractors lost the Winter months, the usual time of quarrying and hauling the metal.

After the appropriation was made, it was impracticable to procure, prepare, and lay the two first strata of the cover, in time to be sufficiently consolidated by the action of the travel for the reception of the third stratum, before the approach of Winter. It was therefore considered best to defer the application of the cover, until the earth is sufficiently dry next Spring to receive it.

The road had been well built, while the bridges had been so well constructed that “this line of road will bear a comparison, in that respect, with that upon any other road within the limits of our Republic”:

The road also has been constructed with great care and fidelity on the part of the contractors; and on it, as well as on the masonry, no expense consistent with propriety and sound economy, has been spared, so that it might be formed of as permanent character as it was susceptible of. With proper attention, it will endure for years to come, with the exception of such portions of it as pass through towns and villages. Those parts are liable to an accumulation of mud from the frequent entry of travel from the side or branch roads, and cannot last long. The cover, indeed, attains such a perfect smoothness, that it is impossible it should wear away rapidly. The traveller prefers the cover to the side roads, which are true and well formed, and they are now becoming covered with grass.

Superintendent Wever also raised a concern about maintenance of the road similar to the concerns expressed multiple times by David Shriver:

The preservation and repair of this highly important public work must be an object of anxious solicitude to every citizen, and more especially so the enlightened Members of Congress. It cannot but be the expectation of every person, that Congress will devise some system for this purpose, before another session of that body passes by. The Legislature of Ohio, at their last session, with a spirit becoming a great State, and with great unanimity, passed an act for the prevention and punishment of injuries committed upon this work. The act, like all others on new subjects, is not as perfect as could be desired. It does not require the ministerial and executive officers of the State to take cognizance of violations of it, unless upon the information of other persons.

The character of an informer is looked upon as one of baseness and dishonor. Informations are, therefore, few, except by the agents of the road, whose duty it is. Some of those sapient magistrates assume the right of questioning the constitutionality of the law, and hesitate to act when information is given. The stage proprietors, who probably reap more benefit from the road than any other class of citizens, have been in the almost daily practice of injuring the road by locking the wheels of their carriages, in contempt and defiance of the law, under the fallacious pretence that it is impracticable to descend the hills in safety, without resorting to that measure.

Their example has had a most pernicious effect, as other persons very justly concluded that if the stage proprietors had the right to do so, they had also, and followed the example. Here, too, the magistrates doubt their right to fine the drivers of the mail stage, and thus the law is rendered almost nugatory. May we not hope that the Legislature will, at their next session, revise this act, and give its provisions more efficiency?

He also discussed conversion of the Cumberland Road east of the Ohio River:

The attention of the Department was called, in my last annual report, to the dilapidated condition of the United States' road, east of the river Ohio. I do not deem it necessary to add to what was then said, except to remark that its progress toward complete and irretrievable ruin has been, since that time, much more rapid than I then expected it would be. Is there not a saving power somewhere, and disposition too?

For the work from the river to Zanesville, Wever wrote:

The appropriations of 1825, '6, '7, and '8, for the construction of the road confided to my superintendency, amount, together to the sum of \$595,000; of that sum, \$424,853.38 were expended up to the 30th of last September, and accounted for; leaving a balance of \$170,146.62 unexpended. The balance will complete the road to the east bank of the Muskingum river, and leave a surplus

of about \$40,000 applicable to the various casualties and incidental expenditure to which all new roads are subject. No further appropriation is, therefore, necessary for this part of that great and important public work.

If Congress, “in their wisdom,” wanted to extend the Cumberland Road beyond Zanesville, additional funds would be needed. Wever suggested “a system of appropriation different from that heretofore pursued,” based on the issues to date:

[It] is this, that an amount equivalent to the total cost of the distance of the road intended to be constructed, to be appropriated at once. The necessity of annually awaiting the appropriations retarded the work under my management very much; but for that, the road could have been completed in the course of two years from its commencement. If the whole amount cannot be immediately applied, it need not be drawn from the Treasury.

Superintendent Wever ended his report with several commendations. First, he wrote, “It is due to the various contractors, both of masonry and road work, to state that their conduct has been, in general, very exemplary . . . . Some of the contractors have not received a sufficient reward for their toils and labors, in an honorable and useful avocation; but many of them have had their exertions amply remunerated.”

Second, he repeated his endorsement of the McAdam system. “The selection of the McAdams system by the Department was a measure of wisdom, fully proven and established by the success of the work.”

Finally, he praised General Gratiot’s predecessor, Major General Macomb “for the generous and unwavering support which he yielded to me during his continuance in the direction of the Department.” He singled him out for a specific action. “I will be pardoned for believing that the triumph which he has gained over prejudice and ignorance in the successful introduction of the McAdam system of constructing roads, will prove in its consequences more signally and lastingly beneficial to this nation” than General Macomb’s victory in the Battle of Plattsburgh on “the ever memorable 11th day of September,” 1814. [*Cumberland Road*, Letter from the Secretary of War, Transmitting a copy of the Last Annual Report of the Superintendent of the Cumberland Road, 20th Congress, 2d Session, Ho. of Reps. War Dept., December 11, 1828, Doc. No. 14.]

### **Taking Up The Issue, Second Session, 20<sup>th</sup> Congress**

Early in the second session of the 20<sup>th</sup> Congress, both Houses took up Cumberland Road measures.

On December 4, 1828, Representative Oliver H. Smith of Indiana, who had lost his reelection bid, introduced a resolution instructing the Committee on Roads and Canals to inquire “into the expediency of reporting a bill to authorize the opening of the Cumberland road eighty feet wide on the present location through the State of Indiana, by cutting off the timber, removing all obstructions, and making temporary bridges, so

as to let on the travel, preparatory to turnpiking the same; and also, that said Committee inquire into the expediency of making an appropriation of fifty thousand dollars for that purpose.”

With pro-internal improvements President Adams still in office, the chances of his approval for such a bill, if it could get through Congress, were good.

He observed that when a Representative introduced a resolution, he usually did not offer remarks about it. He asked for indulgence to comment on the resolution:

There are few subjects, I may say none, in which the citizens of the State from which I come, and particularly those more immediately affected by this road, either in fact or anticipation, are more deeply interested than in that embraced by this resolution. The Cumberland road being the grand thoroughfare through which a great portion of the emigration, as well as the merchandise from the Atlantic States and cities, must pass, by land, to the State of Indiana, and those States west, through which this road is intended to be located, it consequently becomes a matter of much importance to our citizens, that it should be in healthy and active progress westward.

Jonathan Knight, the civil engineer who had run the line across Indiana, “warmly recommends the opening of this road in the manner contemplated by the resolution”:

It would seem almost unnecessary for me to add my entire concurrence in the views of Mr. Knight on the subject, as his opportunities, having examined the ground, for acquiring a knowledge of the subject, not only as regards the geography of the country, but as to the propriety of this preparatory step, has been such, as to entitle his opinions to the respectful consideration of this House and the Committee.

Representative Smith pointed out that in the previous session, the Senate had passed a bill for the same purpose, but “the repeated efforts of myself and colleague, Col. [Thomas H.] Blake, (Mr. [Jonathan] Jennings being at that time unfortunately confined to his bed by severe indisposition) to take up the bill out of its order, proved unavailing, and we were compelled to see the session close and the bill not reached on the orders of the day.”

He urged completion of “this great national work”:

National I call it, sir; for, if any work of internal improvement can properly be called national, this is surely of that character. The people consider Congress as pledged to proceed with this great and important work, and I flatter myself their just expectations will not be disappointed.

For those with constitutional scruples, his resolution steered clear of that issue:

I believe we have the power, and I am willing to exercise it for the benefit of the country. It is not my intention to go into the question at this time, as it can answer no valuable purpose. I will merely point gentlemen to the compact, and to the fact that the two per cent. on the amount of the sales of public lands in the State of Illinois, which I consider pledged to this object, has already amounted to more than the sum called for by the resolution.

Representative McLean of Ohio moved to amend Representative Smith's resolution "by inserting therein, after the word 'location,' these words, 'from Zanesville, by way of Columbus, in the State of Ohio.'"

Representative Smith objected to the modification:

So far as this road had gone into the State of Ohio, it had been made to follow the course of good roads already existing; but in Indiana this was not practicable, as no such roads lay in its contemplated course. Besides, the adoption of the amendment would involve the necessity for an enlarged appropriation.

Representative McLean did not consider the objection valid:

The whole subject would remain in the discretion of the Committee. As to what the gentleman had observed as to the good roads in Ohio, he must certainly be under an erroneous impression. The preparation contemplated by the resolution was as much needed in that State as it could be in Indiana.

The House adopted the McLean amendment of the Smith motion. Representative Smith modified his motion to substitute \$100,000 for \$50,000. In that form, the motion was carried and sent to the Committee on Roads and Canals.

On January 7, the Committee of the Whole returned briefly to the Cumberland Road toll-gates bill left over from the first session of the 20<sup>th</sup> Congress. Representative Mercer moved to add to the ninth section regarding the amount of toll collection at each toll-gate:

Nor shall the same be less, in any one year, than one hundred and twenty dollars; and in case of any deficiency in the amount collected by any toll-gatherer, below the sum of one hundred and twenty dollars, the residue shall be paid out of the other tolls collected on the said road.

The *Register* added, "The various blanks in this bill having been filled, the Committee rose."

On January 15, with the House in Committee of the Whole, Representative Mercer moved to fill in a blank in the bill with the sum of \$100,000:

Mr. M. briefly explained the facts of the case. That part of the road which lies east of the Ohio is one hundred and thirty miles in length. On seventy-one miles

of this road, the bill proposed to erect toll gates, at not less than ten miles apart. After the gates and toll houses have been erected, the residue of the money is to be expended in repairs upon the road. Mr. M. assured the Committee that, when this measure should have gone into effect, they would never again be called upon to appropriate money for this road, as the tolls would be sufficient to keep it in repair. If not, it must remain a charge upon the Government, and the two millions two hundred and forty thousand dollars which had already been expended on this great national work would be lost, and the road fall into a state of total dilapidation.

The committee agreed to the amount, 83 to 76.

The Committee of the Whole considered the bill on January 19. Representative Buchanan offered an amendment to strike out most of the bill and replace it with provisions ceding the road to the States provided they erect toll-gates to pay for keeping it in repair. He saw his amendment of the Cumberland Road bill as part of a battle for the Constitution:

It is not a question whether we shall keep the road in repair by annual appropriations; nor whether we shall expend other millions in constructing other Cumberland roads; these would be comparatively unimportant; but it is a question, upon the determination of which, in my humble judgment, depends the continued existence of the Federal constitution, in any thing like its native purity. Let it once be established that the Federal Government can enter the dominion of the States; interfere with their domestic concerns; erect toll gates over all the military, commercial, and post roads, within their territories, and define and punish, by laws of Congress, in the courts of the United States, offences committed upon these roads; and the barriers, which were erected by our ancestors with so much care, between Federal and State power, are entirely prostrated. This single act would, in itself, be a longer stride towards consolidation than the Federal Government have ever made; and it would be a precedent for establishing a construction for the Federal constitution so vague, and so indefinite, that it might be made to mean any thing, or nothing.

He did not intend to go through the many questions that had been debated over the years about internal improvements. He “cheerfully” conceded that the Federal Government could subscribe stock in internal improvements companies, and even “appropriate money of our constituents directly to the construction of Internal Improvements, with the consent of the States through which they may pass.” He would never, however, support a road or canal, “which my judgment disapproves,” despite the clamor in the House chamber.

He recalled the history of the Cumberland Road from the 1802 Enabling Act for Ohio to the Act of March 29, 1806, which “asserted no other right than a mere power to appropriate the money of their constituents to the construction of this road, after the consent of these States should be obtained.” Advocates of Federal power saw the legislation advancing the idea of sovereign power. Since then, according to the latest

tabulation, the road had cost \$1,766,166.38, “whilst the two per cent. fund which we had bound ourselves to apply to this purpose, amounted, on the 30th of June, 1822, the date of the last official statement within my knowledge,” only to the sum of \$187,786.31, less than one-ninth of the cost of the road”:

This road has cost the United States more than thirteen thousand five hundred dollars per mile. This extravagant expenditure shows, conclusively, that it is much more politic for us to enlist individual interest, than to become ourselves sole proprietors. Any Government, unless under extraordinary circumstances, will pay one-third more for constructing a road or canal, than would be expended by individuals accomplishing the same object.

The road had been built “in the manner that one independent sovereign would construct a road through the territories of another . . . . The right to demand toll, and to stop and punish passengers for refusing to pay it, is emphatically a sovereign right, and has ever been so considered amongst civilized nations.” The U.S. courts would have to consider any case involving failure to pay the toll:

Any citizen of the United States, charged with the most trifling offence against the police of this road, must be dragged for trial to the Federal court of that State within whose jurisdiction it is alleged to have been committed . . . . These, and many other inconveniences, which I shall not enumerate, would soon compel Congress to authorize the appointment of Justices of the peace, or some other inferior tribunals, along the whole extent of the Cumberland road.

He argued in favor of a limited interpretation of the word “establish” in “establish Post Offices and post Roads.” Considering the arguments, pro and con, he said, “There is no power which this Government shall ever wish to usurp, which cannot, by ingenuity, be found lurking in some of the express powers granted by the constitution.” He added:

It never – never was intended that the vast and mighty machinery of this Government should be introduced into the domestic, the local, the interior concerns of the States, or that it should spend its power in collecting toll at a turnpike gate.

The only provision in the Constitution granting jurisdiction to Congress, akin to State jurisdiction, was the language in Article 1 on the Nation’s capital:

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

“This is,” he said, “the only clause in the constitution which authorizes the Federal Government to acquire jurisdiction over any portion of the territory of the States; and this

power is expressly confined to such forts, magazines, arsenals, dockyards, and other needful buildings, as the States may consider necessary for the defense of the country.” All were necessary “for the exercise of the power of war.” They do not “confer any implied jurisdiction over the smallest portion of territory”:

How, then, can it be contended, with the least hope of success, that the same constitution, which thus expressly limits our power of acquiring jurisdiction, which thus expressly limits our power of acquiring jurisdiction, to particular spots, necessary for the purpose of national defence, should, by implication, as an incident to the power to establish post offices and post roads, authorize us to assume jurisdiction over a road one hundred and thirty miles in length, and over all the other post roads in the country. If this construction be correct, all the limitations upon Federal power, contained in the constitution, are idle and vain.

In his view, “the argument in favor of the constructive power to pass the sedition law is much more plausible than any which can be urged by the advocates of this bill, in favor of its passage.”

He pointed out that the Pennsylvania State legislature had passed a resolution authorizing the Federal Government to erect toll-gates and enforce toll collection in the State. He normally had nothing but respect for the actions of his home State legislature:

This resolution, however, was adopted, as I have been informed, without much deliberation, and without debate. It owes its passage to the anxious desire which that body feel to preserve the Cumberland road from ruin. The constitutional question was not brought into discussion. Had it been fairly submitted to the Republican Legislature, I most solemnly believe they would have been the last in this Union to sanction the assumption, by this Government, of a jurisdiction so ultra-federal in its nature, and so well calculated to destroy the rights of the States.

He acknowledged that during his first term in the House, he had voted in 1822 for the toll-gates bill that passed the House 87 to 68. After President Monroe vetoed the bill, the House override vote, 68 to 72, sustained the veto:

I had not reflected upon the constitutional question, and I was an advocate of the policy of keeping the road in repair by collecting tolls from those who travelled upon it. After I read the constitutional objections of Mr. Monroe, my opinion was changed, and I have ever since been endeavoring, upon all proper occasions, to atone for my vote, by advocating a cession of the road to the respective States through which it passes, that they may erect toll-gates upon it and keep it in repair.

Representative Buchanan, who lived in the Lancaster area of eastern Pennsylvania, concluded:

I know that some popular feeling has been excited against myself in that portion of Pennsylvania through which this road passes. I have been represented as one of its greatest enemies. I now take occasion thus publicly to deny this allegation. It is true that I cannot vote in favor of the passage of this bill, and thus, in my judgment, violate the oath which I have taken to support the constitution of the United States. No man can expect this from me. But it is equally true, that I have heretofore supported appropriations for the repair of this road; and, should my amendment prevail, I shall vote in favor of the appropriation of one hundred thousand dollars, for that purpose, which is contained in this bill.

According to the *Register*, New York Representative Storrs replied to Representative Buchanan, contending “that the constitutional question was not involved, inasmuch as the construction of the road rested in a contract prior to the constitution, between Virginia and the old Confederation, in which Virginia gave to the Confederation power to regulate the road, when constructed, and by which all the then existing States in the Confederation were bound.” The usual hour for adjournment having arrived, the House adjourned without further discussion of the Cumberland Road.

On January 21, discussion of the Cumberland Road bill resumed. Representative James Strong of New York, who had tried to speak before adjournment on January 19, delivered a lengthy speech on preservation of the Cumberland Road. He did not want to debate whether the Constitution granted Congress the power to build a road. This bill was a different matter involving preservation of the road and erection of toll-gates. It was, in short, “a mere question of property, and of the right in Congress to protect, by its laws, that property, whatever may be its kind.”

He regretted when arguments on this and other matters “go to alarm the people for the safety of State rights, and which rarely fail to induce a belief that there is danger, where there is none.” The danger, really, was to the Union, not the 24 sovereign States. “Experience abundantly proves it. The Federal Union can never destroy the States; but, whenever it is destroyed, the chances are, that it will be by the action of the States.”

Due to the compact with Ohio, the Act of 1806, and the consent of the three States involved, “the United States now hold real estate within the limits of the old States, and over which they have not exclusive legislation.” The compact was consistent with the constitutional provision giving Congress the right to “make all needful rules and regulations respecting, the territory or other property belonging to the United States.” Just as Congress can appropriate funds to repair ships of war based within a State, or preserve forts, arsenals, and other property on small parcels of land that was federally owned by State grants, “why not also for the property they have in the Cumberland Road?” His view was:

And, in my judgment, Congress has the right to make laws to protect the title, and to preserve the property . . . from destruction. Putting up gates are the usual and ordinary means of preserving this sort of property. It imposes no hardship upon any one. It affects none but the passenger, and he pays only for the benefit he receives at the time.

The road, Representative Strong said, “owes its origin to peculiar circumstances. It rests upon a peculiar foundation. The like will rarely, and may never, occur again”:

The nation was bound not only to make, but to sustain it, if it could be done without a continued drain from the Federal treasury. Such, I think is the spirit of the contract, and of the legislation in relation to it . . . . I am for sustaining it in the way proposed by the bill.

The Buchanan Amendment “is not free from objections,” beginning with the conditions imposed on the cession:

If the United States have not only that sort of property in the road of which it is susceptible, (and which the amendment admits, though the gentleman denies it in his argument) but also the right to put up gates on it, then, indeed, Congress may prescribe conditions. But, if the United States have no right to put up gates, then you not only undertake to grant what the United States do not possess, but you impose a condition, which limits the exercise of the sovereign power of a State. The right to erect these gates is clearly in the one sovereign or the other.

He also questioned Representative Buchanan’s argument about punishment of crimes along the road:

Why, sir, the inferior courts of the United States can have no jurisdiction over any matter or offence, but what Congress gives, by law. If you impose a fine for injuring the gate, or for refusing to pay toll, you can touch none but the offender, nor prosecute for any other cause. Pennsylvania has concurrent jurisdiction and concurrent legislation over this road; and the trial for crimes perpetrated upon it would be in her courts, and not in the courts of the United States. The objection, on the ground of distance from the Federal courts, is an objection equally applicable to the prosecution of any matter, civil or criminal, in the courts of the United States. It goes to the whole system of Federal judiciary.

He pointed out that the Cumberland Road was an established mail road, subject to fines and other penalties imposed by the Post Office law to protect the mail, “as matter of property”:

And what is worthy of notice in this law, is, that, by the 37th section of it, “all causes of action arising under” it, are to be “sued” for, and “all offenders against it prosecuted, before the justices of the peace, magistrates, or other judicial courts of the several States.” If the State courts have jurisdiction in these matters, then the tolls upon this road may be collected in the same way, whenever this mode shall be thought advisable.

He also addressed the idea that if the general government could install toll-gates on the Cumberland Road, it could place gates on any mail road:

The distinction between the two cases is this: the United States own the Cumberland road as a sovereign, and have a right to dispose of it as such. They have an interest, a property, in it; whereas, in the common mail roads they have neither.

He objected to letting the States erect the toll gates. He favored “the plan proposed by the bill adopted – tried, and tried fairly.”

New York Representative Silas Wood traced the history of the road to the cession of Virginia, in 1784, that freed the Northwest Territory from the State’s extended authority under the King’s colonial grant. As for the compact resulting from the Enabling Act for Ohio and the agreements with the three States under the Act of 1806, he said:

The whole amount of the two per cent. fund, on the 31<sup>st</sup> December 1826, arising from the sales of the public lands in Ohio, Indiana, Illinois, and Missouri, amounted only to two hundred and ninety-two thousand four hundred and seventy-seven dollars and three cents, and the moneys expended by the Government on the Cumberland road, from 1806, to December 1827, amounted to one million eight hundred and thirty-eight thousand and seventy-four dollars and twenty cents; more than six times as much as was required by a literal performance of the stipulation with the State of Ohio. Thus, [said Mr. W.] the United States have anticipated the two per cent. fund many years in advance, and have honorably fulfilled the agreement with the Western States. They have laid out and made the road agreeably to the stipulation, and therefore are under no farther obligations in relation to that road.

It is, however, very desirable that so important a road, and upon which so much money has been expended, should be placed in a situation to support itself, and be kept in constant repair.

The toll-gate plan was the best way to achieve that goal. “By this plan the road will, at a very small expense to those who shall enjoy the benefit of it, be kept in constant repair, and will be made as perfect as the nature of the ground and material will admit.” The bill called for the general government to erect the toll facilities and collect the toll, while the amendment calls for transferring the road to the States with the understanding they would erect the facilities for toll collection. He favored the amendment, and argued that it was “immaterial to those who use the road, by which government the toll is collected, and the road is kept in repair.”

The issue involved jurisdiction. The Constitution did not explicitly give Congress authority to operate toll roads or impose punishments on those who violated the toll requirements or the road itself:

Without going farther into the constitutional question, I contend that, if it could be conceded that the General Government possessed the power in question, it would be good policy to relinquish it to the States; that they are more competent to its efficient exercise; that they possess better means to effect the object; can

accomplish it with much less trouble and expense, and with much greater benefit to the public . . . .

This course will remove all constitutional scruples; will put troublesome questions at rest; and enable us to act with some degree of harmony. Why not, then, adopt the amendment? Is not concession due to those who doubt the constitutional right as well as the competency of the General Government to execute this power, when the object in view can be better obtained in this way than in any other.

To accommodate the amendment, he would vote for any sum needed to “put the road in good repair, and to make the necessary erections, that the State may organize the plan for the preservation of the road and put it into operation without expense.”

Representative Philip P. Barbour of Virginia rose to address the subject, promising to present his views in “a brief and condensed form.” He recalled that during a debate on internal improvements some 11 or so years ago, he had “endeavored, in an elaborate argument, to prove that it was utterly without the sphere of the constitutional power of Congress.” He would not relate the entire argument, but he raised the subject “to express my dissent to some of the views of the gentleman from Pennsylvania, with whom I concur in the general result at which he has arrived”:

I denied the power of Congress to appropriate money for the construction of roads, upon these plain principles: that if, as the gentleman from Pennsylvania has admitted, we had no right to construct, we could not have the power to appropriate money for their construction; that the power of appropriation was a mean [sic] for the attainment of certain ends, which were specified; that, whenever we had not power to execute the end, we could not use the means which conduced to it; for that would be to say that what we had not a power to do, we yet had a power to cause to be done. Thus, if we had not power to raise and support armies, or to provide and maintain navies, we could not rightfully appropriate money for either of those purposes.

He quickly dismissed the usual arguments in support of a constitutional grant of power over internal improvements, including the authority to “establish” post roads:

Thus, for example, take the power of establishing post roads, which bears upon its face the strongest plausibility; this, I contended, meant only to designate the mail routes, as is shown not only by the plain meaning of the terms, but by the practice of Government from its commencement: for all the laws, professing by their titles to establish post roads, did nothing more than declare what roads should be mail routes; and this argument ought to have much weight with those gentlemen who repose so much upon the strength of legislative precedent.

He warned about the “long train of implications” that results from defining “establish” as meaning to build:

The power to establish, it is said, implies the right to create; the right to create, implies that to preserve; the right to preserve, implies that to turnpike; that to turnpike, implies that to erect gates; that to erect gates, implies that to collect toll; that to collect toll, implies that to punish for non-payment.

He compared this kind of argument to an inverted cone, explaining that “as the one must fall, by the laws of matter, so must the other, by a just construction of the constitution; the line of direction falls without the base.”

He briefly recalled President Madison’s veto of the Bonus Bill and President Monroe’s veto of the toll-gates bill, as well as House votes during the 15th Congress on the four internal improvement resolutions, three of which were rejected:

Thus we have the opinion of one House of Representatives, and two Presidents, against the power now claimed: for it is obvious that the denial of the power to construct involved the denial of that to erect gates; and yet now the power is gravely contended for. Precedents, it seems, are to have great weight, when they support power; but when they deny it, they are to be utterly disregarded.

He explained that a toll was actually a tax, because “not only is it embraced by the just definition of the word tax, but the best writers on political economy call it a tax.” The Constitution gave Congress the power to levy taxes, but imposed two conditions. First, all duties, imposts, and excises must be uniform through the United States. Second, every direct tax must be in proportion to the census or an enumeration that Congress caused to be made. The tolls proposed by the pending bill “are not in conformity with either of these limitations.”

Moreover, Congress could exercise exclusive jurisdiction over real property, as in the case of fortifications, but whenever the jurisdiction is “exercised directly over the soil, as the subject of its action, it must be exclusive.” It cannot be shared with the State government:

Thus, to illustrate: When the General Government shall have turnpiked a particular road, and established toll gates, if a State were to attempt to regulate or to claim the same road, the two powers could not exist together – the action of the first Government directly upon the right of soil having exhausted the whole subject, and expended the whole power over it. Accordingly, with a view to prevent this necessary collision of jurisdiction, in the clause relating to the Seat of Government, &c. the jurisdiction or legislation is, *totidem verbis* [in so many words], declared to be exclusive; and, in the other, to dispose of, and make all needful rules as to the public land, it must be exclusive, from the necessity of the case; because, no other power can exercise jurisdiction inasmuch as that implies the ownership in the domain, which is in the General Government. . . .

No one can doubt but that the erection of toll gates and demanding toll is an exercise of jurisdiction which can be founded only on a right to, and power over, the soil. If so, and the principle be true that the jurisdiction in the Federal

Government, in its direct action upon the soil, must, where it exists at all, be exclusive, then it results that the States have not, in this respect, concurrent power – that is, that they cannot turnpike any road which is declared to be a post road – thus giving to the General Government exclusive jurisdiction over one hundred and fourteen thousand miles of post road, which we now have, without the assent of the States though the constitution requires the assent before it can be divested of its jurisdiction, in the small surface which is the Seat of Government, and the other inconsiderable places which it enumerates.

Representative Barbour also outlined the implications of jurisdiction over property:

If Congress have a right to turnpike roads, then they have a right to adopt the accustomed means of doing it; but, one of the most usual means is the incorporation of companies; and thus we might have every road in the Union in the hands of incorporated companies, demanding toll of the people, which Congress must make high enough to yield them a dividend upon their stock. This is not all: We are told that the right to create implies the right to preserve. Upon this principle, Congress might, with a view to preservation, prohibit any citizen from passing it, unless his wheels were of a given width; and, indeed, in this very bill, it is provided that those whose wheels exceed six inches in width shall be exempt from toll.

Representative Barbour recalled Representative Wood's explanation that in the absence of constitutional justification, the power to preserve the road stemmed from the compact agreed to by President Jefferson. The committee should recall that "if the constitution gave the power, we have no need of a compact; and if it did not, then the compact . . . cannot do it."

Putting the constitutional question aside, Representative Barbour conceded that the road was built in accordance with a compact with Ohio. The road was to be laid out and built upon consent of the three States involved. "This, sir, is the state of facts in relation to this alleged compact, from which gentlemen now attempt to derive the power to erect toll gates and to collect toll."

The parties to a compact, he said, are subject only to the stipulations in the accord. "Now, sir, no party to a compact can ever be under any greater obligations arising out of it, than its stipulations impose." Congress having met the stipulations of the compact, "the people of Ohio can have no farther right, nor can Congress be under any farther obligation." Actually, in view of the disparity between the amount expended and the amount collected for the two-percent fund:

. . . we have already gone an immeasurable length beyond our contract, and expended, from the Treasury, what we can never recall: the stipulation then, on our part, being more than performed, the compact is executed; it is at an end; and consequently, no right, even now, can be derived from it, and still less, power on our part, and the highest political power, that of jurisdiction over the soil.

After elaborating on these points, Representative Barbour turned to the amendment to turn the road over to the States to erect and administer the toll-gates, concluding:

I have two objections to the amendment, which I would desire to have obviated. They are these: I would prefer that the language should be all the right which we claim to have, rather than as it is, all the right which we may have; the other is the proviso, which proposes to attach certain conditions to the surrender. I would prefer an absolute unqualified surrender of all our pretensions, expressed in terms which could not, by implication even, be tortured into any admission that we had claim; but if these objections cannot be removed, I will vote for the amendment in its present form, as the nearest attainable approximation to what I think ought to be done.

The debate was resumed on January 22 by Representative Archer of Virginia. In a lengthy speech that took about five full pages of the *Register*, he conceded, if only for the sake of argument, the right to construct the road, but his main point involved imposing tolls:

Mr. Archer concluded by saying, that it would be recollected that the view he had been endeavoring to press on the committee did not rest on the denial of the power [to construct roads] to this Government. The denial involved, indeed, this present claim to set up a specific form of jurisdiction on the road, which must fall with the fall of the power. For the sake of argument, however, he had conceded the power in the largest form in which it had been claimed by its advocates, viz: that to construct by the condemnation of the soil.

What he denied was the ulterior and consequent claim of jurisdiction, asserted by the bill – the right to shut up the roads which the Government might make, from unrestricted use, and to levy tolls on them. He denied that this ulterior jurisdiction was a consequence to be inferred from the principal power. The United States had a power to make roads for military purposes, uncontested in time of war, and, therefore, incontestable as a provision for war in time of peace.

But had they a right to shut up these roads from the free and common use of the States and the people, by positive regulation to that effect, or by the equivalent mode of regulations of toll? If they had, there was nothing to hinder the extension of the same system to all roads, by their adoption as post roads (with the solitary reserve of compensation for the infringement of private property) and to submit the transit of persons and property to unlimited regulation by this Government. Such a consequence of it frustrated the pretension. The right really passing to the United States, under the power to make a road, was no more than that which passed by the adoption of a post route – a right of way, not of regulation. The subject acquired was usufruct [the legal right to use] of the soil, not a property in it, conveying competency to exclude others from participation in the use, or to charge that participation with a tax.

What he asked [Mr. A. said] was, that, in our legislation on this subject, we

should conform to this just view of it; which we should do by the substitution of the amendment for the bill. By the adoption of this course, every practical advantage which had been proposed would be realized, without the assumption of an unwarranted, or, in any event, questionable jurisdiction by this Government, which was bound to a circumspect, not to say jealous observance of the limits of its authority.

Representative Tomlinson Fort of Georgia took the floor on January 26 to discuss the pending bill to preserve and repair the Cumberland Road. He said he would avoid, “as far as practicable,” entering into the details of the debate. “Who can expect to throw any new light on a subject so often and so ably discussed as this?” He realized the subject raised passions, but he would proceed dispassionately. The debate came down to three questions:

1. Has the Government of the United States power to construct roads within the States?
2. Has it power to levy tolls on roads thus constructed?
3. Is it expedient to exercise this power in the present instance?

Because he supported the bill, he had to answer each of the questions in the affirmative.

To explain his support, he listed the “principal errors lying at the root of this subject,” namely:

1. That this Government is a compact between the Governments of the States.
2. That its powers are derived from the State Governments.
3. That it properly exists only within the ten miles square, composing this District.  
And,
4. That the sovereignty of each State over its soil, is paramount and exclusive.

If these fundamental statements were wrong, “a great part of the argument which has been advanced on this question must fall to the ground.”

Regarding error #1, he pointed out that the States had not approved the Constitution:

The people chose delegates to meet in convention for this particular purpose; and by these conventions was this sacred instrument ratified and confirmed; and from that day till the present has it been considered as binding equally on all the States, and on all the people, deriving its powers from the highest authority known in this country – people.

The preamble of the Constitution, which he quoted in part (brackets added), confirmed this point:

We the people of the United States, in order to form a more perfect union; to establish justice; ensure domestic tranquility; provide for the common defence; promote the general welfare; and, above all, to secure the blessings of liberty to

ourselves and our posterity [do ordain and establish this Constitution for the United States of America].

The document outlined how to accomplish these goals of the people. “The power to construct roads is no where mentioned in the constitution, as belonging to the United States. If it exists at all, it is as an incident to the powers specially granted.” He listed the usual provisions, without discussion, to support his view that the general government had the power to construct roads:

Could it be believed that this power, thus granted, maintained, and executed, by every successive administration of the Government, for forty years, should now be a matter of question here?

Exercising that authority, granted by the people, would not infringe on the sovereignty of the States.

Moving on to error #2, he said he had demonstrated that the general government’s power derives from the people. He rejected the “many frightful pictures drawn of the decaying powers of the States, and of the rapid strides making [sic] by this Government towards absolute power, and unlimited dominion.” Nothing, he said, was more idle than this fear. If the State governments failed, so would the central government. Therefore, “their confidence and united efforts should remain perpetual: for their interests are one.”

As for point #3 suggesting that national sovereignty was limited to the District of Columbia, he said, “This notion, although not perhaps distinctly avowed, appears to me to form the basis of a great portion of the most abstruse reasoning, which has been advanced on this occasion.” The general government’s sovereignty extended far beyond the capital. “In this argument, we are told there can be no concurrent jurisdiction, and from definitions equally, perhaps, sound, and inapplicable to the case.” It functions in many ways, such as delivery of the U.S. mail, in the States:

True, this District is a residence for the functionaries of this Government, and the seat of its legislation. But the people know that no part of its power is derived from the ten miles square. Every member of both branches of Congress are citizens of the States, and subject to their laws. Every President and every Head of Department, have, so far as I know, been likewise citizens of some of the States. They are taken from among the people, to enact and execute laws operating to the whole extent of our territory, and this Government is, in fact, equally at home in all the States and territories of the Union.

The fourth error, that the sovereignty of the States over its soil is paramount and exclusive, “seems most insisted on, and is, I believe, declared to admit of neither doubt or exception.” Representative Fort asked, “can this Government carry on its indispensable operations, without exercising sovereignty over the soil?” He argued that the power of the general government was co-equal with its duties:

It must establish post roads, regulate internal commerce, defend us against our enemies, have fortifications, march its armies, and occupy so much space as these operations require. Suppose a State were to refuse her consent to each and every one of these operations; by what right would this Government enter her territory for either purpose, if the State sovereignty over the soil is exclusive?

Each government, general and State, was entitled to sovereignty, but “the people of this country acknowledge no sovereignty inconsistent with that liberty which they have again and again declared to be dearer than life, and which he who surrenders is unworthy to live.”

He summarized his response to the four errors:

I think I have shown that the United States is a Government of the people, and that its powers are all sovereign and paramount, though, in many instances, not exclusive. That, if it can make a road, it must do so as a sovereign power, and, if so, a power to tax for the use, is a necessary and proper incident. But this power, although sufficient for its objects, can be extended no farther. It can never be extended to forbid a State from making as many roads as it thinks proper, nor can it claim from the citizen any tax except he travels the road. And it is equally untrue that the legislation of Congress, on this subject, is intended to be exclusive. The sovereignty of the States over this road remains uninterrupted for all the purposes of her civil and criminal jurisdiction, and Congress is restricted in its legislation to those measures which may be necessary and proper to construct, preserve, and keep it for the purposes of the nation.

In short, he supported the bill, but not the amendment.

Maryland Representative Barney spoke on behalf of one of the three States that would receive the road under the amendment, “not as a gratuity, but clogged with onerous and oppressive conditions.” Due to the “continued neglect of Congress,” the road was in a dilapidated condition and would require a large expenditure by the States for improvement before tolls could be collected. The bill (and the amendment, as

Representative Buchanan interrupted to point out) contained \$100,000 to repair the road:

What authority does Congress possess to delegate to the States of Pennsylvania, Maryland, and Virginia, a power which the gentleman from Pennsylvania, and all who support his amendment, deny she herself possesses? If the General Government cannot erect toll gates, can she authorize the erection of them by the States? And conceding, as I do, her right to preserve, by the exercise of her own sovereignty, that which she has created, yet she cannot, by any forced construction of the compact with Ohio, transfer this road, or divest herself of its proprietorship, by any legislative enactment.

The general government entered into a compact with Ohio, and eventually the other new western States, for what Representative Barney described as “making, regulating, and

constructing a highway, that should create an identity of interests, by facilitating intercourse; and the obligation to preserve it, for the full attainment of all the objects designed by its construction, is binding on all succeeding generations”:

If you can now transfer it to a State or States, you could, with equal propriety, have destroyed it within a month after you had complied with the letter of your compact, by its construction. So long as this Union shall endure – and may Heaven grant it perpetuity! – so long are these United States bound, by the spirit of their compact, by every principle of morality and good faith, by self-interest, which has its influence in the councils of the nation as well as in the breasts of individuals, to preserve this object of general interest – the common property of the republic – which they cannot divest themselves of, and which they ought not, if they could.

With the general government bound in good faith “to keep up the road,” Representative Barney thought toll collection was a good way to ensure “that they who enjoy the benefit of it, should contribute an indemnity adequate to the injury sustained by the travel over it.” By contrast, he did not think it was fair to continue supporting the road by taxes collected “from the remotest sections of the Union” whose residents would never use the road:

Pennsylvania and Maryland, by their respective laws, have invited you to erect toll gates thereon. Through Virginia it passes but a few miles; and, were the assent of that State deemed necessary, she has displayed too much magnanimity in granting corporate privileges to citizens of other States to the right of her soil, to refuse it to these United States.

If the amendment, turning the road over to the States, were adopted, “it is not difficult to foretell the fate of the great national road from Washington to New Orleans, in the South, and to Buffalo, in the North”:

Congress will cease to entertain similar propositions of a national character, whenever it shall be solemnly decided that the roads, as soon as constructed, are to be ceded to the respective States through whose limits they pass, and thus the course of the republic be arrested in her march to the high destinies which await her. The bill, as reported, proposes to impart vitality to the road – a living principle, which carries with it the means of self preservation. It is a metaphysical refinement to support that the exercise of a power, by the General Government, within the limits, and by the assent, of a State, which, while it benefits her, does no injury to her sister States, can, by any fair construction, be deemed a violation of constitutional right.

When debate on the bill resumed on January 27, 1829, Representative Samuel Anderson of Pennsylvania told his colleagues that he intended to vote for the bill, but against the amendment. In explaining his decision, he said he would avoid the constitutional question. “I have understood [said Mr. A.] that the question was considered as definitively settled and put to rest, and I certainly have no desire to provoke a discussion

of it on the present occasion.” However, because the issue was involved in the subject at hand, he took a moment to explain his views:

I never had any scruples of the existence of such a power in the General Government. The language of the constitution is too plain and intelligible to be misunderstood. I apprehend it would be difficult to discover any ambiguity in its meaning. To doubt the right of Congress to make appropriations for purposes of internal improvement, appears to me to be about as reasonable as it would be to doubt their right to appropriate a part of the revenue to the payment of the national debt, or to any other purpose. To be adequate to any great national purpose of providing for the general welfare, it was necessary that this power should be untrammelled by restrictions or reservations that might lessen its efficiency. It was equally as impossible for the convention to foresee what state of things the fluctuating tide of events might develop, in the course of half a century, as it is for us to foresee what another half century may unfold to posterity. It was all important, therefore, that Congress should be clothed with a power fully competent to provide for every possible emergency. It is a national power, created for national purposes, and, of necessity, should be lodged in the General Government, by which it can be most promptly and most efficiently applied . . . .

If, then, it is admitted to be the special province of Congress to provide for the general welfare, the existence of a power adequate to the fulfilment of that duty, and their right to exercise it, can no longer be a matter of doubt . . . .

If then, it is conceded that the power granted to Congress, to provide for the general welfare, involves a power to make turnpike roads, it is manifestly clear that they possess a power to provide the ways and means of keeping them in repair.

In considering the bill, therefore, the question was “whether the object about which we are legislating is of sufficient magnitude, in a national point of view, to entitle it to the farther care and supervision of the General Government.” True, the Constitution did not cite “a power to perpetuate the union of the States,” but uniting the States in a strong tie of interest “should be regarded as an object of paramount importance in all our legislation”:

If, then, we are allowed to judge of the importance of a public improvement by the extent of its usefulness, in promoting the prosperity of the people, and securing their attachment to the Government, I know of none more highly important, or more entitled to the care and protection of Congress, than the Cumberland road; none, in the construction and extension of which so large a portion of the community have been interested; none, the benefits resulting from which have been more extensively diffused; and certainly none, for the repair and preservation of which a more general or more anxious solicitude is felt at this time.

He favored the bill, although he would have liked it better if it had stopped at appropriating funds for preserving the road. "I doubt the policy of imposing a tax on the people, by way of tolls, for the privilege of transporting their property on this road." It was a tax on their industry, which should be encouraged, not taxed:

If it is a national road, and was constructed for national purposes, it should be a free road; and as long as the state of the public revenue will authorize annual appropriations, to keep it in repair, and carry on other works that may be necessary for the general welfare, it would be best to keep it so.

At some point, when resources are inadequate and the road loses its importance as a national object, "then, and not until then, ought we to resort to the expedient of taking tolls."

Nevertheless, he intended to vote for the bill, even though he would prefer to see a motion approved to remove the toll provisions. "But, as it is not likely that the Committee would be disposed to sustain such a proposition, I will content myself with voting for the bill," but not the amendment.

Regarding the amendment, he asked, "have we any evidence that all or any one of those States would accept our offer on such conditions?" The amendment proposed to convey title to the road to the three States, provided that the State legislatures accept the conditions by March 1, 1830. For example, he pointed out, Pennsylvania's legislature "passed a resolution authorizing the General Government to collect tolls on so much of the road as lies within the State, on the condition that no more should be collected than would be sufficient to keep it in repair."

What would be the consequence if the amendment became law, but the States rejected the transfer of jurisdiction? Clearly, Congress would do nothing further for the road in the present session. "The inevitable result, therefore, will be, that another year will elapse before any provision can be made for the preservation of the road." Meanwhile, the amendment "does not propose to grant an appropriation of so many thousand dollars to each of those States, for the purpose of carrying on some important improvement, but it proposes to cede the right of property to a public work, on which the money has already been expended."

Given that Pennsylvania, for one, had already shown its preference on the transfer of jurisdiction, he concluded:

Is it expedient to cede to those States, when they neither desire nor ask it, the right of property to, and the consequent right of jurisdiction and legislation over, an object, the benefits resulting from which have been considered of so much importance, in a national point of view, as to justify the expenditure of more than two millions of the public money in its construction? I am inclined to think it is not. This road has been truly and emphatically called a great national work, and, in my humble judgment, it is the duty of Congress, as the guardian of the

national property, to preserve its character, as such, by rejecting the amendment under consideration, and passing the bill.

Next, Representative Stewart delivered a lengthy speech in support of the bill. He regretted that so many other Representatives had used the occasion to bring up “all the topics connected with the general power over the subject of internal improvements.” He said, “If repeated decisions, and the uniform practice of the Government, could settle any question, this, he thought, ought to be regarded as settled.” After recalling the quarter-century history of the road, he said:

It had cost more than two millions of dollars, and was worth much more than it had cost. Its benefits were incalculable. Important as this road was, as a medium of communication, and as a bond of union between the Atlantic and Western States; important as it was, to the nation, in connexion with its mail, military, and commercial operations; no permanent system had yet been adopted for its preservation and repair. This road had already passed through three States, and was in progress through three others. A portion of it had been in constant use for fifteen or sixteen years, yet the whole amount appropriated for its repair had not been sufficient to put one inch of stone on its entire surface. No road in the world, he contended, had ever sustained itself so long, with so little repair. This fact, alone, furnished a triumphant refutation of the charge of want of fidelity and skill in its original construction.

(In this point, he was defending his father-in-law, David Shriver.)

Today, though, the road was “in a state of rapid decay, almost total dilapidation.” The Committee on Roads and Canals recognized the “impossibility of obtaining annual appropriations” for preservation. It had, therefore, reported a bill “which required those who use the road to pay for its repair”:

This was not to be a tax for purposes of revenue, as had been alleged; but a voluntary contribution, paid by travelers, barely sufficient to repair the injury they did to the road by using it; it was not a tax in the constitutional sense, no more than the postage paid on letters, or the money paid by vessels passing light-houses on the sea-coast. The power that sanctioned the one, sustained and supported the other.

The power of creation, he said, “carried with it, as a necessary and inseparable incident, the power of preservation.” The only way to deny this power was to deny the initial power to build the road.

On this point, Representative Stewart said, his Pennsylvania colleague, Representative Buchanan, had “denounced it as a most daring and dangerous usurpation of power; as tending directly to consolidation or separation.” He had called it worse than the Alien and Sedition Acts. As a result, Representative Buchanan “felt it his duty to sound the tocsin of alarm.” He was keeping “alive the wholesome doctrine of State Rights; and of this school he, too, it seems, has become a sudden, and, of course, a zealous disciple.” It

was a “‘spectre’ at which, he says, even the Federalism of former days would have ‘shrunk back with horror.’” In doing so, he had divided the country into two parties – those in favor of Federal power and those wedded to State rights.

That was a central argument among “those who advocate, and those who deny, the power of this Government to protect domestic manufactures and promote internal improvements. These are the subjects, and the only subjects, over which the power of this Government is now warmly resisted.” Every man “must take his stand, on the one side or the other.” They could not have it both ways.

For Members of Congress from the interior and the west, in the absence of internal improvements, their constituents “must bear their full share of the public burthens, pay their full share of the public revenue, without the possibility of participating in its benefits – the whole would go to the sea-board”:

He affirmed, without fear of contradiction, that, from the foundation of the Government, to the present time, the whole civil expenditures of the Government, for all purposes, except internal improvements, in the whole Union, twenty miles from the tides of the ocean, had not been equal to the expenditures on a single fortification! Deplorable, indeed, must be their condition, without this power; it amounted to a positive exclusion of the interior and the West from all participation in the benefits of the public expenditure . . . .

Without roads and canals, of what avail was it to the people of the West to possess a country abounding with all the essential elements of wealth and prosperity; of what avail was it to have a country abounding with inexhaustible mines of coal and ore; to possess a fruitful soil, and abundant harvests, without the means of transporting them to the places where they were required for consumption . . . .

By denying to this portion of the Union the advantages of internal improvements, you not only deprive them of all the benefits of Governmental expenditure, but you also deprive them of the advantages which Nature’s God intended for them. Possessing the power, how, he asked, could any Representative of the interior or western portions of this Union vote against a policy so essential to their prosperity?

Turning to the debate over the word “establish,” he said the general government’s power to construct roads and canals to carry mail, the support the military, and transport commercial goods “was as clear and as undoubted as the right to build a post office, construct a fort, or erect a light house”:

In every point of view, the cases were precisely similar, and were sustained and justified by the same power. The eighth section of the first article of the constitution enumerated, in a few brief sentences, all the great powers and ends of the Government, and among the rest was found the power “to establish post offices and post roads,” “to declare war,” “to provide for the common defence,”

“to suppress insurrections and repel invasions,” “to regulate commerce with foreign nations, and among the several States,” ending with the express grant of the power “to make all laws necessary and proper for carrying into execution the foregoing powers.” Without this last power, the constitution would have been a dead letter – the Government could never have gone into operation. The means to be employed in carrying into effect the powers conferred upon this Government were not indicated; their selection was of necessity left to the sound discretion of Congress, with this single qualification, that they should be “necessary and proper” means to attain the end proposed; the degree of their necessity was also left for Congress to determine.

With that thought in mind, he discussed the Supreme Court’s unanimous verdict in *McCulloch v. Maryland*. He quoted the opinion by Chief Justice Marshall:

“The sound construction of the constitution must allow to the National Legislature that discretion with respect to the means by which the powers which it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people; let the end be legitimate; let it be within the scope of the constitution; and all the means that are appropriate, which are plainly adapted to the end, which are not prohibited, but consist with the letter and the spirit of the constitution, are constitutional.”

“Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and tread on legislative ground.”

Based on the Supreme Court’s reasoning, Representative Stewart continued:

The power [said Mr. S.] “to establish post offices and post roads,” involves the power and the duty of transporting the mail, and of employing all the means necessary for this purpose; the simple question, then, was this: Are roads necessary to carry the mail? If they were, Congress has expressly the right to make them, and there was an end to the question. Roads were, he contended, not only necessary to carry into effect this power, but they were absolutely and indispensably necessary; you cannot get along without them; and yet we are gravely told that Congress have no right to make a mail road, or repair it when made ! that to do so would ruin the States and produce consolidation – ruin the States by constructing good roads for their use and benefit – and produce consolidation by connecting the distant parts of the Union by cheap and rapid modes of inter-communication . . . .

But we are told that the States will make roads to carry the mail. This was begging the question. If the States would make all the roads required to carry into effect our powers, very well; but if they did not, then we may, undoubtedly, make them ourselves. But it was never designed by the framers of the

constitution that this Government should be dependent on the States for the means of executing its powers; “its means were adequate to the ends;” this principle was distinctly and unanimously laid down by the Supreme Court in the case already referred to:

“No trace,” says the Chief Justice, “is to be found in the constitution, of an intention to create a dependence of the Government of the Union on the States, for the execution of the powers assigned to it – its means are adequate to its ends. To impose on it the necessity of resorting to means it cannot control, which another Government may furnish or withhold, would render its course precarious, the results of its measures uncertain, and create a dependence on other Governments, which might disappoint the most important designs, and is incompatible with the language of the constitution.”

And this was in perfect harmony with the constant and uniform practice of the Government.

To demonstrate how Congress had implemented “establish post office and post roads,” he reminded his colleagues of the law passed in 1825 “without a word of objection” that “went infinitely farther than the bill under consideration.” Representative Stewart was referring to “An Act to reduce into one the several acts establishing and regulating the Post-office Department,” signed by President Monroe on March 3, 1825. It consolidated past laws on the organization and operation of the Post Office Department, including imposition of fines and punishments for 30 or 40 highly penal offences, extending not only on the Cumberland Road, but on all mail roads, roads parallel to them, and boats and vessels passing from one post town to another, in the country. “His colleague [Mr. Buchanan] was then a member of this House, and, no doubt, voted for it. His eloquence was then mute; we heard nothing about State rights, spectres, and sedition laws”:

Compare that bill with the one under debate: this bill had two or three trifling penalties of ten dollars; and was confined to one road, of about one hundred and fifty miles in extent, made by the United States, while the other act, with all its fines and forfeitures, pains and penalties, extended not only to all the mail roads in the United States, but also to all parallel roads; yet no complaint was then heard about the constitutionality of that law, or the dreadful consequences of carrying the citizens hundreds of miles to be tried; under it no difficulty had ever been experienced, and no complaint had ever been heard.

No one had talked about appointing justices or creating Federal courts to carry out that law, “about which there was so much declamation on this occasion. This was truly straining at gnats and swallowing camels”:

To take away life, by virtue of the post office power, for robbing the mail, is nothing; but to impose a fine of ten dollars for willfully destroying a road which has cost the Government millions of dollars, is a dreadful violation of State

rights; an unheard of usurpation; worse than the sedition law; and went farther towards a dissolution of the Union than any other act of the Government.

He made an analogy with military roads. The Constitution gave Congress the power to declare war and provide for the common defense. Under this power, Congress appropriated funds for munitions, forts, and cannons, and established penalties for offences. “Were not roads equally necessary, nay, in many cases, even more necessary, for this purpose?” In a country the size of the United States, roads and canals were essential to carrying out the power of Congress for defense. The Constitution, in short, did not name all the ways Congress could exercise its power, whether for the common defense or to establish post offices and post roads:

States and individuals were not bound, as was this Government, to provide the means of defending the nation; of transporting its mails; of regulating its commerce; of suppressing insurrections; repelling invasions; in short, of preserving the Union, and advancing its interests. And what, he asked, would more effectually promote all these great objects, than the construction of internal improvements, connecting the widely separated parts of our common country more closely together!

Notwithstanding all this, we have been gravely told by gentlemen, in the course of this debate, that this Government has nothing to do with internal improvements; that they belonged exclusively to the States! Such arguments scarcely merited a serious reply. The reverse of the position would certainly be much more plausible.

Next, Representative Stewart turned to the power to regulate commerce:

This power carried with it, as a necessary incident, the right to construct commercial roads and canals. From this grant, Congress derived precisely the same power to make roads and canals, that it did seawalls, light houses, buoys, and beacons, along the seaboard. If the power existed over the one, it existed over the other; in every point of view, the cases were precisely parallel; it was impossible to draw a distinction between them. This power was essential to every Government – there was no Government under the sun without it. All writers on national law and political economy considered the right to construct roads and canals as belonging to the commercial power of all Governments.

In the case of the Cumberland Road, it was “emphatically national, and ought to be accomplished by national means.” None of the three States it passed through “would have given a dollar to make it. It passed through mountainous and uninhabited regions.” It linked the Potomac and the Ohio Rivers and, via the Ohio, the Mississippi River. “Important as these were to all the States, yet they were the internal concerns of none; they were mere boundaries, to which the States would give nothing, while they had so many objects exclusively internal, requiring all their means.”

Representative Stewart, as a result, was “utterly opposed” to dividing Federal revenue among the States to use as they thought best. To do so, as Congress had occasionally considered, “would be to surrender the national means which the people had confided to this Government for national purposes, to mere local and sectional objects, while those truly national would remain forever unprovided for.” The Constitution divided the power among the general government and the States:

To the National Government belonged, under the constitution, the power of making national roads and canals for national purposes. To the States belonged the power of providing for State and local objects. The roads and canals projected and executed by States and private companies were often highly important in a national point of view; and to such, in his opinion, this Government ought always to afford aid in a proportion corresponding with the interest the nation had in their accomplishment.

If private individuals were willing to invest millions in projects that would aid in connecting the remote sections of the Union together, the general government should not “look on with cold indifference. Was it not our duty to lend a helping hand to encourage, to cheer, and to sustain them, in their noble and patriotic efforts?”

He scoffed at Representative Buchanan’s observation that the Sedition Act had more claim to be constitutional than the present bill:

This was an argument *ad captandum* [an argument designed to appeal to the emotions, not the mind]. He would not do his colleague the injustice to suppose that he was so ignorant of the constitution of his country as seriously to address such an argument to the understanding of this House. The bill under consideration was necessary to carry into effect the express power of transporting the mail. What power of this Government was the sedition law intended to carry into effect? None. It was, therefore, not only clearly unconstitutional on this ground, but it went directly to abridge the freedom of the press, and, of course, was a plain and palpable violation of that provision in the constitution which declares that “Congress shall make no law abridging the freedom of speech or of the press.”

Now, if his colleague could show any provision in the constitution, in the slightest degree impugning the right of Congress to pass this bill, then he might have some excuse for offering such an argument; otherwise, he had none.

Representative Stewart pointed out that Representative Buchanan’s own amendment disproved his argument that the general government did not have jurisdiction over the road. The amendment assumed that the general government had jurisdiction, which it would turn over to the States along with the power to erect toll-gates and charge whatever toll was necessary to keep the road in repair. “But his whole argument went to prove that Congress did not possess the very power which his amendment assumed, and proposed to transfer to the States. The gentleman’s amendment and his speech were, therefore, at

open war with each other, and would, perhaps, both perish in the conflict. Certainly both could not survive – one or the other must fall.”

Representative Stewart turned to the argument offered by Representative Barbour that if the general government had the power to construct roads and canals, it could take possession of all roads and canals in the country, including the Erie Canal. In Representative Stewart’s view, “this would not be the use, but the abuse of power”:

Congress was confined, by the constitution, to the use of such means as were necessary and proper, and it would be neither proper nor necessary to take possession of the New York canal; it could be used for all the purposes of this Government, without committing such an outrage.

Congress could declare war against the entire world, lay taxes, raise armies to any extent it chose, and the Supreme Court could not object; “but, if they employ means to carry these powers into effect, which are not ‘necessary and proper,’ then the Supreme Court could say that they would feel themselves bound to pronounce such laws unconstitutional.”

Some colleagues raised the question of jurisdiction, saying “it must be exclusive; that it could not attach to soil; and much other metaphysical refinement of this sort, which had little to do with the subject.” The general government had a right to assume such jurisdiction over its roads as was necessary to ensure their preservation by any means necessary for that purpose – “leaving everything beyond that to the States.” The States were responsible for punishing all offences committed on the road in the same way as if those offences occurred anywhere within their borders.

Everyone agreed that the consent of the States could not confer jurisdiction or power to the general government beyond that conferred by the Constitution:

Did the gentlemen forget that Mr. Gallatin was the very first man that suggested the plan for making the Cumberland road, and that it had been sanctioned and actually constructed under the administrations of Jefferson, Madison, and Monroe? Their opinions were thus reduced to practice, which was the best evidence in the world – that “by their fruits shall ye know them.”

Representative Buchanan, according to Representative Stewart, had tried to divide the powers of government into external powers belonging to the general government and internal powers that belonged to the States, with a few exceptions. “It was a matter of astonishment that any one who had ever read the constitution should seriously advance such a proposition.” Representative Stewart suggested that his colleague read the eighth section of Article 1 which identified 18 substantive grants of power. Only two of them were external. This was, he said, a case of using a false premise to draw a faulty conclusion. He quoted Chief Justice Marshall who said:

. . . ingenuity, by assuming premises, may explain away the constitution, and leave it a magnificent structure to look at, but totally unfit for use.

Representative Steward continued:

The radical vice of most of the arguments against this power was found in this: that they treated this Government as an alien and a foreigner in its own country. The common parent and protector of all, the [United] States is habitually regarded with an eye of jealousy and distrust, instead of generous confidence. This course was calculated to make enemies of those who should be friends; it was anti-republican in its principle, and dangerous in its tendency to the harmony and well-being of this Union.

But we are told that Internal Improvements will destroy the States and produce disunion. Destroy the States by giving them money; by making roads and canals for their use at the national expense! Produce dis-union by binding and uniting together distant parts of our common country, by promoting harmony of interest and feeling; creating mutual dependence of the agricultural, planting, and manufacturing districts, on each other, for markets and supplies, by virtually removing the mountains that divide them; destroying time and space, and constituting us, in fact as well as in theory, a united people. Yet all this, we are told, is to destroy the Union! Such logic was too refined for the comprehension of common sense.

He quoted George Washington, who as president of the Potomac Company, urged in 1784 the opening of roads and canals to the west:

I wish every door to that country may be set wide open, and the commercial intercourse with it rendered as free and easy as possible. This, in my opinion, is the best, if not the only cement, that can bind them to us for any length of time, and we shall be deficient in foresight and wisdom if we neglect the means of effecting it. Our interest is so much in unison with this policy, that nothing short of that ill-timed and misapplied parsimony and contracted way of thinking which intermingles so much in our public councils can counteract it.

Representative Steward said:

Such was the language of the Father of his Country, on this subject, more than forty-five years ago. If opposition to internal improvements was then justly denounced as “ill-timed and misapplied parsimony,” as contracted and illiberal, what would be said of it now?

He had been told “there is a great party in this country, wedded to what they call ‘State Rights.’” This party resisted the general government in its exercise of the powers granted in the Constitution:

They were always preaching up the dangers of this Government; endeavoring to alarm the people with the idea of consolidation; holding up before them frightful pictures and imaginary evils. They talked much of the public liberties, or

usurpations and oppressions. On some occasions they had gone so far as to call on the people to resist!

The goal was to weaken the national system and then destroy it, not by overthrowing it but by trying “to wean off the affections, and destroy the confidence, of the people in their Government.” He pointed out that the Members of the House of Representatives were accountable to the people. The Senators were elected by their State legislatures, which would surely object if their chosen Senators acted to take away their power. “Where, then, was the danger of the rights of the people and the rights of the States being destroyed by their own Representatives? Such apprehensions were idle and unfounded.”

Closing his speech, Representative Stewart, a former Jackson Republican who had been elected in 1826 as a pro-Adams candidate, assured his colleagues that he would never belong to a party that wanted to undermine the confidence of the people in its government:

He belonged to that party (and thank God there was such a party in this country) whose business it was, not to destroy the confidence of the people in this Government by a constant clamor about “State rights,” consolidation, usurpation, and oppression, but firmly to maintain the just rights and powers of this Government; to guard and protect it against all its enemies, whether foreign or domestic, open or insidious; to resist every attempt to trample upon the constitution and laws, or to render them odious among the people. This he considered “the great republican party.” This was the party to which he always had, and always would belong; and it was the party to which his colleague [Mr. Buchanan, a Democratic-Republican] always had been, and always would be, opposed.

Mr. S. concluded with the expression of an anxious hope that the bill would pass. The question was not, whether we would construct a new work, but whether we would preserve what we had already constructed. The question was, whether a great national work, connecting the Eastern and Western States, made at the expense of millions, should be preserved or destroyed? This was the true question presented for decision. Even the enemies of internal improvement could not justify themselves in such a wanton waste of the public money: while to its friends it must be evident that the rejection of the bill would not only involve the destruction of this road, but the destruction of the whole system. The ruins of this road would, in all future time, be pointed to by the enemies of this policy, as a beacon to warn those who may come after us against similar acts of wastefulness and folly.

The House debated the Cumberland Road bill at length on January 28 through 30, February 2, 9, 10, 12, 16, 17, and 18, 1829. (On February 11, the Senators moved to the House chamber to fulfil the constitutional role of counting the electoral votes before certifying the election of Andrew Jackson as President to take the oath of office on March 4, 1829.)

Many of the speeches addressed comments from other speakers, particularly Representative Buchanan. On February 12, Representative Buchanan again addressed the House to respond to some of the points his colleagues had made in opposition to his amendment. He knew his colleagues were “anxious to dispose of the question . . . because it has already occupied too much of their time.” He would speak “as speedily as possible,” in the hope of voting on this day in the Committee of the Whole. He encouraged those who also wished to speak to hold their comments until the matter reached the full House.

In his earlier remarks, he said, he had confined himself “strictly to the questions of the power and the policy of erecting toll-gates on the Cumberland road, under the authority of this Government.” Since then, the debate had broadened to the general topic of internal improvements. He, by contrast, would confine himself to the questions he had raised initially. Several speakers, including the chairman of the Committee on Roads and Canals, Representative Mercer (also, as noted, first president of the Chesapeake and Ohio Canal Company), had sounded the alarm that the amendment’s adoption “would prostrate the whole system.” Representative Mercer had denounced Representative Buchanan for “my open defection from the cause,” and Representatives Stewart and Smith who said they opposed the amendment but would vote for the resulting bill if the amendment were approved. Referring to Representative Mercer, Representative Buchanan asked:

Can the gentleman be serious when he declares that upon the vote on this amendment hangs the fate of internal improvements? Will he really vote against this bill, a bill which appropriates \$100,000 for the repair of the Cumberland road, should a majority of the committee, upon the whole, think it better that the collection of tolls necessary for the future preservation and repair should be made under State rather than United States authority? If so, instead of being a great friend to internal improvements, he would become their greatest enemy.

Representative Buchanan doubted that the whole question of internal improvements would be determined by whether the general government or the States erected toll-gates on this road. “Can the gentleman point to a single beneficial purpose which will not be equally accomplished without the aid of this power?” By contrast, he saw danger in the assumption of jurisdiction by the general government:

No, sir, so far from it, that I do most solemnly believe that exercise of this dangerous and unconstitutional power would roll back the tide of public opinion which now runs so strongly in favor of internal improvements, and endangers the whole system. I protest against the doctrine of the gentleman. I protest against any idea going abroad, that, because either we cannot or we will not erect toll-gates upon the Cumberland road, therefore we have abandoned all power in relation to internal improvements. This would be placing its existence upon a fearful cast. The principles for which I contend will carry the power of this Government to the point at which exclusive State jurisdiction commences. Beyond that limit it ought never to pass. All the beneficial effects of this power

would thus be conferred upon the people, whilst there could be no danger from collision between State and United States authority.

According to Representative Buchanan's summary, Representative Mercer had made clear that the Committee on Roads and Canals "had placed this bill in the front of the battle, so that if it passed it might be a guide to their future conduct. It must, then, be their intention inseparably to connect with the construction of roads and canals the erection of toll-gates by Congress for their preservation and repair."

Representative Buchanan explained that if the general government installed toll-gates, it would assume jurisdiction over the road "for the purpose of preserving it from injury, of repairing it, of collecting the necessary tolls upon it, and of punishing all offences committed against the police which we may establish." The States it passed through would lose all jurisdiction. "Distinct sovereignties cannot act, at the same time and in the same manner, upon the same object, more than two solid bodies can, at the same moment, occupy the same space."

The committee bill was "grossly defective even for this purpose." He agreed with Representative Mercer's statement that the bill contained only three penalties. The first was for "the omission to set up directors on the road, cautioning drivers of carriages to pass on the left of each other." The bill was unclear on whether the penalty would fall to the superintendent of the road, the toll-gatherers, or the President of the United States. "A penalty, without designation of the person on whom it is to be inflicted, is something new in legislation."

The second penalty was against the toll-gatherers for unreasonably delaying travelers or demanding more than the toll that was due. The third penalty was against those who willfully injured the road or obstructed its passage.

Anyone familiar with the operation of turnpikes, including the State legislatures of Ohio and Pennsylvania, would "inform you that its provisions are wholly inadequate to effect the purposes for which they ought to have been intended."

Representative Buchanan said of the bill that "its most glaring defects . . . should it become a law, must be immediately remedied by a supplement." First, the bill did not penalize travelers who passed, or tried to pass, the toll-gates without paying the toll. He called it "a most wonderful omission."

Second, he discussed the right of eminent domain, which he said would have to be employed:

It cannot be supposed that all the owners of the soil along its course and all the contractors will be reasonable men; and even if they were, they might honestly differ in their estimate of the value of the materials necessary for its repair. What then is to be done? These materials are of such a ponderous nature, that they cannot, without a ruinous expense, be transported a great distance.

If negotiations did not result in agreement on just compensation, officials may have to take what is needed without the owner's consent through eminent domain. "And in order to exercise this power, you must establish a tribunal to assess their value," as was the case with State actions. The bill was silent on this topic.

Similarly, if nearby property owners built a toll-gate bypass, the bill did not offer a remedy. "You are left completely at the mercy of all the owners of the soil near each gate, through the whole extent of the road."

Those were just a few defects; he would not list all of them. "The truth is, that the code of laws necessary to preserve such a road, and to collect toll upon it, must contain many minute provisions, and many penalties for the commission of trifling offences, which can only, without the greatest inconvenience, be carried into execution by the local jurisdictions of the States." The machinery of the general government is not well suited to the task. "It would be monstrous and intolerable oppression to permit the gate-keepers along the road to take a citizen of the United States to Baltimore, or Pittsburg, or Clarksburg, to be tried before a circuit or district court for such an offence as that of defacing a milestone." The State courts could not be substituted for consideration of violations of Federal law, as they have indicated by their decisions "upon constitutional principles, which, in my humble judgment, cannot be controverted."

In any event, why was this bill needed when the States could add toll-gates based on their own experience with toll roads? Why not ask them to do so? If they refuse, then there will be "time enough for Congress to adopt this doubtful and dangerous measure. 'Nec Deus intersit nisi nodus vindice dingu.'" (The Latin phrase is from Horace's *Ars Poetica*, written about 19 B.C.; loosely translated it means: Invoke the miraculous power of God only when needed; otherwise, use ordinary means). "No one doubts the power of the States; and whether the toll be collected and the road be preserved under State or United States authority, must be a matter of indifference to those interested."

He turned to another argument against his motion:

I confess, therefore, I was astonished to hear the gravity and solemnity with which the gentleman from New York [Mr. Storrs] treated this part of the subject. He says this is a most grave question. One has a vested right in the road. We cannot, we dare not, transfer it to the States. He asks, shall we give away this road? I answer, by no means.

Representative Storrs, as noted earlier, had spoken on January 19 after Representative Buchanan introduced his amendment. The *Register* summarized the comments:

Mr. STORRS spoke in reply, contending that the constitutional question was not involved, inasmuch as the construction of the road rested in a contract prior to the constitution, between Virginia and the old Confederation, in which Virginia gave to the Confederation power to regulate the road, when constructed, and by which all the then existing States in the Confederation were bound.

In addition, on February 12, prior to Representative Buchanan's speech, Representative Storrs, "advocated the bill, and opposed the amendments, as fatal to the system of Internal Improvement," again without elaboration in the *Register*.

Representative Buchanan said that was not the intent of his amendment

This road is now going to ruin; and for the benefit of Ohio we transfer a naked trust to the States through which it passes, on condition that they will keep it in repair. We consign this trust to the only persons who have the power of executing it with advantage for the benefit of Ohio and the other States.

He added, "We have already redeemed our pledge over and over again to Ohio" through appropriations "far more than we were bound to do by our contract." He would vote to extend the road all the way to the Mississippi River, but added:

I shall never vote another dollar, if toll-gates are to be erected under the authority of Congress. Here I take my stand on the doctrine of internal improvements. Thus far have I gone; I shall go no further. My last limit is the point where the power of appropriation ends, and jurisdiction commences.

He also rejected the argument from precedents. Although numerous bills for the Cumberland Road and its repair had been approved, not one bill for erecting toll-gates had been signed by a President. In fact, President Monroe had vetoed one such bill. "Where, then, are the precedents of the gentlemen to sustain this measure? The weight of authority is clearly on the other side."

He responded to Representative Samuel Anderson of Pennsylvania, an Adams backer. Representative Buchanan, saying, "I wish to quote his very words," quoted Representative Anderson as saying:

This is the first time I have ever heard that the power to make roads, and the power to keep them in repair by erecting toll-gates, could be distinguished. Such a distinction appears to me to be absurd.

Representative Buchanan said:

The gentleman ought to know that this is not language to be used on this floor. When I was laboring to establish the distinction, a distinction which he could not doubt I sincerely believed to exist, he might have used a little more courtesy than to have denounced it as absurd.

At this point, Representative Anderson denied using the word "absurd." He had said that it was the first he heard of such a doctrine.

(The *Register* quoted him as saying, "It is contended, however, that this power, which has been emphatically called the *making* power, does not involve the *preserving* power; that the power to make turnpike roads does not involve a power to erect gates and collect

tolls, for their preservation; that they are distinct powers, between which there is no connexion; that the power to preserve is not an attribute of the making power. This [said Mr. A.] is the first time I have ever heard such a doctrine seriously advocated.” He may have revised his statement before its publication, leaving Representative Buchanan’s quote as delivered.)

Representative Buchanan asked of Representative Anderson, “In what benighted part of the world has been his abode?” Just 7 years earlier, President Monroe had made that very distinction, “and maintained it in an argument of sixty pages,” and by not overriding the veto, “this House had yielded their assent to the distinction.”

He conceded that Congress had the power to appropriate funds from the general Treasury to build a road and to maintain it. That precedent did not mean Congress also had the power to install toll-gates or assume a local jurisdiction over the soil of the States, an idea never contemplated in the Constitution.

As for the idea that his amendment would lead, as Representative Anderson had suggested, to distribution of the surplus to the States, Representative Buchanan said the idea had never occurred to him. That might, however, be a good idea:

I am growing tired of the policy of seeing my own State exhausting herself and taxing her citizens for the purpose of making internal improvements within her own limits, whilst the treasury of the United States, to which she contributes the one-seventh, is lavished in making similar improvements for the benefit of other States of the Union. The system proscribed by my colleague is the only one, I fear, under which we can expect justice in Pennsylvania.

The idea, too, would divert Congress from the “innumerable petty and selfish details and understandings which must arrive from the laying out and constructing roads and canals” to “the great objects of federal legislation entrusted to us by the constitution.” He emphasized that “I have not finally made up my mind on this subject.”

Next, he turned to “settle my accounts” with Representative Stewart. “His unprovoked attempts to be severe, at my expense, are my only reason and my only apology for detaining the committee a few moments in adverting to his remarks. I had not even anticipated his opposition to the amendment.”

First, Representative Stewart referred to Representative Buchanan’s supposedly sudden conversion to the State’s rights cause “and an enemy to this road, considering that as the democratic course.” Representative Stewart knew full well that Representative Buchanan had advocated a similar bill as long ago as February 1823 “and have been pursuing it ever since, under every aspect which the political horizon has assumed.” His change of opinion was fully stated at the time.

Representative Stewart contended that Congress should focus only on national roads and canals needed for commerce, for war, or for carrying the mail. Congress may extend its jurisdiction to all such roads, and collect tolls on them. “But how shall we ascertain what

are these roads,” considering that State and local roads also may be used for those purposes.

Representative Stewart had acknowledged that however the bill turned out, whether with or without the amendment, he would vote for it. Representative Buchanan said:

To what a lame and impotent conclusion does the gentleman arrive after all his premises? Who could ever have supposed, until he announced it himself, that it was a matter of indifference to him whether this road should be ceded to the States or not? After such a conclusion, well might the chairman of the Committee of Roads and Canals accuse him of defection. Yet I have been denounced as a most pestiferous democrat, as possessing the zeal of a recent convert, for proposing an amendment in favor of which the gentleman himself will vote, should it be engrafted on the bill by the committee. The course of the gentleman towards me has been very unkind, and nothing but the justice which I owed to myself could have compelled me to make these remarks.

He turned to comments by Representative Richard A. Buckner, an Adams/Clay Republican from Kentucky. On January 29, he delivered a lengthy discussion supporting the bill, opposing the amendment, and favoring a system of internal improvement. He pointed out that Representative Buchanan had voted for the 1822 bill to erect toll-gates on the road – the bill he now opposed. Representative Buckner had said:

At that day, if he had been correctly informed, he had been dubbed a Federalist . . . But the gentleman said, he read Mr. Monroe’s message to Congress, assigning his reasons for refusing to give his assent to the bill, and instantly, he experienced a deep and thorough conviction. A great light seems to have shone round about his head; the scales fell from his eyes, and straightway he went extolling the argument, and declaring, he presumed, to all whom he met, what great wonders that, and the spirit of State rights, had wrought for him. Ever since that period, he had been endeavoring, as he had informed us, to atone for the great error which he had committed, in voting for the bill, but using his best exertions to effect a cession of the road to the States in which it is located.

Responding now, Representative Buchanan reminded his colleagues that Representative Buckner “had been pleased to compare my conversion to that of the Apostle Paul”:

I can assure him it was neither sudden nor miraculous. It took place in 1822, before the age of political miracles had commenced, and was the result of Mr. Monroe’s long and able message on the subject, and the reflections to which that document gave birth.

In addition, Representative Buckner had pointed out that Representative Buchanan had once belonged to the Federal party, “which he complimented by calling it an independent class of men”:

His information has been correct. I trust I shall never blush to have been attached to that party, of which the father of his country was the head. I take pride, however, in declaring that I was a Washington federalist, and, when my country was in danger, I had no constitutional or other scruples about the propriety of defending it against a foreign foe.

(During the War of 1812, James Buchanan had served as a private in Henry Shippen's Company of the Pennsylvania Militia, defending Baltimore from British invasion in 1814.)

The gentleman says I have hitherto always acted with independence; if he means to insinuate that this will not be my course hereafter, he is greatly mistaken. Thank God, I am as independent as I ever was. I hope nothing and fear nothing from any administration. I am neither a petitioner nor an expectant. I shall continue to support the great republican family as the gentleman calls it so long as it shall continue true to its principles; and I have no objection to be called a democrat. But if the gentleman supposes that for any office, of which, humble as I am, I might be thought worthy, I would decline to serve out the term for which I have been recently elected, and abandon constituents who have sustained me amidst the difficulties and dangers of no ordinary character, I can assure him that he does me great injustice.

In view of Representative Buckner's agreement with President Adams on internal improvements, Representative Buchanan cited the President's observation that the means must be subordinate to the end:

This principle is at the very root of any just construction of the constitution. And yet the gentleman, though he would not say this was "unintelligible jargon," left it to be inferred. Now I shall assert that no greater political absurdity can exist, than a Government confined to enumerated objects of power by a written constitution, and yet at liberty to assume other distinct and independent powers of a character more formidable than those delegated, for the pretended purpose of carrying them into effect. A Government restricted as to its ends, but wholly unlimited in regard to its means! Imagination cannot present a stronger case to illustrate my position than the one now before the committee.

This Government is expressly restricted from acquiring any jurisdiction within the States, except over small portions of territory absolutely necessary for the defence of the country; and even this cannot be acquired without the consent of the States; and yet gentlemen now claim, as a mere incident to the power of appropriation for internal improvements, jurisdiction over a road which will extend from Cumberland to the Mississippi. Although you cannot directly acquire jurisdiction over any portion of the territory of the States, except for the purposes of war, you may indirectly assume jurisdiction over all the post-roads and canals in the country. Such a principle would be subversive of all limitations to federal power. It would render all the wholesome restraints of the system nugatory. The true principle is, that although the means may be varied, with the

ever-varying changes of society, they must still be subordinate to the end. But I shall not say that the gentleman's argument in favor of a contrary position was "unintelligible jargon."

Representative Buchanan turned to the issue of the general government and States having overlapping power. He answered by citing a recent example:

But what has the history of the last year taught us upon this subject? If we had undertaken to construct the Chesapeake and Ohio canal by our own authority, the United States would, at this very moment, have been in collision with the State of Maryland. This canal and the Baltimore rail-road are now contesting which of them is entitled to the choice of location along the Potomac. And here permit me to observe, that the rail-road, which we have not patronized, is, in my opinion, a much more national and a much more practicable undertaking than the canal, which we have taken under our fostering care. The rail-road may extend to the Ohio; but the canal can never proceed beyond the coal mines near Cumberland. Gentlemen cannot, I think, seriously suppose that the Alleghany mountain is ever to be passed over by locks, or passed through by tunnels.

(Although Congress periodically authorized the general Treasury to acquire stock in canal companies, it did not do so for the railroads. Under the General Survey Act of 1824, the U.S. Army surveyed 61 proposed lines for railroads at a total cost of \$75,000. Federal assistance, however, tended to be less direct than stock purchases. For example, import duties on railroad iron were remitted during the years 1830 to 1841, totaling almost \$6 million – a boost at a critical time in the early history of railroading. By an Act of July 7, 1838, Congress declared railroads to be "post routes," thus making them eligible to carry the U.S. mail, a valuable source of income for stagecoach companies and, now, railroad companies. Beginning in 1850, Congress authorized land grants, eventually totaling 130.3 acres, to subsidize railroad development. [*America's Highways 1776-1976*])

He also wished to comment on the insinuation that if the general government turned the road over to Pennsylvania, it would be like committing a lamb to the care of a wolf:

The road passes ninety miles through our territory. It accommodates three populous and wealthy counties; and yet it is supposed we might abandon it to ruin. When was Pennsylvania ever known to neglect the interest of her own citizens, or the obligations of her own honor?

Finally, he said that in all the speeches, no one had addressed an argument he had raised. He directed his comments to Chairman Mercer. "There has been much ingenious play around it, but it has not once been fairly met." For the sake of argument, he granted that the power to establish post roads means "you can exercise the sovereign power of constructing such roads throughout the States." In that case, he asked, does the fact that the Constitution grants the authority to build a road for a specific purpose, namely the transportation of mail, "give you an unlimited control?" In short, can the post road authority, "to be exercised simply for the transportation of mail, transfer to you, by

implication, the sovereign power of closing up these roads by the erection of toll gates, and taking them under your own exclusive jurisdiction?" Representative Buckner had cited illustrative examples on this point, but Representative Buchanan said:

I shall allude merely to the strongest. He says that Congress have passed a law imposing a penalty on any ferryman who neglects or refuses to carry the mail over a river. Granted. It is right. It is proper.

The Federal Government alone possess the sovereign power of carrying the mail, and, as a necessary consequence, of removing all obstructions to its passage. But does it follow, because they have exercised the power of punishing a ferryman for violating his duty in this single case, that therefore they may take the ferry itself under their exclusive jurisdiction, prescribe the tolls for its passage, and punish, in the court of the United States, all the citizens of the country who may violate the regulations imposed by their laws?

He concluded:

I am anxious the question should now be taken. I have been urging it ever since 1823. Let it now be decided. I shall submit with deference to the decision of the committee, whatever it may be. At the same time I must express my conviction, that should Congress adopt the policy of this bill, it will alarm the people of the States, and, in the end, destroy the system of internal improvements which the Committee on Roads and Canals are so anxious to cherish. It will be the best argument that has ever been used in favor of the distribution of the surplus funds of this Government among the States.

Representative Mercer did not respond to the question.

Considerable debate remained before the House voted on February 18, 1829. Discussion of the bill on that date, according to the *Register*, began with a warning:

Mr. McDUFFIE warned gentlemen that the very first moment he perceived any attempt to prolong the debate on this bill, he should immediately move for the consideration of the appropriation bills.

Kentucky Representative Chilton apologized "for the necessity which induced him to give it and his constituents the reasons which induced him to vote for the bill, spoke at some length in its support."

Virginia Representative Alexander moved to amend the Buchanan Amendment by striking out the clause that ceded the road to the States on the condition they install toll-gates. His motion was defeated without debate.

Ohio Representative Vance moved to amend the Buchanan Amendment by adding a section that he had suggested in the Committee of the Whole regarding the two-percent fund. He explained, briefly, that he had offered the motion "merely to secure to Ohio her

rights, should the amendment of Mr. Buchanan succeed, against which, however, he protested, as proposing a cession which was not warranted.” The House voted the motion down without a count.

Representative John J. Wood of New York moved to lay the bill and the amendment on the table, but the motion was decided in the negative, 20 to 168.

Finally, the House voted on Representative Buchanan’s amendment to delete the substance of the bill and insert language conveying the road to the States on the condition they install toll-gates. It was defeated, 77 to 113.

Representative Buchanan immediately introduced a motion to strike out the first seven sections of the bill, and insert a substitute that would authorize the President to “enter into such arrangements with the States of Maryland, Pennsylvania, Virginia, and Ohio as he may deem necessary, for the purpose of having toll gates erected, under the authority of the said several States, upon the Cumberland road; and collecting sufficient toll thereupon for its preservation and repair.” He was, he reminded his colleagues, proposing a solution that President Monroe had suggested.

A brief discussion followed the motion. Representative John C. Weems of Maryland said he hoped the House would not authorize the President to do what the House had just decided not to do. In addition, Virginia Representative Floyd objected on the basis of a toll being a tax that should be authorized by a separate bill.

Representative Buchanan withdrew his motion.

Representative Benjamin Gorham of Massachusetts offered a motion to strike out the bill after the enacting clause, and substitute a provision appropriating \$100,000 for repairs, without reference to tolls. The Committee of the Whole had rejected the motion on February 12, 50 to 80. This time, the House rejected the motion 60 to 129.

Kentucky Representative Wickliffe said he did not think a bill burdened with toll provisions could pass both Houses. He moved to strike out the first seven sections of the bill and part of the eighth covering toll-gates and tolls. The House rejected the motion, 87 to 107.

The House then voted on whether to engross the bill and read it a third time, the last step before passage. The House approved the measure, 105 to 91. [The *Register*’s account of the debate on February 18 was supplemented by an account in the *Niles Weekly Register* of February 21, 1829]

On March 2, with the 20<sup>th</sup> Congress nearing an end, the House again considered the bill as amended by the Senate to strike out all parts of the bill relating to erection of toll-gates. Representative Mercer moved that the House disagree to the Senate amendments. Representative Stewart opposed the motion:

If the House disagree, the appropriation will be lost, and the road become impassable. He read a letter from the Postmaster General, showing that the mail and travel were last spring frequently forced off the road, through farms. The friends of the road had done all they could to get up gates, but had failed. This money would now do more good than double the amount a year hence. To reject the bill would be equivalent to a vote of non-intercourse between the East and West. He described the present condition of the road, and entreated its friends, East and West, to concur in the amendments of the Senate, and save the road from total destruction.

After some additional debate, the question was put to the House: "Will the House disagree to the amendments of the Senate to this bill?" By a vote of 52 to 80, the House refused to disagree. As a result, the bill was ready to be signed by outgoing President John Quincy Adams.

On his last days in office, President Adams signed many bills, including three on the Cumberland Road:

- Act of March 2, 1829 – Appropriated \$100,000 for opening and making the Cumberland Road west from Zanesville, in the State of Ohio, with Treasury funds to be replaced by the land sales reserve.
- Act of March 2, 1829 – Authorized continuation of the Cumberland Road through Indiana under the direction of the President, "said road to be opened eighty feet wide, by cutting off the timber, removing it from the road, and digging down the banks preparatory to making a turnpike road, commencing at Indianapolis, cutting and digging as aforesaid, to the eastern and western boundary of the said state." Appropriated \$50,000 in Treasury funds to be replaced from the two-percent fund. The President was to appoint "two fit persons" as superintendent "to divide the same into sections, of not more than ten miles each; to contract for, and personally superintend the opening and making the said roads, as before mentioned, as well as to receive, disburse, and faithfully account with the treasury, for all sums of money by them received in virtue of this act." They were to execute a bond, with security, "conditioned for the faithful discharge of their duties." They were to be paid "at the rate of eight hundred dollars each, per annum, for their services, during the time they may be employed in the discharge of the duties required by this act."
- Act of March 3, 1829 – Appropriated \$100,000 "for the purpose of repairing bridges, walls, and other works, on the Cumberland road, east of Wheeling." The President was to appoint a superintendent for the work, to be compensated the same as the superintendents west of Wheeling. Funds were to be paid out of the general Treasury.

Sky summarized the impact of President Adams:

John Quincy Adams had joined the two strands that potentially made for sustainable national investment in the case of the National Road: strong support for the road as a policy matter and a constitutional reading that did not require a

constitutional amendment to support a broad federal role. But Adams was unable to bring Congress along with him to the end of making the road fiscally sustainable by providing for a federal system to collect the tolls that would reduce the need for direct federal appropriations.

## Part 6: The Impact of President Andrew Jackson

### President Jackson's Road to Washington

In November 1828, General Jackson defeated President Adams. Jackson won 56 percent of the popular vote and an electoral college victory, 178 to 83 (131 needed to win). His supporters also gained control of both Houses of Congress, including a 138-to-74 advantage in the House of Representatives.

After the frustrating circumstances surrounding General Jackson's defeat in 1824, the personal satisfaction of victory in 1828 was tempered when President-elect Jackson's wife, Rachel, died on December 22, 1828, even as he and his associates were planning their journey to Washington.

John C. Calhoun, the former Representative, Secretary of War, and Vice President under President Adams, continued as Vice President during Jackson's first term. He and President Jackson would have a falling out in May 1830 when President Jackson learned that during his campaign against the Seminoles in 1818, Calhoun had wanted the general arrested for treason. Always ready to hold a grudge, President Jackson never again trusted Vice President Calhoun.

For Secretary of State, President Jackson chose former Senator (1821-1828) and New York Governor (January-March 1828) Martin Van Buren. Although Van Buren had supported the invalid Secretary Crawford in 1824, the new Secretary had been one of the chief architects of General Jackson's 1828 victory. His political ingenuity, and his height of 5 feet 6 inches, earned him the nickname "Little Magician."

Tennessee Senator Eaton (1818-1829), mentioned earlier for his role in congressional debates on internal improvements, was the new Secretary of War. He had written a highly sanitized authorized biography of General Jackson (*The Life of Andrew Jackson*, 1817) and worked tirelessly to promote Jackson's presidential bids. Historians consider Eaton's revised and further sanitized 1824 edition of his book the country's first presidential campaign biography.

(Secretary Eaton is best known to history for what has been called the Petticoat Affair. He married his second wife, Margaret "Peggy" O'Neal, in 1829 shortly after her husband died. The fact that she did not observe a respectful mourning period before remarrying suggested to contemporary official Washington that she and Eaton had engaged in an extramarital affair. The rumors prompted Vice President Calhoun's wife and the wives of the Jackson Cabinet as well as the women of official Washington to ostracize the Eatons socially. President Jackson, whose wife Rachel had been the subject of malicious rumors over the years that she had lived with and married Jackson before divorce from her first husband was final, was sympathetic to his friend Eaton. Jackson resolved the dispute in 1831 by reorganizing his Cabinet, including the resignation of Secretary Eaton. He returned to Tennessee, later being appointed governor of the territory of Florida (1834-1836) and Minister to Spain (1836-1840).)

President Jackson and Secretary Eaton were familiar with the Cumberland Road. Their usual trip between Jackson's estate, The Hermitage in the Nashville area, and

Washington was to take a steamboat from Nashville along the Cumberland River to the Ohio River at Paducah, Kentucky. When they reached Wheeling, they boarded a coach to travel the Cumberland Road into Maryland, where they took that State's toll extension on their way to Washington. If no delays occurred, the trip took about 28 days.

Author Hubert G. H. Wilhelm, writing a chapter in Professor Raitz's compilation on *The National Road*, wrote:

One of the Road's more ardent supporters was Andrew Jackson. He supposedly was responsible for the remark that "America begins at the Appalachians." As a "Westerner," he understood the importance of the Road for the far-flung regions beyond the Appalachians. During his campaign for the presidency, Jackson had used the Road frequently. It was not unusual for him to meet with local citizens when he stayed in one of the many inns along the National Pike. Because news travels fast along a highway, Jackson's ideas and plans for the presidency became well known. [Wilhelm, Hubert G. H., "The Road as a Corridor for Ideas," in *The National Road*]

Richard J. Ellis, in his book about presidential travel, wrote that during 8 years as President, Andrew Jackson "made the long journey back to his home in Tennessee: in 1830, 1832, 1834, and 1836":

Every president since Washington had returned home during the summer months, but Jackson was the first who hailed from outside of Virginia or Massachusetts. He was also the first to encounter massive crowds en route and the first to use the journey for political purposes. Jackson's travels to the Hermitage truly did, at times, resemble a "highly partisan, political campaign." [Ellis, Richard J., *Presidential Travel: The Journey from George Washington to George W. Bush*, University Press of Kansas, 2008]

President-elect Jackson used the Cumberland Road on his trip to Washington for his first inauguration. Initially, communities along the way had wanted to celebrate passage of the first western President, but the trip took place so soon after Rachel Jackson's death that Jackson was still in mourning when he left The Hermitage.

Author Carlton Jackson, in his book about the inaugural trip, described its start:

Charles, one of his "servants" (a euphemism for slave) sat, waiting in the coach's driver seat, wanting to start the four gray horses . . . . Finally, he entered the coach and gave the signal to start on the way. Thousands of onlookers who had walked, ridden horses, come in buckboard wagons, as well as fancy coaches, to see him off on this first leg of a momentous journey packed the roadsides. A newspaper later reported that, "no man ever carried with him more truly the good wishes of his neighbors."

They rode for about a mile and a half and came to a place on the Cumberland River, generally known as "Hermitage Landing." There, the gentleman stepped out of the coach while his baggage was hauled aboard a steamboat named Fairy, which had come up from Nashville the night before.

Jackson had paid his fare, \$5.23, for the best and warmest cabin on the *Fairy*.

As author Jackson explained, the distance by road would have involved fewer miles than the steamship journey. However, even before his wife's death, President-elect Jackson had decided on the river alternative:

Although Rachel's condition was first and foremost in Andrew's mind for taking a water route, there were other reasons. First, he would be able to avoid crowds better by river than land. He deeply appreciated the care and concern of the American people; after all, they had put him into the highest office in the land at their disposal. But, mourning for Rachel was not compatible with fanfares, parades, and public appearances. Further, on a steamboat, he would have lodging accommodations twenty-four hours a day. If by land, he would have to leave his coach each day and seek lodgings. Of course, these could have been arranged beforehand, but with this unpredictable season of the year – it was middle and late January, and early February – the days were short; sometimes travelers had to stop in mid afternoon because going on to a further inn or hotel would have put their arrival well after nightfall.

The roads were another factor in the decision to go by river:

The roads were sometimes not in good shape and, especially at night, coaches were vulnerable to mud holes, ditches, and other traffic. Moreover, at this time of year, snow, sleet, and ice were always possible. In these circumstances, the presidential party – like all other traveling groups – would have been hopelessly stranded . . . .

By land, the President-elect would have been more or less at the mercy of whatever inn he stopped for his choices of food. Jackson, who was not in a good physical and psychological shape when he left the Hermitage, saw his gastrointestinal difficulties continue on his way to Washington city.

About the choice of modes, the author concluded, "All things considered, therefore, the President-elect made the correct decision of going to Washington City primarily by steamboat. He was the first President ever to do so."

Crowds formed along the Cumberland River as the *Fairy* made its way to Nashville. To acknowledge the crowds, President-elect Jackson "came out on deck, took off his hat and bowed low in a salute to 'these good people.'" A festive crowd greeted the *Fairy* when it reached Nashville where the ship stopped to pick up additional passengers. Jackson disembarked and shook hands with so many well wishers that his hand was sore when he returned to the ship.

On January 22, the *Fairy* arrived in Louisville. President-elect Jackson and the members of his party disembarked; the ship was too large to get through the racing waters at the Falls of the Ohio; plans to construct a four-lock canal to allow easier passage were underway. In Louisville, his hand was again painfully shaken by many well wishers. He spent the night at Perkins's Union Hall at Fifth and Main.

The next day he boarded the *Pennsylvania* at the Fourth Street Landing to continue his river journey. Unlike the *Fairy*, the *Pennsylvania* was not a passenger vehicle; the members of the Jackson party were the only passengers. Accommodations for the passengers were disappointing, with the women all crammed into a single space. Other ships accompanied the *Pennsylvania* as crowds cheered on the riverside.

As the *Pennsylvania* approached Cincinnati on January 24, dignitaries came on board to greet the President-elect while crowds cheered:

It was an impressive site: Andrew Jackson standing on the forward deck of the Steamboat *Pennsylvania* happily waving to the crowds on the banks.

After the ship docked, the President-elect walked from the ship to the Cincinnati Hotel:

The weather was fair, but cold – around 30 degrees – so, as at Louisville, Old Hickory decided to walk most of the distance; accordingly, the crowds divided themselves to give him enough room. He looked better than many had expected, to the pleasure of most observers and the chagrin of a few.

An occasional critic called out (“Adams forever,” one shouted). At the hotel, he continued to receive well wishers before returning to the re-stocked *Pennsylvania* in mid-evening. The ship had left earlier than perhaps planned as reports arrived that the waters of the Ohio River were falling due to lack of precipitation and moderate temperatures.

While in Cincinnati, the President-elect caught a bad cold. One member of Jackson’s traveling party, Emily Donelson, told her mother in a letter that the cold might have been caused by the smallpox vaccination he had received in the city. (Emily was Rachel Jackson’s niece and the wife of Andrew Jackson Donelson, Rachel’s nephew and the Jacksons’ adopted son. Emily would serve as White House hostess in the absence of a First Lady.)

Their next planned stop was Wheeling, where the captain would have to determine if water levels would allow the *Pennsylvania* to continue on to Pittsburgh. If the trip to Pittsburgh was not possible, the President-elect and his party would shift to the Cumberland Road at Wheeling.

As the ship made its way along the Ohio River, President-elect Jackson asked the captain to stop at Maysville, Kentucky, on Sunday, January 25:

Jackson’s visit to Maysville proved to be a joyous occasion: cannon firing, bells ringing, citizens turning out by the droves and shouting best wishes to the new president . . . [He] definitely intended to enjoy his visit to this little picturesque town situated on the Kentucky side of the Ohio River.

The delegation from Cincinnati that was accompanying the presidential party “shielded him as best they could from his admirers,” as the “air . . . resounded with loud and truly warm hearted greetings.”

President-elect Jackson and his party stayed the night in a Maysville hotel before resuming their journey aboard the *Pennsylvania* in the morning.

As they approached Wheeling, Emily Donelson wrote to her mother about the company's plans. They intended to go directly from Wheeling to the Cumberland Road. Author Jackson wrote, "That may have been their intention as they plied the Ohio between Maysville, Kentucky, and Wheeling, Virginia, but they changed their minds once they got to the latter city."

The citizens of Wheeling, a community of about 5,000 people, had "practically deified Henry Clay for what he had done in getting the National (or Cumberland) Road run through their city. Jackson's visit, therefore, created as much polite curiosity as any kind of warm welcome." It was January 28.

While the *Pennsylvania* was docked for about 3 hours, Jackson remained on the ship except for a brief period when he responded to a request from supporters that he receive a gift from them. The gift was a flask with Jackson's likeness on one side and an American eagle on the other:

Jackson graciously accepted the flask but left it with the Wheeling group, apparently desiring not to add to the heavy loads of materials he already had with him; this was necessary since at Pittsburgh he would be obliged to transfer everything to a coach, which would undoubtedly have less room for cargo than the *Pennsylvania*.

Despite the presence of the Cumberland Road in Wheeling, President-elect Jackson decided to proceed to Pittsburgh, as planned, despite concern about the water level:

Nevertheless . . . the General and his advisors once again picked Pittsburgh as their upriver destination; it was roughly sixty river miles to that Pennsylvania city.

Why the indecision? First, the citizens of Wheeling had not known exactly when the President-elect would arrive – or, indeed, if he would even stop in their city – so no livery arrangement had been made for teams of horses or for carriages. Though there were many inns, hotels, and taverns outside of Wheeling on the developing National Road, no distinct overnight reservations had been made for Old Hickory and his traveling partners. The weather in late January took a turn for the worse, freezing roadways and making horses' footing precarious. Also, the Jackson party probably wanted to get out of Wheeling and its environs as quickly as possible, seeing as how their presence had been frowned upon by large portions of the populace.

By contrast, Pittsburgh leaders had arranged accommodations for the party.

The captain, taking a risk, departed for Pittsburgh. Normally, the ship had traveled at about 10 miles an hour. On this leg of the trip, it moved at 6 miles or less per hour. "This slow pace was necessitated by the low water with its attendant problem of tree limbs, snags, high-rising sandbars and other debris."

The following morning, on January 29, the party began to see crowds along the shore again as they approached Pittsburgh. Two boats, the *Delaware* and the *Shamroz*, greeted the *Pennsylvania* and guided it into the Market Street wharf. As President-elect Jackson walked off the ship, the crowds were so large that observers feared he and his party would be tumbled into the river. "In fact, the General was 'literally carried' on the shoulders of numerous intense Jackson supporters to the home of a Mr. McDonald, where he stayed – speaking cordially and happily with everyone he met – until the mortified reception Committee caught up with him, and escorted him to his hotel." It "took Jackson and his party over an hour to get from Mr. McDonald's home to" the Mansion House, a quarter mile away as he shook all the hands offered to him "and these seemed to be in the tens of thousands – and sometimes speak to citizens who lined his route to the hotel."

After two days in Pittsburgh, he left on January 31 "in a plain carriage drawn by two ordinary horses." He and his party would be accompanied by State militiamen and a group of citizens who planned to accompany the group to Washington, Pennsylvania:

His coach could travel about twenty-five miles in a twelve-hour period if the roads were passable; coaches, unlike river boats, generally did not travel at night. It had been snowing in Pittsburgh on the day of Jackson's arrival, and the weather remained cold as he continued his trip to the capitol city.

Thomas B. Searight, in his classic early history of the road and compilation of documents about it, recounted an anecdote from General Jackson's trip to Washington in 1829:

The first coach of the Troy pattern was placed on the road in the year 1829 by James Reeside, and tradition has it that he won this coach with a bet on Gen. Jackson's election to the presidency. Mr. Reeside was desirous that Gen. Jackson should be the first person to ride in this coach, and accordingly tendered it to the President-elect when on his way to Washington, who true to his habit of refusing gifts, declined the proffered compliment as to himself, but consented that his family might occupy the coach.

Around midnight on January 31, the party arrived at Hill's Tavern, which had opened in 1794 on a road that would be included in the Cumberland Road. The party spent a second night at the inn, in part because Jackson was still suffering from the cold he had contracted at Cincinnati. The group also needed time to catch up on paperwork. "Besides, February 1st being a Sunday, Jackson realized that criticism would be leveled against him if he and his party traveled by coach on a Sabbath."

On February 2, the party left Hill's Tavern, with thousands of people seeing the President-elect off. He had "switched to a spacious four-wheeled carriage, drawn by 'four beautiful grays.'" Someone had painted "General Jackson" on the sides of the barouche coach. The party had more companions:

Pennsylvania Governor John Andrew Shulze authorized additional militia to travel with the President-elect, not so much to protect him from any violence, but to keep the masses at a respectable distance, many of whom crowded his coach, just wanting to say something to him or, better yet, shake his hand.

With the temperature mild, between 40 and 50 degrees, the party made good time on a portion of the Cumberland Road that was in good condition.

At Brownsville, the party checked in at George Gibson's Inn. The chef and his staff had prepared a "most sumptuous" meal for their distinguished guest and his party – several entrees of roasted beef and pork, to be followed by numerous desserts." They were "amazed," however, when Jackson said he wanted only "ham and eggs." The surprised chef said, "But Mr. President, there must be some mistake. You surely don't want ham and eggs." Jackson replied, "Yes, sir, that's what I ordered, and that's what I want":

A server rushed to the kitchen to arrange a special presidential meal (he usually had eggs lightly scrambled). Probably no one at Gibson's Inn knew of the delicate nature of Jackson's digestive system; ham and eggs was one of the few dishes he could enjoy without fearing the consequences.

(Searight tells this anecdote differently, attributing it to George E. Hogg, a leading citizen, and placing it at Workman's Tavern at the upper end of Market Street.)

The following day, February 3, the President-elect sent two members of the party – Rachel's nephews, Robert Hays and Andrew Jackson, Jr. – to ride ahead to let people in the capital city know that he would arrive on February 10 or 11. The riders had another purpose:

Along the way, when stopping to rest their horses or change them for new ones, they informed the owners of inns, hotels, taverns and sometimes private residences (though none of these were in abundance through the mountainous regions) that the President-elect was on his way and might want to stop off at their establishment for a while, a pleasing proposition to most of them.

Actually, author Jackson pointed out, the President-elect was taking his time through Washington, Brownsville, and Uniontown because "he did not want to get to Washington City before the certification of electoral votes by the Senate," scheduled for February 11. Although the outcome was certain, he thought that arriving early "would seem a little awkward."

Uniontown was a "popular stopover for travelers" along the National Road as the city was "thickly studded with public houses on both sides and from end to end." Jackson had traveled the road often enough that he had a favorite inn in many of the communities. In Uniontown, it was Hart House, operated by William Hart (later the Hotel Brunswick), on the corner of Main and Arch Streets in Uniontown, Pennsylvania. Searight recounted a Jackson anecdote about the inn:

This house was a favorite stopping place of General Jackson. On an occasion a committee of citizens met Jackson on the road near town and tendered him the freedom of the municipality. Among other things made known to him by the committee, he was informed that quarters had been provided for his accommodation at the Walker House [at the corner of Broadway and Main Streets]. He replied that he "always stopped at Hart's."

“But,” rejoined the chairman of the committee, “Hart is a Whig and his tavern a Whig House.” The old warrior answered back by saying that, “Hart always treated him well, and he would go to his house,” and to Hart’s he went, reluctantly escorted by the Democratic committee.

On the trip to Inauguration day, however, author Jackson stated that a “cavalcade of citizens” accompanied the President-elect to the Union Hotel, where – his intestinal problem calmed – he enjoyed a sumptuous meal, not his preferred ham and eggs:

Their intention was to stay on the road for the next four nights and days, so that at around two or three miles per hour, they could be in a good position to reach Washington by February 10th or 11th. They could travel at nighttime, at least a part of it, even over the mountains, by lantern light affixed to all the coaches, following instructions of advance riders, who went ahead to check their path for obstacles and dangers. (If saddle horses were available, some of the men – just for the joy of it – rode horseback during much of each day.) When citizens along the way heard that the President-elect’s arrival was imminent, many gathered on the roadsides with their lanterns, providing more than enough light for the entourage to see.

If the Jackson party expected to be slowed by the mountains they were crossing, they were disappointed:

They rarely got above 3,000 feet in altitude and the steepness was about a five to six percent gradient. When going downhill, a clever coach driver could manipulate the brakes and speed to match the gait of the horses, who could either trot down the decline or even walk, without having the strain of pulling a coach. Of course, they were taxed on the ascents, nevertheless there were numerous restful places along the way for both animals and humans. For one thing, when getting to the top of a mountain, there were frequently long, level ridges that produced relatively easy traveling conditions. Under these circumstances, and with unusually warm weather for that time of year (although, however, fogs were frequent), the coaches could make good time. Some of these ridges were 30 to 40 miles in length, and these were always welcomed by the travelers. The group passed over such mountains, and took advantage of their ridges at Big Savage, Negro and Green River in Pennsylvania, and Polish Mountain, in Maryland.

Crossing the mountains, the party found few inns or taverns:

[It] was not unknown for Jackson’s traveling group to stop at private homes for new supplies, resting horses and meeting citizens. Many times these good mountain people came out onto the road itself bearing food and drink (sometimes the latter was corn whiskey, for which they knew Jackson had a fondness) to serve to the passers-by; always received gratefully by the travelers.

The four-wheeled coach carrying the President-elect included a bed to provide “a modicum of comfort.” It also included a “charcoal brazier” to lessen the 20-degree temperature at the height of winter “and the ever-present chamber pot comforted him throughout the night.”

Author Jackson added that the party, still protected by the Pennsylvania militiamen, was not accompanied by the press corps that follows modern Presidents and Presidents-elect wherever they go. Press accounts, therefore, were scant.

President John Quincy Adams had not offered any assistance for the trip by his successor:

He was, as far as official Washington was concerned, on his own. The traveling party did stop from time to time for the rest that their coaches could not give them, to refresh or get new horses and to partake of the hospitality offered to them along the way.

Finally leaving the Appalachian Mountains, they reached the vicinity of Hagerstown on February 7 “where – much to the relief of many in the entourage, especially the women – they decided to linger for a while.” Just west of Hagerstown, they stopped at Indian Spring where they “supped” with area residents before going to Bell’s Tavern where they spent Saturday and Sunday, February 8. Jackson and his party, accompanied by Elder John Robertson and hundreds of residents, walked to the new Presbyterian Church on South Potomac Street (presently Hagerstown Independent Church).

After greeting visitors the rest of the day who came to see him at Bell’s Tavern, the President-elect delayed resumption of the journey on Monday, February 9, to walk to the town hall to see a William Dunlap painting called “The Bearing of the Cross.” He had met Dunlap a few years earlier, and liked him and his work.

He then made his way to his waiting coach, greeting and shaking hands with so many that members of his party, waiting in their coaches at town hall and mindful of their schedule, urged him to get in the coach. Finally getting in, “he turned once again to the crowd, waved at them, and said, ‘To do justice to all.’”

With temperatures between 30 and 38 degrees, the party progressed through Funkstown and Boonsboro, over South Mountain to Middletown and finally crossed Braddock Mountain into Frederick. The city had gone solidly for President Adams in the election and many still opposed Jackson. As in Wheeling, “there was no love lost between the good citizens of Frederick, Maryland, and Andrew Jackson.” Nevertheless, the party went to the Talbott Hotel for a good night’s rest.

The two men General Jackson had sent ahead of the party from Brownsville, had arrived in Washington on February 6. They checked out the accommodations arranged some weeks earlier at John Gadsby’s hotel called The National at Pennsylvania Avenue and Sixth Street:

A two-roomed parlor was next to two “drawing,” or sitting, rooms, both of which could be used at the same time for any large audiences that might arrive. The parlor overlooked a terrace “where he may be saluted from the avenue (Pennsylvania Avenue) by any number of the people who will throng to gaze on their favorite.

The party made good time riding south of Frederick. Senator Eaton, in a plain two-horse carriage, took a carriage from the city to meet them in Rockville. To avoid fanfare that

had been arranged by supporters, he took General Jackson alone into the city, leaving the rest of the party to arrive several hours later:

By the time Eaton's carriage got to Georgetown, the Central Committee had caught on, met him on horseback and escorted him to Gadsby's Hotel. He arrived at this famous lodging house about 10 a.m., catching most of his friends in the capital unawares; by 2 p.m., however, word had gotten around and cannon salutes thundered from several points in the city.

It was February 11, the day Congress was to count the electoral votes and determine, officially, the next President of the United States. After the vote, a joint delegation of the Senate and House went to the National. The delegation consisted of Senator Littleton W. Tazewell of Virginia, a Jackson Republican; Representative John Bell, a Jacksonian from Tennessee; and Virginia Representative Alexander, also a Jacksonian. They were ushered into the drawing room of the President-elect's room. Senator Tazewell delivered the formal address:

In obedience to the orders of the senate and house of representatives of the United States, and by the direction of their joint committee, appointed for that special purpose, it is my duty to notify you that you have been duly elected President of the United States for the term of four years, to commence with the 4th day of March, next. While performing this act of duty, I beg leave to offer you my very own and the cordial congratulations of each of my associates of this committee, on this event, an event which we all very confidently believe, will redound not less to your fame, and to the future benefit of our common country, than any other of those occurrences which have signalized your past life, and secured to you that respect and esteem, and confidence of your fellow citizens, which have been so fully illustrated in your recent election. The particulars of this election will be known to you by the record which I have now the honor to place in your hands.

He handed President-elect Jackson a transcript of the journal of the two Houses of Congress detailing the opening and counting of the electoral ballots.

Jackson, "with much apparent feeling," replied:

The notification that I have been elected president of the United States for four years from the 4th of March next, by the directions of the senate and house of representatives, you have so politely presented, is received with feeling of the deepest sensibility.

I desire you to communicate to the respective houses of congress, my acceptance of the high trust which has been conferred by my fellow-citizens, with an acknowledgment of the responsibility which it enjoins; and that I can make no suitable return for so flattering a proof of their confidence and attachment. All that I can offer, is my willingness to enter upon the duties which they have confided to me, with an earnest desire to execute them in a manner the best

calculated to promote the prosperity and happiness of our common country, and, to the attainment of these objects, shall my unceasing efforts be directed.

I beg you, sir, to convey to the senate and house of representatives, assurances of my respect and regard. [“The President Elect,” *Niles Weekly Register*, February 21, 1829]

Author Jackson wrote:

This was the moment for which Jackson had been waiting. He had not wanted to arrive in Washington City before he was duly certified by the Senate as the next president; nor had he wanted to come into town several days after this procedure. His arrival on the very day that the electoral votes were counted and certified was not just a happy coincidence; he had planned it that way ever since he left the Hermitage. [Jackson, Carlton, *Bittersweet Journey: Andrew Jackson’s 1829 Inaugural Trip*, Acclaim Press, 2011]

### **President Jackson on Internal Improvements**

A crowd estimated at 15,000 to 20,000 people had arrived in the capital for the inauguration of Andrew Jackson on March 4, 1829. Author Jackson described the event:

He arose early on the morning of March 4th, Inauguration Day. At about 11 a.m. he started out on foot from the Gadsby Hotel . . . . With Jackson and his traveling companions walking in the middle of Pennsylvania Avenue and with great crowds on either side with horses prancing, cannons booming and drums beating, there was definitely more noise than the President-elect wanted.

Bystanders, participants in the event, and citizens in carriages accompanied Jackson, making sure to stay behind the President-elect:

Just behind the President-elect marched a large regiment of veterans from the Revolution, and behind these old soldiers the rank and file, “without regard” to station,” brought up the rear. As they approached the Capitol’s west entrance, the “foot procession” veered to the north gate; the carriages and horses filed off to the south side of the Capitol building.

The President-elect was escorted into the Senate chambers:

The Senate, in session when Jackson entered, postponed further business to welcome the next Chief Executive. Jackson sat in front of the Senate clerk with members of the Supreme Court on his right and foreign ministers from several countries on his left.

President John Quincy Adams was not present. Jackson had not requested a courtesy call with outgoing President Adams, who had not invited him. Aside from lingering animosity stemming from the “corrupt bargain” election, Jackson believed that President Adams “had encouraged some of the scurrilous attacks on Rachel during the 1828 presidential race.” Adams remained in his newly rented home in Meridian Hill, in the city, leaving only for a short ride.

Author Jackson continued:

At noon on Wednesday, March 4, 1829, Jackson was led to the Capitol's east portico. He was soon joined by Supreme Court Chief Justice John Marshall, who proceeded to give the Oath of Office. Jackson placed his left hand on a Bible that had been brought from the Hermitage (probably held in place for him by Emily Donelson), raised his right hand and took the thirty-five word oath:

I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect, and defend the Constitution of the United States."

When he had completed this Oath of Office, he was no longer the President-elect.

Andrew Jackson was now the President of the United States.

Vice President Calhoun had entered the Senate chamber at around 11:00 a.m. and took his seat as chair of the Senate. Senator Smith of Maryland had administered the oath of office for Vice President Calhoun's continuing service in that post.

The *Niles Weekly Register* of March 7, 1829, pointed out that, "A large number of ladies were present, and occupied the seats in the rear of the senators, and lobby under the eastern gallery." The western gallery had been reserved for members of the House of Representatives.

The Inaugural Address on March 4, 1829, lasted only a few minutes and was heard mainly by those closest to the new President. Based on its length of 1,128 words, it was the seventh shortest Inaugural Address in the country's history (his second Inaugural Address was the eighth shortest at 1,176 words; the shortest was President Washington's second Inaugural Address of 135 words in 1793).

Professor H. W. Brands, in his biography of Jackson, summarized the speech:

He emphasized the popular nature of his victory, crediting the "free choice of the people" for his elevation. He promised to interpret the Constitution strictly. "I shall keep steadily in view the limitations as well as the extent of the executive power." He would respect the rights of the states, "taking care not to confound the powers they have reserved to themselves with those they have granted to the confederacy." In foreign affairs he would seek "to preserve peace and to cultivate friendship on fair and honorable terms." He would strengthen the army, but he looked to the people for the ultimate safety of the republic. "The bulwark of our defence is the national militia, which in the present state of our intelligence and population must render us invincible as long as our government is administered for the good of the people and is regulated by their will . . . . A million of armed freemen possessed of the means of war can never be conquered by a foreign foe. [Brands, H. W., *Andrew Jackson: His Life and Times*, Anchor Books, 2005]

He also, briefly, addressed internal improvements:

With regard to a proper selection of the subjects of impost with a view to revenue, it would seem to me that the spirit of equity, caution, and compromise in which the Constitution was formed requires that the great interests of agriculture, commerce, and manufactures should be equally favored, and that perhaps the only exception to this rule should consist in the peculiar encouragement of any products of either of them that may be found essential to our national independence.

Internal improvement and the diffusion of knowledge, so far as they can be promoted by the constitutional acts of the Federal Government, are of high importance.

President Jackson's rough draft of the address indicated that when the national debt was retired, he would favor a "distribution of the surplus revenue amongst the states according to the apportionment of representation, for the purposes of education and internal improvement, except where the subjects are national." This idea did not make it into the final speech.

Joe W. Specht, in his Master's thesis on Andrew Jackson's association with internal improvements, summarized General Jackson's actions on internal improvements during his brief tenure in the Senate (1823-1825). His Senate activity did not reflect a clear vision for his actions as President:

If he held any reservations about the federal government's power to finance and construct such projects, his voting record in Congress did not show it. He approved all types of federal aid and involvement. He voted in favor of constructing roads in the territories of Arkansas and Florida. He approved passage of the general survey bill in 1824 and voted in favor of allocating funds for improving navigation on the Mississippi and Ohio Rivers. Jackson also voted to extend the Cumberland Road to Zanesville, Ohio, in 1825. The last internal improvement measure he voted for as Senator was one which would haunt him more than any of the others. In 1825 he voted in favor of the stock subscription in the Chesapeake and Delaware Canal Company.

When Jackson resigned from the Senate in 1825, no one seemed a stronger supporter of federally-financed internal improvements. He could still state as late as February 28, 1828, in a published letter to Indiana Governor James B. Ray, "that my opinions, at present, are precisely what they were in 1823 and '24 . . . when I voted for the present tariff and appropriations for internal improvements." [Specht, Joe W., *Andrew Jackson and the Problem of Internal Improvements*, Thesis Presented to the Gradual Council of the North Texas State University in Partial Fulfillment of the Requirements for the Degree of Master of Arts, August 1973: <https://digital.library.unt.edu/ark:/67531/metadc164079/>]

The wording dropped from the Inaugural Address suggested a change in thinking, as Specht explained:

This last phrase indicated quite clearly that Jackson believed that there were certain internal improvements of a national character that belonged under federal jurisdiction. Apparently some of Jackson's advisors believed that even this brief mention of national works was politically unwise . . . . This final draft . . . while retaining his major ideas, differed in its emphasis. Jackson said, "Internal improvement and diffusion of knowledge, so far as they can be promoted by the constitutional acts of the Federal Government, are of high importance." There was no mention of a national nature or the distribution of the surplus revenue after payment of the national debt.

### **President Jackson's First Message**

Although President Jackson's Inaugural Address was vague on the subject of internal improvements, he made his views on internal improvements clearer in his first annual message to Congress on December 8, 1829. Throughout his presidency, one of his goals was to eliminate the public debt, much of it dating to the War of 1812:

This state of the finances exhibits the resources of the nation in an aspect highly flattering to its industry and auspicious of the ability of Government in a very short time to extinguish the public debt. When this shall be done our population will be relieved from a considerable portion of its present burthens, and will find not only new motives to patriotic affection, but additional means for the display of individual enterprise.

Considered in connection with the difficulties which have heretofore attended appropriations for purposes of internal improvement, and with those which this experience tells us will certainly arise when ever power over such subjects may be exercised by the Central Government, it is hoped that it may lead to the adoption of some plan which will reconcile the diversified interests of the States and strengthen the bonds which unite them. Every member of the Union, in peace and in war, will be benefited by the improvement of inland navigation and the construction of highways in the several States. Let us, then, endeavor to attain this benefit in a mode which will be satisfactory to all. That hitherto adopted has by many of our fellow citizens been deprecated as an infraction of the Constitution, while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils.

To avoid these evils it appears to me that the most safe, just, and federal disposition which could be made of the surplus revenue would be its apportionment among the several States according to their ratio of representation, and should this measure not be found warranted by the Constitution that it would be expedient to propose to the States an amendment authorizing it. I regard an appeal to the source of power in cases of real doubt, and where its exercise is deemed indispensable to the general welfare, as among the most sacred of all our obligations.

Upon this country more than any other has, in the providence of God, been cast the special guardianship of the great principle of adherence to written constitutions. If it fail here, all hope in regard to it will be extinguished.

That this was intended to be a government of limited and specific, and not general, powers must be admitted by all, and it is our duty to preserve for it the character intended by its framers. If experience points out the necessity for an enlargement of these powers, let us apply for it to those for whose benefit it is to be exercised, and not undermine the whole system by a resort to overstrained constructions. The scheme has worked well. It has exceeded the hopes of those who devised it, and become an object of admiration to the world. We are responsible to our country and to the glorious cause of self-government for the preservation of so great a good.

The great mass of legislation relating to our internal affairs was intended to be left where the Federal Convention found it – in the State governments. Nothing is clearer, in my view, than that we are chiefly indebted for the success of the Constitution under which we are now acting to the watchful and auxiliary operation of the State authorities. This is not the reflection of a day, but belongs to the most deeply rooted convictions of my mind. I can not, therefore, too strongly or too earnestly, for my own sense of its importance, warn you against all encroachments upon the legitimate sphere of State sovereignty. Sustained by its healthful and invigorating influence the federal system can never fall.

Sky summarized the difference between Presidents Adams and Jackson on internal improvements:

Unlike John Quincy Adams . . . Andrew Jackson was not a proponent of a broad, expansive system of federally funded internal-improvement projects. On the contrary, he undertook to draw back from the internal-improvement policies of Adams and to limit what he regarded as profligate spending on roads and canals. Throughout his administration Jackson urged fiscal restraint, the primacy of state authority, and limitations on internal-improvement projects, even if constitutionally authorized.

President Jackson's idea of distributing funds equally among the States, an idea considered occasionally in earlier years, proved "harder to implement than to applaud," as Professor Larson wrote. "It was met by a firestorm of protests from the West," which felt that the funds it desperately needed to grow would be shifted "to the states that already absorbed most of the federal revenue." Georgia and South Carolina objected because they considered it "a ploy to perpetuate the hated tariff":

No plan or system of national works (called for in the General Survey Act) had ever been adopted by Congress, and the logrolling system that grew up in its place seemed capable of infinite expansion. Appropriations did not flow equally to the states – *could not* do so if the object was to aid works of national significance, because such projects were not equally distributed among the twenty-four states. Efforts to balance the score inevitably exposed lawmakers to charges of pandering for votes; refusal to do so convicted them of partiality. Those who did not share

Clay's satisfaction with the cumulative effect of all developmental policies found states' rights radicals eager to convert them to a neo-Antifederal view of the Union.

Regardless, the idea would be raised periodically during President Jackson's two terms in office.

### **Condition of the Cumberland Road**

One of the documents accompanying President Jackson's message was a report from Secretary of War Eaton that included the report of Chief Engineer Gratiot dated November 18, 1829. In the section on Civil Construction, he reported on the status of the Cumberland Road east of the Ohio River:

The superintendent appointed to direct this work was instructed to adopt the MacAdam system of road making, and to apply the funds to repairing the worst parts of the road; the sum appropriated being entirely inadequate to effect a complete repair of it.

An officer was inspecting the road, with a report expected soon "unless he should be prevented by snow from performing the duty assigned him."

General Gratiot had not received information in time to report on the road between Canton and Zanesville and the section west of Zanesville in Ohio. He added, that "it is known that travelling has been admitted on the road, as far as Zanesville, and that the construction of 26 miles, Westwardly from that place, extending to the crossing of the Ohio canal, has been contracted for, and is in progress."

In Indiana, based on "a literal construction of the law for opening this part of the national road, two commissioners had been appointed to superintend it." They had made contracts "agreeably to their instructions, for cutting off and removing the timber, and cutting down the banks, so as to form as good a road as circumstances would admit of." In doing so, the commissioners encountered a problem:

Subsequently, however, finding that the expense of this work would absorb but a small part of the funds appropriated, the superintendents were authorized to provide for grubbing the trees from the central part of the road, which will be accordingly done. Contracts were made for opening the road entirely across the State of Indiana, and will probably be completed this Winter.

Surveys to continue the road to the capital of Missouri "have been diligently prosecuted this season":

At the date of my last Annual Report, the location had been effected as far as Vandalia; since that time, experimental surveys have been made from Vandalia, through St. Louis, along the South side of the Missouri, to Jefferson; thence, in returning, along the North side of the Missouri, back to Vandalia, which place the commissioners expected to reach about the 25th of October. In the course of this Winter, therefore, such a report may be expected, as will afford the means of deciding the most advantageous route for the road, beyond Vandalia.

On January 15, 1830, Secretary Eaton sent a report to the Senate in response to a request for information on the opening of the Cumberland Road in Indiana. The report from General Gratiot, also dated January 15, indicated that contracts had been awarded for opening 131¾ miles, at an average cost of \$120.21 each in accordance with the literal words of the Act of March 2, 1829: “cutting off the timber, removing it from the road, and digging down the banks.” Complying with that wording required only one-third of the \$50,000 appropriated for the purpose. Therefore, “it was thought advisable to authorize the grubbing of the timber, knowing that its complete removal could be more easily effected in this way than by first cutting down the trees and then removing the stumps”:

Instructions were therefore given to this effect, and contracts made for the grubbing and removal of the timber from the central part of the road, including a width of thirty feet; an additional width of twenty-five feet on each side being cleared by cutting off the trees . . . .

The remittances to the Superintendents on account of this road have amounted to \$14,600, of which they had expended and accounted for, on the 16th December last, \$9,254.62.

General Gratiot enclosed a copy of a letter, dated December 28, 1829, from the superintendents, Homer Johnson and John Milroy:

The grubbing, with few exceptions, has been let out to the former contractors, and we think, on good terms. We calculate that all of the present contracts will be finished by the first day of August next. After these are completed, the road will be prepared for bridging and grading; but the sum remaining of the present appropriation will be too small to commence this work. We are clearly of opinion, that, unless another appropriation is had, the remaining sum will not be sufficient to make the road even passable. We would suggest, that the road, in the situation in which the grubbing leaves it, will be impassable, owing to the deep holes made in digging up the trees and stumps. But, besides this, there are *many* very deep and long ravines; *many* steep banks, at streams and other places, that *must be dug down*; *many* streams that should be bridged; and *many* low and *swampy* places, that *must be raised and ditched*, before it can be made a *tolerably* good or even a *passable* road.

The progress of the work has far exceeded our expectations. We think about two-thirds of the cutting, and perhaps one-eighth of the grubbing is finished, but the very unfavorable season for eight weeks past, has retarded the progress of the work very much; but many contractors continue at work, and will until they finish. [*Report from The Secretary of War, In compliance with a resolution of the Senate of the 12th instant, showing the progress made in opening the Cumberland road continued through Indiana, In Senate of the United States, 21st Congress, 1st Session, January 19, 1830, Doc. No. 27*]

On January 23, 1830, Secretary Eaton sent a letter to Speaker of the House Stevenson in response to a House resolution on the “present condition” of the original Cumberland Road. He transmitted a letter from General Gratiot, who reported that as of October 31, 1829, \$87,224.17 had been expended and accounted for on the repair work, “in addition to which, the Superintendent reports an expenditure, during the months of November and December, of \$12,114.92, the accounts for which are not yet received. The Superintendent had a balance of \$660.91 as of December 31.

General Gratiot had instructed the superintendent, Valentine Giesey, to stay within the limits of the sums Congress had appropriated. Captain Giesey of Brownsville was a merchant who earned his rank during the War of 1812. He had been part of a delegation that greeted President-elect Jackson on February 2, 1829, when he stopped in Brownsville on the trip to his inauguration. Author Carlton Jackson described the incident without naming Giesey:

An hour or so after this early supper, Andrew Jackson received a visitation by a committee of the Lodge of Hope and Good Intentions at Ft. Burd, commonly known as Brownsville,” Free and Accepted Masons. Since Jackson was a mason and since the Lodge was meeting that very night, the members could not allow this opportunity of having Jackson as a guest to pass by. The committee escorted “Brother Andrew” to the meeting hall, where he was the guest of honor. As he was introduced to each member, he bowed gracefully to him, extending his hand in friendship . . . . When the meeting ended the same committee that had called on him escorted him back to the Gibson Inn . . . .”

Within the limits of the appropriation, no funding was available to calculate the cost of “putting the road in a complete state of repair,” as requested by the House resolution. However, based on a report made in 1827, General Gratiot estimated that “the repairs of the road, on the McAdam plan, the only one to be recommended, was then estimated to cost about \$330,000; deducting from this, the sum of \$130,000, which has since been applied, we have \$200,000 dollars as the probable cost of thoroughly repairing the road at this time.”

He had the unpleasant duty to add that the Superintendent, despite being told to stay within the appropriated amount, had approved contracts exceeding that amount by \$15,000. The superintendent had explained:

In giving out the contracts, I had no expectation that the amount would cover the whole of the appropriation of last session for the repairs of Cumberland Road; but, in consequence of the extensions which have been made, and which I considered absolutely necessary, it will exceed the amount of the appropriation about fifteen thousand dollars; the weather being so wet and unfavorable, I am even now compelled to keep in my employ day laborers, for the preservation of the road. I trust there will be no difficulty in obtaining a further appropriation; the contractors stand much in need of the money due them.

General Gratiot added that he learned of the added expense “too late to allow of any remedy being applied to correct the evil.” He had, however, asked Captain Richard Delafield to inspect the 1829 work, concluding:

[As] the reports of the Inspecting Officer, and others, are favorable as to the integrity of the Superintendent’s character, I would suggest the propriety of asking for a special appropriation, to enable him to meet the claims of the contractors, should it be determined not to continue the repairs of the road.

Although Captain Delafield vouched for Giesey’s integrity, the inspection report was critical of his execution of the work. The captain had examined about 30 miles of the road, being the part most in need of repair. Contracts showed “inconsistencies and parts at variance with the instructions of the Department,” both for preparatory work and construction. He had prepared the contracts from “the forms of Messrs. Shriver, Weaver [sic], the instructions of the Department, and McAdam’s work on roads,” without adapting them “to the locality or repairs of an old paved road.”

After elaborating on the problems, Captain Delafield said he also examined the books and accounts of the superintendent:

The honesty, integrity, and indefatigable industry of the superintendent are not to be questioned. His acts appear to have been always governed by the desire to perform his duties faithfully, and have failed in execution from his having been called to the supervision of duties, of which he had no previous knowledge.

Captain Delafield had looked into an accusation against Superintendent Giesey “in the Uniontown prints,” and found it to be “no doubt fallacious.” A contractor named Moreland had removed more sandstone from the old road than was needed for the new. He was allowed to sell the excess amount “for his own emolument.” The charge that the contractor had substituted “softer stone is, I believe, a gross misrepresentation, as limestone was used by Moreland on the upper strata of most of his sections.” The government had benefited by Moreland’s actions, “and received an equivalent in services by the removal of this stone, certainly equal to its value to the Government”:

Another newspaper statement, purporting to be a dialogue between wagoners, either grows out of the ignorance of the wagoners, or, more probably, is a perversion of facts by the writer of the article.

The purport of it is, that the road is worse now than before any repairs were commenced, and that wagons stall on the newly constructed parts of the road. Now, this is unquestionably a misrepresentation. It is no doubt true, that, during the repairs when the old road has been broken up, and no broken stone thrown on it, wagons, during wet and rainy weather, may, and in some instances have, cut up the bed to such a degree, as to make it worse for the time, than the old road; dry weather, and a few inches of stone, soon correct this evil; and the road, when finished, is far better for the travel of loaded wagons than the old road.

[*Cumberland Road*, Letter from the Secretary of War, Transmitting a report

relative to the repairs of the Cumberland Road, Ho. of Reps. War Dept., 21st Congress, 1st Session, January 27, 1830, Doc. No. 36]

On February 12, 1830, President Jackson forwarded a report to Speaker Stevenson that he had received from Secretary Eaton on continuation of the Cumberland Road. "There being but one plan of the surveys made," President Jackson's transmittal letter read, "produces the necessity of making this communication to but one branch of the Legislature." He asked for return of the map to the Secretary of War when the House completed its review.

Secretary Eaton's letter of February 10, 1830, to President Jackson was brief:

I beg leave to submit to your consideration the accompanying letter of the Chief of the Engineers; and a survey of two routes for the continuation of the Cumberland Road, which have been made agreeably to the provision of an act of Congress of the 3d of March, 1825.

There is nothing in this, or in the previous act of 1820, which vests a discretion any where to determine upon the particular route. It becomes necessary, therefore, to submit to the consideration of Congress, for their direction.

I would ask that a request be made for the original map to be returned, so soon as the use of it can be dispensed with.

General Gratiot had transmitted the report to Secretary Eaton on February 5. "The road having been already located as far as Vandalia, in Illinois, the present report refers to that part of the location between Vandalia and the Seat of Government of Missouri."

He recalled the Act of 1820 that called for the commissioners to choose "a point on the left bank of the Mississippi river, between St. Louis and the mouth of the Illinois river," with the road to be laid out "on a straight line" or as nearly straight as geography would permit. By strict construction of that direction, the commissioners could not lay out the road through the capitals of Ohio, Indiana, and Illinois. That defect was corrected by an Act of 1825, calling for the road to pass through those capitals.

The 1825 Act did not specify the point where the Mississippi River should be crossed. The commissioners' 1821 report stated that they were to choose the point of termination based on physical circumstances. They wrote:

. . . it is highly probable that the point should be made above the mouth of the Missouri river. But, on the other hand, if the Commissioners are left at liberty to take in consideration all the political and commercial circumstances that the whole case presents, they do not hesitate to say, from their present impressions, that St. Louis should be the point selected for the termination of the road.

General Gratiot, therefore, instructed them to consider the routes west of Vandalia on both sides of the Missouri River. They provided the information in their report "which

I have the honor to request that you will lay before the President, that he may adopt such course as he may think proper.” He asked Secretary Eaton to ensure the accompanying map was returned after the question had been decided.

In a letter dated January 20, 1830, Commissioner Joseph Shriver, a civil engineer and the nephew of David Shriver, wrote that in 1828, he had surveyed the southern route from Vandalia as far as St. Louis. He and his team had now continued the survey to Jefferson City. For the first 25 miles, they found “a gently undulating surface, opposing [sic] consequently few obstacles to the passage of a road.” From there, the path “suddenly assumed a very broken aspect, occasioned by the near approach of the Missouri and Merrimac rivers”:

The hills here rise abruptly from narrow valleys to the height of from three to four hundred feet. Their sides present steep and rugged [sic] activities, and occasionally rocky cliffs. A route through this broken country would be very circuitous since valleys or ridges would necessarily have to be followed. Abundance of the best material, together with a favorable soil, will, however, enable the formation of a good and permanent road.

The survey team found similar conditions for 10 to 15 miles, after which the country gradually takes a more undulating exterior, which character is maintained, with the exception of some very rough portions in the neighborhood of the principal streams, throughout the remaining distance, to Jefferson City.”

Having completed the survey of the route south of the Missouri River to Jefferson City, the team examined the northern route, which involved traveling north of the river to the Mississippi River. This route, which paralleled and came close to the Missouri River for the first 30 miles, “encounters, therefore, very rough ground, the difficulties opposed [sic] by which were so great, as to cause attention to be directed to two other routes that for this distance presented themselves”:

The one, a very level route, it will be seen by an inspection of the accompanying map, might be had along the bottom of the Missouri river. The other, passing further out from the river than the one examined, thereby avoiding most of the small streams and ravines crossed by it, would consequently occupy smoother ground.

While these examinations were underway, a team surveyed a route eastward from St. Charles, opposite Alton, Illinois, “connecting with the main line, in order to ascertain the position of that place, by which to determine, as nearly as possible, what would be the increased distance of a route embracing it.”

Next, the team considered where to cross the Mississippi River:

After some examination, attention was particularly drawn to two points, Smeltzers, and the village of Portage de Sioux, at both of which places a ferry is now established. These were found to be the best, and, indeed, the only

practicable crossing places within a considerable distance. The points lie about six miles apart. Routes embracing either would not differ materially in distance. The ground, in approaching the crossing at Portage de Sioux is chiefly above the inundations of the river. To Smeltzers, the bottom for two or three miles is subject to deep and dangerous overflow. On the whole, considering the crossing at Portage de Sioux the best, it was adopted.

Colonel Rufus Easton had laid out the town of Alton, named after his son, in 1817. A ferry had operated in the vicinity as early as 1806, but it came into the possession of George Smeltzer. In 1817, Uel Whiteside was licensed to locate a ferry above Portage des Sioux, Missouri. [*History of Madison County, Illinois*, W. R. Brink & Co, 1882]

Shriver compared the routes on several grounds, including cost of construction:

The cost of constructing a road on the Southern route is estimated at \$990,358; of one on the Northern route, at \$979,158; making a difference in favor of the Northern route, in the cost of construction, of \$11,200. [The] bridging and paving amount to considerably more upon the Northern than upon the Southern route, by reason of the greater scarcity of stone. A consideration of great importance, unfavorable to the Northern route, grows out of this fact, which is, that a greater expenditure will forever hereafter be required to keep a road upon this route in repair, although it cost less in the construction, because stone is the material which will be needed for that purpose.

Geography aside, Shriver concluded:

In conclusion, it seems hardly necessary to advert to the accommodation which would result to a considerable portion of the public by embracing the city of St. Louis in the extension of this road westward. The importance of passing through a great commercial place, such as this has grown to be, containing now 8,000 inhabitants nearly, and promising from its peculiar situation to become one of the most important cities of the West, will be duly appreciated, as will also the advantages which this route possesses in a military point of view, by its passing so near the military station at Jefferson Barracks.

It is believed that the information given in this paper, together with that which may be derived from the accompanying map and notes, is such as is called for by my instructions, and affords the means necessary to decide which of the two routes is the more eligible to be adopted. [*Continuation of the Cumberland Road*, Message from the President of the United States, Transmitting a Letter from the Chief of the Engineers, with Surveys of Two Routes, for the Continuation of the Cumberland Road, House of Reps Executive, 21st Congress 1st Session, February 12, 1830, Doc. No. 59]

On February 9, Secretary Eaton replied to a letter from Indiana Senator Hendricks, who had asked about the cost of completing the work in his State. Secretary Eaton stated:

I have the honor to state that all that could be done, under the appropriation of last year for this part of the road, was to cut off the timber and dig down the banks in some places, and that, in its present state, the road is almost useless. I, therefore, consider it highly desirable that an appropriation should be made for grading and bridging it. Agreeably to the estimate furnished to me by the Chief Engineer, from the report of the Commissioner, the expense of clearing off the timber, grading and bridging, and masonry, on the part of the road in Indiana, east of Indianapolis, is \$203,429.77; and on that part between the same point and the boundary line of Illinois \$290,153.18 . . . . Deducting from this total of \$493,583.95, the sum of \$50,000 appropriated last year, and we have \$443,583.95 as the estimated cost of work by means of which the road may be put in the condition to be permanently useful.

He added that “\$80,000 is probably as great a sum as can be applied advantageously during the present year; and an appropriation of that amount is therefore recommended.” [Documents in Relation to the Continuation of the Cumberland Road in the States of Ohio and Indiana [With Senate Bill No. 100], 21st Congress, 1st Session, February 22, 1830, Doc No. 63]

### **The First Year**

When the 21<sup>st</sup> Congress assembled in December 1829, the country was, in the words of Professor Larson, “increasingly racked by sectional jealousies and a people more inclined toward rhetorical polarization than mutual concessions and compromise”:

Early gestures of local rebellion appeared across the West, where states like Illinois, Indiana, and Mississippi laid claim unilaterally to the public lands inside their borders, preempting Congress’s authority over the national domain. To the South, free-trade extremists led by Vice President Calhoun, pressed their relentless attack on the tariff. Internal improvement could not escape these contradictory pressures, in part because tariffs and public lands generated the revenues for future aid to roads and canals. More to the point, the shameless pursuit of narrow sectional interests – immodestly stripped of any shroud of “common interest” and accompanied by threats of nullification – refocused the significance of the constitutional question: was this a nation or a mere confederation, and did the government in Washington have real work to do?

The sectional disputes were reflected in the actions of the Congress, as Professor Larson summarized:

In the House, Jonathan Hunt of Vermont introduced a distribution resolution virtually identical to Jackson’s, ostensibly to stop “unequal legislation” for internal improvements. It was met by a firestorm of protests from the West. Proportional distribution, cried the frontier, transferred the West’s only capital stock to the states that already absorbed most of the federal revenue. Bitter accusations from the West drew flanking attacks from South Carolina and Georgia (states that fancied themselves the most abused in the Union), claiming

that distribution was really a ploy to perpetuate the hated tariff. South Carolina's William D. Martin called for an "accounting" of all the land grants made to the West so that deductions could be made before any patrimony was divided, and John Test of Indiana angrily demanded a parallel tally of "the useless millions" spent on the Capitol building, the White House, and the navy. Missouri's lone representative, Spencer Pettis, condemned distribution as "intended to check the growth" of the western states: "We have had American Systems – anti-slavery systems – and systems, the Lord knows what: and now we are to have an anti-emigration system to cripple the West."

These differences were demonstrated in a debate on a resolution that Senator Samuel A. Foot, a pro-Adams, anti-Jacksonian from Connecticut, introduced on January 13, 1830:

*Resolved*, That the Committee on Public Lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also whether the office of Surveyor General may not be abolished without detriment to the public interest.

Professor Larson summarized the debate in the context of the national divisions:

This bitterness was matched and exceeded in the Senate by the brawling four-month debate over Samuel Foot's resolution to prohibit the sale of new public lands until the millions of acres already available cleared the market. Thomas Hart Benton of Missouri seized the occasion to detail a plot (entirely fanciful) by which unreconstructed Federalists in New England wickedly conspired to jack up the tariff and close off the West, the better to enslave their poorest class of factory operatives – "a most complex scheme of injustice, which taxes the South to injure the West, to pauperize the poor of the North." Robert Y. Hayne of South Carolina, solicitous of all outbursts against power in Washington, embraced Benton's exposé and praised the fabled "penny-or-a-peppercorn" policies of old colonial regimes, before steering back to the parallel subjection of the South. "We stand," he complained, "towards the United States in the relation of Ireland to England. The fruits of our labor are drawn from us to enrich other and more favored sections of the Union." Seething as this tissue of falsehoods took shape, Daniel Webster finally rose to deny that the East had ever "shown an illiberal policy towards the West." It was South Carolina, not New England, that pursued exclusively sectional agenda, blocking all manner of roads, canals, and other generous policies with its strict construction, anticonsolidation doctrines. And it was Hayne's South Carolina colleague (and Calhoun's acolyte) George McDuffie who had led an earlier bitter assault on the western states – whose 1825 speech Webster gleefully quoted to the Senate.

Such intemperate exchanges, separated by mind-numbing, days-long speeches – mostly bereft of constructive insights, calculated to infuriate but never to accommodate the opposition – marked the entire first session of the Twenty-first Congress.

Senator Webster's second response to Senator Hayne is generally considered the greatest speech ever delivered in the Senate, admired, studied, and modeled by many later orators, including Abraham Lincoln.

When debate finally ended without adoption of the resolution on May 21, 1830, the *Register* observed the occasion:

Here the debate on Mr. FOOT's resolution was finally brought to a close.

A similar prolonged debate took place in the House on a proposal by Pennsylvania Representative Hemphill, chairman of the Committee on Roads and Canals, for a 1,500-mile national road from Buffalo to Washington to New Orleans. Professor Charles J. Reid, Jr., summarized the fight over the bill in an abstract of his study on the debate:

The debate over the National Road was largely a proxy for the larger struggles over slavery and sectionalism. The Road's supporters generally represented Northern or Western states and took a nationalist view of the Constitution. They understood the Union as an organic entity, a single nation, comprising a single People, united to attain large and shared objectives. They understood the Constitution as facilitating these objectives. They were bold in the various creative if not novel constructions they placed on the Constitution. They paid little heed to arguments about states' rights or limited and enumerated constitutional powers.

The opposition was centered in the South although it drew support from some Northern sympathizers. They viewed the highway as a threat to the Southern slave-based economy and mustered various constitutional objections to it. The Constitution was one of limited and enumerated powers, they argued, and it did not include the authority to construct highways. Similarly, they argued, the Constitution created a loose "confederacy" of sovereign states, united for only a few specifically identified purposes. States' rights was, on this analysis, the central organizing principle of the Constitution. In all of this, the great concern was with the preservation of an "agricultural" way of life, understood by all to refer euphemistically to plantation slavery.

Representative Hemphill introduced the bill on March 22, and the lengthy debate ended on April 15, when the House, which had rejected the bill the day before, 88 to 105, decided not to reconsider the decision. [Reid, Charles J., Jr., *Highway to Hell: The Great National Highway Debate of 1830 and Congress as Constitutional Interpreter*, Working Paper, 2014, University of St. Thomas School of Law, Legal Studies Research Paper No. 14-20]

On April 16, 1830, the Senate took up a bill making appropriations for surveys and certain works of internal improvement. Senator John McLean of Illinois moved an amendment:

Sec. 2. *And be it further enacted*, That the sum of one hundred thousand dollars

be, and the same is hereby, appropriated for the purpose of opening, grading, and making the Cumberland road, westwardly of Zanesville, in the State of Ohio; and that the sum of sixty thousand dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and bridging the Cumberland road, in the State of Indiana, commencing at Indianapolis, and progressing with the work to the eastern and western boundaries of said State; and that the sum of forty thousand dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and bridging the Cumberland road, in the State of Illinois; that the sum of thirty-two thousand four hundred dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and bridging the continuation of the same road from St. Louis to Jefferson city, in the State of Missouri; which said sums shall be paid out of any money not otherwise appropriated, and replaced out of the fund reserved for laying out and making roads, under the direction of Congress for the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on an equal footing with the original States.

Sec. 3. *And be it further enacted*, That, for the immediate accomplishment of these objects, the superintendents heretofore appointed, or hereafter to be appointed, in the States of Ohio, Indiana, Illinois, and Missouri, shall, under the direction of the President of the United States, faithfully execute the work, and disburse the money, giving bond and security as he shall direct, and receiving such compensation as, in his opinion shall be equitable and just, not exceeding to each that heretofore allowed by law to the superintendent of the Cumberland road, in the State of Ohio.

The Senate adopted the amendment, 26 to 16, without reported debate.

Late in debate that day on the bill, Senator Tyler took a moment “to show how this Government acted.” Having voted against the Cumberland Road amendment, he acknowledged that the time for opposing it “had gone by”:

Commencing with a principle narrow and restricted, it served as an apology for unlimited and unrestrained action; let it put out once to sea, and whatever port it held in view at the time, it very soon found itself at large upon the ocean, and visited in its course every coast and harbor. So in reference to this road. The Government started upon the principle of devoting to the construction of this road three [sic] per cent. arising out of the sales of the public lands lying in Ohio, Indiana and Illinois, and in what had it terminated? He desired to call the attention of the Senate to the facts. The whole amount of sales of the public lands lying in the State of Indiana, amounted the last year to four hundred and ninety two thousand dollars. Now this bill appropriated two hundred and thirty two thousand four hundred dollars, and that of last year amounted to two hundred and twenty thousand dollars; adding these two sums together, with the commissions chargeable on the sales, and there is left the paltry sum of fifteen thousand dollars to flow into the treasury. Thus then it appeared that, for this single road, two years of appropriations have nearly consumed the amount arising the [sic] from

last year's sales of land in one of the most flourishing of the new States. He had made this statement, and submitted it to the Senate without comment.

Senator Hendricks pointed out that the comparison of one year of receipts in one State with two years of appropriations was unfair.

The bill was then ordered to be engrossed and read a third time.

By May 31, 1830, when President Jackson signed "An Act making appropriations for examinations and surveys, and also, for certain works of internal improvement," a few changes had been made. The \$32,400 for Missouri had been dropped, while the final bill included an additional section:

Sec. 4. *And be it further enacted*, That the sum of fifteen thousand dollars be, and the same is hereby, granted, for claims due and remaining unpaid at the treasury, on account of the Cumberland road, east of Wheeling, to be paid out of any money in the treasury not otherwise appropriated.

This amount was to reimburse contractors for the over payments by contracts awarded by Superintendent Giesey.

The total appropriations in the bill amounts to \$215,000.

### **The Maysville Turnpike**

With so much time spent on the Foot Resolution and the Buffalo-to-New Orleans road, the first session of the 21<sup>st</sup> Congress had little time for other measures affecting the Cumberland Road.

In addition to the internal improvement appropriation bill, President Jackson signed a bill on April 2, 1830, that granted public land in Ohio "to aid . . . in extending the Miami Canal from Dayton to Lake Erie." He also signed a harbor and rivers improvement bill on April 30.

However, his most significant action on internal improvements during the first session of the first session of the 21<sup>st</sup> Congress was a landmark veto unrelated to the road that would be cited in virtually every history of the two terms as President.

Amid the annual bitter debates on internal improvements, stock subscriptions had become a common way of skirting constitutional issues to aid internal improvements financed largely by the private sector. A law would direct the Secretary of Treasury to invest a sum in a corporation established to build a turnpike or canal, on the theory that the corporation would retire the debt with interest. Often, the charter of the company had set stocks aside for that purpose.

On April 26, 1830, Representative Robert P. Letcher of Kentucky, a friend and supporter of Senator Henry Clay, interrupted a discussion of a controversial tariff bill to move that, instead, the Committee of the Whole "take up . . . some minor bill, that would occupy but

little time.” He introduced a bill authorizing the general Treasury to subscribe to stock in the Maysville and Lexington Turnpike road. The committee having approved the motion, discussion of the bill began.

The Kentucky State legislature, Representative Letcher told his colleagues, had incorporated by “well guarded charter” a corporation under the name “the Maysville, Washington, Paris, and Lexington Turnpike Company”:

The subject is one of very great solicitude in the State, and more particularly in that interesting portion of it through which the road is to run. The attention of the General Government has long since been drawn to the importance and utility of this great highway; and under its immediate direction, skillful engineers, in the year 1827, made a survey from Zanesville, in Ohio, to Florence, in Alabama, including that portion of it over which the contemplated road is to be made. The report of the engineers, sir, is now before me – it is made out with great care, enters minutely into details, and, upon examination, will, I trust, be found entirely satisfactory and accurate . . . .

He had the report in hand and made it available to any of his colleagues who wanted to examine it:

The road designed to be improved is intended to intersect the great national road in the State of Ohio. It connects itself also on each side with the Ohio river. These two connexions most certainly and justly entitle it to the appellation of a national work. Its present condition is too bad to be particularly described, probably the very worst in the United States, while at the same time it is more travelled, in proportion to the population of the country, than any other section of the West . . . .

In the winter it is almost impassable, owing to the depth of the soil, which readily forms deep mud holes. Such is the difficulty of getting along, that the wagoners have sometimes to join themselves in gangs to lend each other assistance. Double teams are often hitched to the same wagon; and not unfrequently they become so deeply mired that the neighbors have to turn out to aid the teamsters; and in winter it often happened, after sticking in the mire, that they are frozen up entirely. The same state of things exists in reference to the mail; and a great saving will be effected by the Government, both as to time and expense in its transportation. Should the road be properly made, the saving on this head alone will more than compensate you, even if the money was given, instead of subscribed.

He stressed that this planned turnpike was national in importance and that the general Treasury would not lose any money by subscribing to the stock in the company:

The subscription now asked is not to be advanced, until enough has been actually paid by individuals and the State, to equal the amount paid by the General Government. The sum reserved to individuals has all been subscribed, amounting to seventy-five thousand dollars, and the State of Kentucky has subscribed

seventy-five thousand dollars more; both these sums are to be fully paid before the subscription of the United States is to be demanded . . . .

There is no intention to induce the House to subscribe to a mere neighborhood road. The calculation above quoted must convince every gentleman that this is a road greatly travelled – that it is both useful and used. And while the aid of Government will put it in a good condition, the Government will not lose a dollar by its beneficent operation.

He concluded his introductory comments by saying:

Whilst I do not desire or anticipate any opposition to the passage of the bill, yet I hold myself ready now, and at all times, to defend it, should any be offered.

Representative Thomas F. Foster of Georgia quickly disillusioned Represent Letcher about the lack of opposition. “He could not but feel surprised at the confidence expressed by the gentleman from Kentucky, that the bill would meet with no opposition; this surprise was only equaled by that which he felt at the support which the Committee on Roads and Canals had given to the proposed measure by even reporting the bill.”

Representative Foster disputed the basis for declaring the road to be national in scope. “Why, forsooth, that immense numbers of horses, wagons, &c. travel it, and that in certain seasons of the year it is almost impassable.” If that were sufficient evidence of the national scope of a road, “our country abounds with them; there is scarcely a market road in Georgia or Carolina, which might not, with great propriety, claim the distinction.”

Georgia Representative Haynes, a leading opponent to the Buffalo-to-New Orleans national road, said he “could not permit the inference to be drawn from the gentleman from Kentucky, that he [Mr. H.] entertained the opinion that this Government has the power to engage in works of internal improvement. In his opinion, the subscription to stock stood precisely on the same footing, in principle, with a direct appropriation of money for the construction of a road or canal.”

Debate on the bill continued on April 28. Representative Foster pointed out that at the time, nine or ten bills of the same character were on the calendar, “and he felt it his duty to warn gentlemen against the danger of establishing the precedent – it will only be the commencement of a system which promises to have no end”:

It has only been within a few years, he believed, that Congress had ever authorized subscriptions for stock in canal and turnpike companies; but, having done so in a few instances, others have been encouraged to apply. Sir, some of the petitions now on your table would never have been dreamed of, had it not been for the aid you have given to the Chesapeake and Ohio canal, and a few others.

Another consideration was the claim that the road was national in scope:

The road now under consideration is to extend only sixty miles; but we have been already told that this is only the middle link of the great chain that is to extend from Zanesville, in Ohio, to Florence, in Alabama. What then is to be the direct

and almost necessary consequence of passing this bill. It requires no spirit of prophecy to predict.

Companies will be formed to build turnpikes on other segments of the Zanesville-to-Florence, all of which will seek subscriptions from Congress.

He also wanted to alert his colleagues to the danger of the subscription. The bill was calling on the general Treasury to purchase half of the corporation's stock (1,500 shares out of a total of 3,000). If the corporation has trouble selling the remaining 1,500 shares, "the company will again look to Congress. You will then be told, that, as you have already invested part of your funds, you certainly will not want to see the enterprise fail, and subject the nation to loss, when it can be so easily prevented by additional contributions: and thus in a short time companies will project works of internal improvement, obtain from their State Legislatures acts of incorporation, and Congress must supply the means of accomplishing the object."

Representative Foster doubted the claim that the subscription would prove profitable to the general Treasury. "Now, can any gentleman seriously believe that the proceeds of this road will ever reimburse the treasury the advance it is designed to make?"

Representative James K. Polk of Tennessee, a strong backer of his family friend, General Jackson, in 1824 and 1828, and a future President of the United States (1845-1849), spoke at length in opposition to the bill. He questioned the claim that the road was national in scope. The bill asked that "Congress shall subscribe one hundred and fifty thousand dollars in the stock of a private company, to construct a road sixty miles in length, leading from one town to another in Kentucky. Every foot of the road lies within the interior of Kentucky." Can such a road, he asked, be "a national object, indispensable to enable the Government to carry on its operations in peace, or for defence in war?"

He questioned the argument that roads of this type were needed to bind the country together:

Sir, there is no more ardent advocate here for the Union, and for its perpetual preservation, than the individual who now addresses you; but let me tell the gentleman that if we have no stronger ties to bind us together, as brethren of the same family, than such schemes as this, then the Union is, indeed, but "a rope of sand" . . . .

It is idle any longer to talk about nationality as applicable to this system. Any thing is national that gentlemen think proper to deem expedient. A road from a neighborhood tavern to a neighborhood mill is just as national, according to the doctrine we hear every day, as anything else.

The usual procedure, Representative Polk stated, was that before Congress considered such bills, "a minute survey and report upon the proposed work is required to be made by engineers of the United States." Indeed a group from the Corps of Engineers rode through the country from Zanesville to Florence a few years earlier and submitted a report. Representative Polk read an excerpt:

It cannot be supposed, nor was it intended, neither indeed was it necessary, that the details furnished by a preliminary examination, like that in which we have been engaged, should be attended with undeviating accuracy; nor were we supplied with the means of attaining it, in reference to any of the items contained in the tables connected with this essay.

Several alternative routes were presented, but none with precise details:

We are asked then, to subscribe stock to a large amount in a road which has never been minutely surveyed by an officer of the United States. You are about to dispense with this prerequisite, usually required by the advocates of the system, in such projects.

Like other critics of the bill, Representative Polk emphasized that he had no ill will toward Kentucky, and wished the State success in building the turnpike. He did not, however, believe that if the people of Kentucky could witness the debate, that they would approve the bill.

Debate continued on April 29, at the end of which the House voted, 102-86, in support of the bill.

The Senate acted on the bill in mid-May. The *Register* reported that on May 13, 14, and 15, much business took place in the Senate, including on the Maysville Turnpike bill, but the “publishers have, in their possession, only the following remarks by Mr. TYLER.” Senator John Tyler said he would avoid a detailed constitutional argument, promising that when the proper bill came before the Senate, he would not stint on that point. He had listened to previous debates on the constitutional authority of Congress to make roads and canals. He weighed the arguments “urged by the advocates of the system – if system that may be called, which is none – and my decision was against them.” The experience of the past 6 years confirmed his thinking, namely that “in its exercise, all that is dear and should be considered sacred in our institutions is put to hazard”:

Can any man say in what this system is to end? Formerly, it was held to be national. I have no such word in my political vocabulary. A nation of twenty-four nations, is an idea which I cannot realize. A confederacy may embrace many nations; but by what process twenty-four can be converted into one, I am still to learn. Yes, Sir, formerly it was contended that the road-making powers could only be exerted over national objects, but now it is gravely contended that every thing is national, and that the bounty of this Government may be exerted in aiding to construct a road but sixty miles long. And what do we hear? Why, that the stock thus taken up by the Government is destined, in the end, to yield a handsome dividend; that this road runs through the most fertile district of country in the world, and is the great thoroughfare through the State of Kentucky.

Given that the promised benefits are so important and the expected dividend so large, he could not understand why the citizens of Kentucky were not prepared to buy the stock:

Why permit this Government, already possessed of such abundant sources of revenue, to engross this also? Why suffer it, from this time and for ever, to levy

a tax for the benefit of other portions of the confederacy, on the good people of Kentucky? Let this truth be spoken. The benefits of the contemplated subscription are destined to arise to certain individuals, who have been incorporated by the Legislature of the State to construct this road. Their fortunes are to be advanced, and they are earnestly urging us to aid them in this enterprise.

If the Congress were to accept the principle of using funds from the general government for roads of this type, “no man can set bounds to the applications which will be made to us at the next session. We shall have a perfect jumble of all manner of schemes and plans; national and local; public and private; in lawyer’s phrase, a perfect hochpot.”

He used the rivers and harbors bill as an example:

Four or five years ago, our ingenious politicians found the power in the constitution to improve harbors, and to make our rivers navigable. They began with roadsteads for the navy; and in what has it terminated? Let our observation this session illustrate. We have got now to surveying creeks which have not water enough to keep at work a common grist mill.

He addressed the character of the proposed road:

When the subject was before the committee, it was attempted to show that it was but part of a scheme, more enlarged and more extensive. It was said to be but a link in a great road hereafter to be finished by the Government from Zanesville, in Ohio, to a point opposite to Maysville, on the Ohio river; and from Lexington to Nashville; and from thence on to Florence, in Alabama. On this ground, it claimed nationality of character. The chain was broken by the interposition of the Ohio river; and what was to be done to supply it, I do not know. A bridge would scarcely have been thought of, and a ferry, founded by authority of this Government, might subject to too severe a test this road-making power. Now, sir, it is the easiest thing imaginable to make a road a national road. Every road in the country readily becomes so. Each is connected with each other, whether by a straight line or otherwise, is not material. The angle at which the county road passing at my door intersects the principal road leading from this city to Richmond, and from thence to Huntsville, in Atlanta, whether it be a right angle or an acute angle must be wholly immaterial. It is a part of a national road, and is mediately or immediately connected with every other road in the United States.

If this Maysville road rested on a pivot, and could be turned round from its present posture of east and west, to north and south, it would be still as much a national road as it now is. The only difference would be, that it would lead to other States and to other cities. Here, then, is the termination of this stupendous national scheme – this great American system of road making and canal digging – this system, in support of which, the constitution was carefully scanned through all its provisions. Here is exhibited the rightful exercise of this power under the authority to raise an army, and, *ex vi termini* [from the force of the term], to construct a permanent road for military purposes. Here the great power of regulating commerce, not in truth by making rules or regulations by which it

shall be carried on between the States, but by affording facilities in travelling from Maysville to Lexington, a distance of sixty miles. Splendid and magnificent, truly, has this great American system become, now that this Government is set down by the side of some few of the citizens of Mason, Bourbon, and Fayette counties, to deliberate upon the important questions which must arise in the construction of this road, whether there shall be a cart load of sand or gravel, more or less, deposited on this spot or that.

Senator Tyler mentioned a speech by another Senator regarding Virginia's "want of good roads; and he has been pleased to denounce our prejudices, as he has thought proper to call them." (As noted, other speeches were not included in the *Register* record of the debate.) Senator Tyler did not deny that Virginia's roads were not good, adding, "If we are content with our situation, surely no one else has any right to complain of it." No doubt Virginia would benefit by using funds from the general government:

No State in this confederacy requires the expenditure of larger sums of money to objects of internal improvement; and none would be more benefited by such application. When then we stand aloof from this system; when we close our ears to the siren voice which has won so many others to the support of these measures, what is the true attitude in which we stand before the world? Can we be charged with interested or selfish designs or feelings? If we were actuated by any such, we should reach forth our hands, and gather this golden fruit. Instead of this, we give no vote for these measures, even [those] which appertain to our immediate benefit; against the appropriation in aid of the Dismal Swamp canal, the Senators of Virginia on this floor have uniformly voted. No, sir, we will never consent to sacrifice the construction of this land to a mere ephemeral policy.

He understood the allure of the seductive policy of internal improvements, but "Virginia can only regard that course of governmental action as sound, which falls clearly within the pale of the constitution."

He did not want his colleagues to think Virginia was "more insensible than others to the advantages of good roads and canals":

Not so, let them be made out of the proper treasury – that of each State; and they will find in no quarter a more devoted advocate than myself. But when the interposition of this Government is invoked, and the high reward which an exuberant treasury offers, is held out, I say nay to the exercise of the power.

It was no use to tell him of the benefits of the system or that it was a harmless policy. "Show me the grant in the constitution in plain terms, not extorted to a forced interpretation, and not until then will I listen to you."

He recalled the Aesop fable of the cock and the fox. As Senator Tyler recalled the fable from his childhood, a fox in search of prey came upon the locked door of a hen roost. The fox decided to try to get in, resorting "to an expedient, sir, which so often proves successful in the affairs of the world, that of flattery and hypocrisy united." In a friendly tone, the fox said he'd heard the cock was indisposed. The cock replied that his health was perfectly good, especially since the fox was on the other side of the locked door.

The fox asked to see for himself, and was so concerned that he asked, humbly, only that the door be opened enough so he could get his nose in at the door:

The cock very wisely refused this permission, declaring to him at the same time, that, if he permitted him to get his nose in, his whole body would soon follow. Such were my feelings when this road-making power was first claimed for this Government. But, sir, it was vain that Virginia protested against it. Vain that she urged upon others the moral of the fable which I have just recited. The good and true State, North Carolina, reasoned as did Virginia; but all in vain. This harmless and beneficent power was yielded; and what has followed, let the whole South testify. She can bear witness throughout all her borders; measure after measure has followed; until powers as supreme and as universal are claimed for this Government, as if the parchment upon your table had never been executed. The internal policy of the States prescribed, the industry of the country regulated, and all the mere charities of life exercised as fully by this Government as by an imperial monarch. The States sinking every day with accelerated velocity into the condition of mere provinces; and a great national government to grow out of the ruins of the confederacy. Can the people of these States be reconciled to this? Or, will they continue supine until the whole fabric of the Government is changed?

The issue was larger than a 60-mile road in Kentucky:

Sir, does any one believe that we can exist under a consolidated national government? Look to the present condition of things, and the question is answered. I ask every member of this House, whether it could have been conceived, that, when this American system was entered upon, the results which are now constantly transpiring would have arisen. What scenes are exhibited on the legislative floor under the influence of the feelings of local interest? I do but glance at them, and will not dwell upon them. When were sectional lines ever before so strongly drawn?

Just look at a map, Senator Tyler said, and the impossibility that a central government can know or meet all its varied needs will be obvious:

Can a national legislature know the interests of these extremes, feel their wants, or advance their wishes? It is in vain to disguise it; a central government here, call it by what name you please, which shall attempt to legislate for local interests, is an open and manifest despotism. Ingenuity is tortured to bring this Government to this. The first fruits are bitter enough; combinations have arisen, and combination will follow combination, to the end of the chapter. The South now suffers, and anon it will be the turn of the North and of the West.

He cited the example of Europe where its countries preyed on each other:

And yet the States of this Union are not differently circumstanced. A national government, acting here through the instrumentality of law, in other words, in obedience to an under-league of interests, will operate as forcibly and as fatally. The gentleman has in these considerations the true foundation of our prejudices, if

so they are to be called. We oppose ourselves to every strained construction of the constitution, under the knowledge that the concession of one power, however slight, lends to the claim of another and another, until all will be gone.

He added that by custom dating to the first President Adams, Virginia, “which has stood by this Union, through good and through evil report, is sneered at and reviled.”

Nevertheless, it had stood by the Constitution. At the time of the Alien and Sedition Acts, the principle of force was relied on; now it was money that was relied upon. He said, “cupidity – avarice, are the infernal agents now invoked. These are the fatal sisters who weave the web of our destiny; and, if we do not destroy that web before we come to be more fully entangled, if we permit first an arm and then a leg to be tied up, there will be left to us no means of escape.”

He concluded:

My untiring efforts shall not be wanting in so holy a cause. But if we surrender ourselves into the hands of ingenious politicians, those aspirants for high office who seek evermore to enlist in their support the strongest passions of human nature, with a view to their individual aggrandizement, the ark of the covenant will be destroyed, and the temple rent in twain. Let us expel the money changers from that temple, and introduce the only true worship. In this way only, I am fully satisfied, can we preserve the Union of these States, and secure their unceasing happiness.

The Senate is indebted for these remarks to the gratuitous attack which has been made upon Virginia in this debate. They have been as unpremeditated as that attack was unexpected; but I could not forego the opportunity thus afforded me of expressing my feelings.

The next line in the record stated:

The bill, as it is known, passed the Senate.

### **The Veto**

Martin Van Buren discussed the Maysville Turnpike bill in his autobiography. Secretary Van Buren and President Jackson had discussed the “passion” for local projects receiving funds from the general government, “whilst the Constitution remained unaltered.” Of the

President, Van Buren wrote:

[He] preferred to meet the question on constitutional grounds. No Cabinet councils were called: not another member of the Cabinet was consulted before his decision had become irrevocable. It was understood between us that I should keep an eye upon the movements of Congress and bring to his notice the first Bill upon which I might think his interference would be preferable, and that when a case was presented, we would take up the question of Constitutional power and examine it deliberately and fully.

The bill authorizing a subscription to the stock of the Maysville, Washington, Paris and Lexington Turnpike-road Company appeared to me to present the looked for occasion. Its local character was incontestably established by the fact that the road commenced and ended in the same State.

(As mentioned earlier, the Secretary of State in those days was the equivalent of Secretary of State and Secretary of the Interior, so Secretary Van Buren's assignment to watch for legislation on an internal matter was not unusual.)

The fact that it was in the home State of Henry Clay, long despised by President Jackson for his part in awarding the 1824 presidential election to John Quincy Adams, was a plus. It was President Jackson's "preference, in accordance with a sound military axiom to make his enemy's territory the theatre of the war whenever that was practicable."

I brought the subject to the President's notice during one of our daily rides, immediately after the passage of the Bill by the House . . . . I had myself no hesitation in respect to the course that ought to be pursued and spoke of it accordingly.

President Jackson, after considering the issues, wrote to Secretary Van Buren on May 4, 1830:

I have been engaged to day as long as my head and eyes would permit, poring over the manuscript you handed me; as far as I have been able to decipher it I think it is one of the most lucid expositions of the Constitution and historical accounts of the departure by Congress from its true principles that I have ever met with.

It furnishes clear views upon the constitutional powers of Congress. The inability of Congress under the Constitution to apply the funds of the Government to private, not national purposes I never had a doubt of. The Kentucky road bill involves this very power and I think it right boldly to meet it at the threshold. With this object in view I wish to have an interview with you and consult upon this subject that the constitutional points may be arranged to bear upon it with clearness so that the people may fully understand it.

Secretary Van Buren replied later in the day:

This matter has for a few days past borne heavily on my mind, and brought it to the precise conclusion stated in your note. Under this impression I had actually commenced throwing my ideas on paper to be submitted to you when I should get through to see whether it is not possible to defeat the aim of our adversaries in either respect, viz.; whether it be to draw you into the approval of a Bill most emphatically *local*, and thus endeavor to saddle you with the latitudinarian notions upon which the late administration acted, or to compel you to take a stand against internal improvements generally, and thus draw to their aid all those who are interested in the ten thousand schemes which events and the course of the Government for a few past years have engendered. I think I see land, and that it will be in our power to serve the Country and at the same time counteract the

machinations of those who mingle their selfish and ambitious views in the matter. We shall have time enough; the Bill had not yet passed the Senate and you have, you know, ten days after that.

Secretary Van Buren asked Secretary of the Treasury Samuel D. Ingham for a report on the state of the treasury, a point that would become part of the planned veto message.

President Jackson was pleased by the news, as explained in a letter to Van Buren on May 15:

The appropriations now exceed the available funds in the Treasury, and the estimates always exceed the real amount available . . . .

The people expected reform retrenchment and economy in the administration of this Government. This was the cry from Maine to Louisiana, and instead of these the great object of Congress, *it would seem*, is to make mine one of the most extravagant administrations since the commencement of the Government. This must not be; The Federal Constitution must be obeyed, State-rights preserved, our national *debt must be paid, direct taxes and loans avoided*, and the Federal union preserved. These are the objects I have in view, and regardless of all consequences, will carry into effect.

Secretary Van Buren, in his autobiography, wrote that few people expected President Jackson to veto the bill, citing other internal improvement bills he had signed and the public opinion in favor of such acts. "If they had thought otherwise they would not have presented him a Bill so purely local in its character."

Van Buren feared that if Jackson's supporters knew his intentions, they might "substitute a Bill for a work more national in its pretensions," thus depriving the President of the opportunity to make his views clear. Because President Jackson was normally forthright about his views, keeping his concerns about the Maysville Turnpike bill to himself "would be the most difficult for him."

Nevertheless, rumors suggested that President Jackson might veto the bill. At the request of western members of Congress, Representative Richard M. Johnson of Kentucky, the former Senator, sounded out the President on the possibility of a veto. After expressing a desire not to offend, Representative Johnson explained the reason for his visit:

He then spoke of the rumors in circulation, of the feelings of the General's Western friends in regard to the subject of them, of his apprehensions of the uses that Mr. Clay would make of a *veto*, and encouraged by the General's apparent interest, and warmed by his own, he extended his open hand and exclaimed "General! If this hand were an anvil on which the sledge hammer of the smith was descending and a fly were to light upon it in time to receive the blow he would not crush it more effectually than you will crush your friends in Kentucky if you veto that bill!"

Gen. Jackson, evidently excited by the bold figure and energetic manner of Col. Johnson, rose from his seat and advanced towards the latter, who also quitted his chair, and the following questions and answers succeeded very rapidly:

“Sir, have you looked at the condition of the Treasury – at the amount of money that it contains – at the appropriations already made by Congress – at the amount of other unavoidable claims upon it.”

“No! General, I have not! But there has already been money enough to satisfy appropriations and I do not doubt there will be now!”

“Well, I have, and this is the result,” (repeating the substance of the Treasury exhibit,) “and you see there is no money to be expended as my friends desire. Now, I stand committed before the Country to pay off the National Debt, at the earliest practicable moment; this pledge I am determined to redeem, and I cannot do this if I consent to encrease [sic] it without necessity. Are you willing – are my friends willing to lay taxes to pay for internal improvements? – for be assured I will not borrow a cent except in case of absolute necessity!”

“No!” replied the Colonel, “that would be worse than a *veto*!”

In the face of President Jackson’s determination, Representative Johnson picked up the green bag he usually carried and made to leave. Secretary Van Buren caught up with him to say that “the President’s earnestness was occasioned by his own strong speech and how natural it was for a man to become excited when he has two sets of friends, in whom he has equal confidence, urging him in different directions, he would be less confident in his conclusion.” Reminding Representative Johnson that the President had been inspired “by the Colonel’s sledge-hammer,” Secretary Van Buren assured the congressman that the President “would not make up his mind without looking at every side of it.”

In view of this assurance, Representative Johnson left “not so desperate as he had at first imagined”:

When he returned to the House he replied to the eager enquiries of his Western friends that the General had thanked him and assured him that he would thoroughly examine the subject, but his private opinion decidedly was that nothing less than a voice from Heaven would prevent the old man from vetoing the Bill, and he doubted whether that would!

The Maysville Turnpike bill proved the ideal vehicle for expressing the President’s views. On May 27, he returned the bill to Congress unsigned.

In a message written mainly by Van Buren, President Jackson professed to be “friendly to the improvement of our country by means of roads and canals.” He regretted having to veto the bill, but pointed out that he had made his views clear in his December message:

I was desirous of presenting to the representatives of the several States in Congress assembled the inquiry whether some mode could not be devised which would reconcile the diversity of opinion concerning the powers of this Government over the subject of internal improvement, and the manner in which these powers, if conferred by the Constitution, ought to be exercised.

Considering the battles over past appropriations for internal improvements and their likely continuation, “it is hoped that it may lead to the adoption of some plan which will

reconcile the diversified interests of the States and strengthen the bonds which unite them.” Since every State would be “benefited by the improvement of inland navigation and the construction of highways,” he urged an effort to find “a mode which will be satisfactory to all.” The “most safe, just, and federal disposition” of the pending surplus “would be its apportionment among the several States according to their ratio of representation.” If such a plan were not permitted by the Constitution, “it would be expedient to propose to the States an amendment authorizing it.”

President Jackson recalled the history of past appropriations as well as vetoes of internal improvement measures. After recalling President Monroe’s veto of the Cumberland Road toll-gates bill, President Jackson referred to his immediate predecessor:

The views of the last Administration are of such recent date as to render a particular reference to them unnecessary. It is well known that the appropriating power, to the utmost extent which had been claimed for it, in relation to internal improvements was fully recognized and exercised by it.

In view of all these difficulties and different results, “it is the duty of all to look to that sacred instrument [the Constitution] instead of the statute book, to repudiate at all times encroachments upon its spirit.”

He considered the Maysville stock bill under the long-claimed authority that “such grants have always been professedly under the control of the general principle that the works which might be thus aided should be ‘of a general, not local, national, not State,’ character.” Disregarding this general concept “would by necessity lead to the subversion of the federal system.”

He had carefully examined the bill:

I am not able to view it in any other light than as a measure of purely local character; or, if it can be considered national, that no further distinction between the appropriate duties of the General and State Governments need be attempted, for there can be no local interest that may not with equal propriety be denominated national. It has no connection with any established system of improvements; is exclusively within the limits of a State, starting at a point on the Ohio River and running out 60 miles to an interior town, and even as far as the State is interested conferring partial instead of general advantages.

As this example illustrated, distinguishing between local and national interests “is often extremely difficult of solution.” Presidents and Congress had come up with varying and conflicting views on this subject over the years, as illustrated by the history of the Cumberland Road. Whatever doubts may have existed about the road, he wrote:

No less than twenty-three different laws have been passed, through all the forms of the Constitution, appropriating upward of \$2,500,000 out of the National Treasury in support of that improvement, with the approbation of every President of the United States, including my predecessor, since its commencement.

Now, with the national debt to be eliminated, the time was right to determine whether an accumulating surplus “may be beneficially applied to some well-digested system of improvement”:

Under this view the question as to the manner in which the Federal Government can or ought to embark in the construction of roads and canals, and the extent to which it may impose burthens on the people for these purposes, may be presented on its own merits, free of all disguise and of every embarrassment, except such as may arise from the Constitution itself.

In the other view of the subject, and the only remaining one which it is my intention to present at this time, is involved the expediency of embarking in a system of internal improvement without a previous amendment of the Constitution explaining and defining the precise powers of the Federal Government over it . . .

He did not want to waste time professing his “zeal in the cause of internal improvements” because, he said, “I do not suppose there is an intelligent citizen who does not wish to see them flourish.” Under that circumstance, “it is not only highly expedient, but indispensably necessary, that a previous amendment of the Constitution, delegating the necessary power and defining and restricting its exercise with reference to the sovereignty of the States, should be made.”

He recognized the “difficulty and supposed impracticability” of securing such an amendment, but he considered this concern to be “a great deal unfounded.” He did not know of a time when “the patriotism and intelligence of the American people were not fully equal to the greatest exigency” when “the subject calling forth their interposition is plainly presented to them.” He added:

To do so with the questions involved in this bill, and to urge them to an early, zealous, and full consideration of their deep importance, is, in my estimation, among the highest of our duties.

Specht explored the drafting of the veto message. He found that following Senate passage, President Jackson prepared notes on the basis for the veto:

In these notes, the President stressed the limited nature of the Constitution and the need for a constitutional amendment. His major concern was with “the speedy payment of the public debt.” As he had stated in his first annual message, if a surplus remained in the Treasury following payment of the debt, it could be distributed among the states for internal improvement projects. He also did not think that Congress has the power “to appropriate money to objects where the constitution had not given jurisdiction over the subject, or where the object was not clearly national.” Even more important, Jackson asserted there were “no powers granted by the constitution, to authorize [sic] the United States, to become a member of a corporation created by the states . . . . It must lead to consolidation and the destruction of state rights.”

As Specht observed, Senator Jackson had voted for a stock subscription to the Chesapeake and Delaware Canal, an action contrary to the views of President Jackson.

Although the final veto message contained the ideas in the President's notes, the message "bore only slight semblance to Jackson's notes":

The message obviously was a skillfully-written political document, but as the *National Intelligencer* noted [in the issue of June 24, 1830], it was "not the language of the President." It is possible that Donelson, Secretary of War John Eaton, and [Representative] Polk had all contributed to its composition. Donelson and Eaton corrected portions of Jackson's notes. Polk submitted two separate drafts, each stressing the constitutional limitations and need to pay the national debt.

Van Buren probably revised and wrote the bulk of the message. The Secretary of State shifted the emphasis away from Jackson's opposition to federal involvement in a private corporation. Instead he chose to stress the local versus national nature of the project. Van Buren believed that Jackson's earlier senatorial support of stock subscriptions made a stand against such involvement inconsistent and therefore inappropriate. Even if the President had changed his mind, the Secretary of State believed it best to present Jackson's position as consistent and avoid the issue.

Van Buren's revision of this point and Jackson's acquiescence to the change obscured an extremely important part of the President's objections to the bill and left his decision open to even further debate and criticism. As Polk said in the earlier House debate on the bill: "It is idle any longer to talk about nationality as applicable to this system. Anything is national that gentlemen think proper to deem expedient," and anything could be expediently termed "local" as well. If Jackson now opposed federal stock subscriptions to private corporations, his opposition made the local or national nature of the project superfluous.

Specht found "a copy of the message in Donelson's hand with Jackson's corrections, another draft in Donelson's hand with corrections by Eaton and Jackson which was not used, and two drafts in Polk's hand that were not used . . . ."

Secretary Van Buren, in his autobiography, wrote that before sending the veto message to Congress, the "impression among the General's Western friends, that he would destroy his popularity by a veto, was universal and prevailed also extensively among those from the North":

Being with him to a very late hour the night before the Message was sent up, he asked me to take an early breakfast with him, as Congress was on the point of breaking up, and would therefore meet at an early hour.

In the morning I found our friends, [Felix] Grundy, [William T.] Barry, Eaton, and [William B.] Lewis at the table, wearing countenances to the last degree desponding, occasioned, as I well knew, by their convictions of the injurious effects that must result from the step about to be taken. On going up stairs to his

office, he leaned on my arm on account of his extreme physical weakness, I observed that our friends were frightened. “Yes,” he replied, - “but don’t mind that! The thing is here” (placing his hand on the breast-pocket of his coat) and shall be sent up as soon as Congress convenes.”

It was sent up that morning and a scene ensued that baffled all our calculations. If there was any sentiment among our opponents which we knew to be universal, before the reading of the *veto*-Message, it was that it would prove the political death warrant of the Administration and we were prepared to hear denunciations against the violence and destructive effects of the measure and the reckless insult offered to the House by the President in sending it. But no such clamor arose, and the first and principal objection that was made against the Message, when the reading was finished, and which was persevered in to the end, was that it was “an *electioneering document*” sent to Congress for political effect! – and that the “hand of the *magician*” was visible in every line of it.”

### **The Veto Fight**

The veto was read by the clerk in the House of Representatives on May 27, 1830, “and heard with great attention,” according to the *Register*:

When the reading was concluded, there arose a hurried and anxious debate, involving no principle of the bill, but merely the question whether the bill should be reconsidered *instanter*, or whether the reconsideration should be postponed until to-morrow. During the whole of this proceeding, there was a constant tendency to debate the main question, and an effort on the part of the Chair to confine the debate to the question of postponement.

By common consent, the House agreed to postpone debate until May 28, by which time each member would have a copy of the veto message.

On May 28, the House debated the question: “Will the House pass the bill, the objections of the President notwithstanding.”

Representative Henry Daniel of Kentucky had voted for the Maysville Turnpike bill, but he thought the people should have time to consider the message from a co-equal branch of the government on this issue:

It is the first time in the history of the world, that the Executive of a nation has interposed his authority to stop extravagant and ruinous appropriations. He was elected on the principle of economy and reform, and if the representatives of the people refuse him a proper support, (as it must be admitted they have,) it is impossible that the object for which he was elected can be obtained . . . .

Mr. D. said he was in favor of internal improvement, but the system, as it has heretofore been carried on and pursued, was better calculated to destroy than to promote it . . . . It was clear, from the message, that if the system was pursued, as it had been attempted at the present session, this nation would soon be involved in a large and immense national debt. The members of Congress would understand

each other – if not corruptly, the effect would be the same; they would vote for each other’s projects without regard to the public good. A host of federal officers would be created to superintend the collection of tolls, and the repairing and amending those improvements. The tax on the people would be increased, until their leaders would be as great as they are in any despotic Government on earth. Besides, it would end in corruption beyond control.

Rejection of the bill would deprive his own State of Kentucky of the investment, but ultimately, “I hope, they will be benefited; their liberty will not be placed on such a doubtful issue.” He would vote to sustain the veto “and permit the people to act on it.”

Kentucky Representative Chilton addressed the subject, but his comments were not reported in the *Register*.

Representative William Stanbery of Ohio said that in the message, he heard “the voice of the President’s ministry rather than of the President himself; or, to speak more correctly, the voice of his chief minister,” meaning Secretary Van Buren:

The hand of the “great magician” was visible in every line of the message. There was nothing candid, nothing open, nothing honest, in it.

He took exception to the calculation of the cost of all the bills reported but not passed as evidence of increased debt. “These are relied upon in the argument as if they had passed, and become laws; when it is well known to all of us, the most of these bills are only evidence of the opinions of the committees by whom they were reported; and there is not even a probability that they will ever become laws.” After listing some of the less likely bills, he said:

On the whole, I consider this document artfully contrived to bring the whole system of internal improvement into disrepute, and as calculated to deceive the people. Such a document can never have issued from the President. It is not characterized by the frankness which marks his character. It has every appearance of a low, electioneering document, not worthy of the eminent source to which it is attributed.

Many Representatives had voted for the bill, “contrary to their consciences,” because they thought it was acceptable to the President. “They were literally dragooned into its support.” Representative Stanbery, by contrast, had many reasons for opposing it, not the least of which “was a belief that its passage would strike a death-blow to the whole system of internal improvement”:

It received the support of all enemies of internal improvements, as their only means of destroying the system; and it is accordingly relied upon in this message, and I will admit that it is the only good reason assigned in it against any further appropriations for the improvement of this country. And yet we, who are friends of this administration, but still greater friends to the honor and prosperity of the country, have been threatened with denunciations by certain members of the House . . . . Sir, let them commence their denunciation – I fear no bravo, unless

he carries the assassins' knife. Against every other species of attack I am prepared to defend myself.

Representative Polk, who had spoken at length in opposition to the Buffalo to New Orleans National Road, understood that the friends of the Maysville Road bill were ready to vote on overriding the veto without further debate, but the debate had been brought on. He began with a lengthy criticism of Representative Stanbery. "The violent, vindictive, and unprecedented character of the remarks which had just fallen from the member from Ohio had opened the whole discussion." Representative Polk objected to Representative Stanbery's characterization of the veto message as "a low, undignified, electioneering paper; that it had nothing honest in it; that it had nothing candid or open in it; that the hand of the magician was to be seen in every line of it":

Mr. P. said he took the liberty to say to the member from Ohio, that this violent torrent of abuse, poured upon the head of the Chief Magistrate, was gratuitous, and wholly unjustifiable, not sustained in a single particular by the truth, and wholly unfounded in fact.

The member himself did not, and could not believe one word of what he had just uttered, in the face of the House and of the nation. No man in the nation, of any party, who knows the character of the President, believed what the gentleman had charged upon him.

Representative Polk said of Representative Stanbery that, "If he was correctly informed, he came into this House upon the popularity of the venerable man whom he now so wantonly assailed." Representative Stanbery had been elected initially to Congress as a Jacksonian to take the seat after the death of Representative William Wilson. After taking his seat on October 9, 1827, Stanbery transitioned to an anti-Jacksonian:

He had been elected to his seat here by the friends of the President . . . . He came here professing to give to his administration a fair and an honest support – professing to be enumerated among his political friends. Had he sustained one single measure which the President recommended? Not one – and it was matter of no regret that the member had at length thrown off the mask. He cannot claim this occasion, or this bill, as a pretext for his desertion from his former professed political attachments.

All that provoked Representative Stanbery on this occasion was that President Jackson had exercised an important provision of the Constitution, namely the right of veto. In addition, the President had submitted "a very temperate" message that outlined the reasons for his decision:

We were now called upon to discharge a high constitutional duty on our part. Had the member discussed, or even pretended to discuss, a single principle contained in the message, or in the bill? No! He had chosen to make a most wanton attack upon the President.

This opposition could not be explained by supposing that Representative Stanbery supported the system of internal improvements. "Does he now know, will he deny it, that

he has heretofore professed to be opposed to this whole system.” He had supported the tariff bill, but “did he not then openly say to many gentlemen, (not in confidence, for, if it had been so, he [Polk] would be the last man to betray that confidence,) that he was opposed to the whole [Clay] American system; that it was nothing but a political hobby”:

He best knows whether he was ever, in truth and in fact, the sincere friend of the President, or whether he found it convenient to profess to be his friend, in order to obtain his election to this House.

Representative Polk was clear on one thing:

The message of the President, he undertook to state, was emphatically his own, and the views presented for the rejection of this bill, were the result of honest convictions of his own deliberate reflection.

The claim that it was an electioneering scheme or “a popularity hunting scheme” was ridiculous. “The common sense of the national will put to shame the charge.” If President Jackson had been thinking about the 1836 election, he would have signed the bill:

Such considerations have no place in minds of the elevated cast of that of the Chief Magistrate. Such considerations are only suited to the bent of such groveling minds as are themselves capable of making the charge . . . . Had he signed this bill, the road on which he would have travelled, would have been a broad pavement, and his continued elevation certain, beyond the possibility of doubt. As it was, he had planted himself upon the ramparts of the constitution, and had taken the high responsibility upon himself to check the downward march in which the system, of which this bill is a part, was fast hastening us. It required just such a man, in such times, to restore the constitution to its original reading . . . .

He had achieved a civil victory, which will shed more lustre upon his future fame, and be infinitely more durable, than many such victories as that of the battle of Orleans, for, by this single act, he verily believed he had done more than any man in this country, for the last thirty years, to preserve the constitution and to perpetuate the liberties we enjoy.

The constitution was, he hoped, to be again considered and practiced upon, as it, in fact, was one of limited powers, and the States permitted to enjoy all the powers which they originally intended to reserve to themselves in that compact of Union. The pernicious consequences, the evil tendencies, to say nothing of the corrupting influence of the exercise of a power over internal improvements by the Federal Government, were not fully developed until within a very few years last past.

He mentioned President Madison’s veto of the Bonus Bill and President Monroe’s “rejection of a bill assuming jurisdiction and fixing tolls on the Cumberland road”:

The subject of the power was discussed at great length, and with great ability in the next Congress. The House of Representatives, by a small majority, at that

time affirmed the power to appropriate money for objects of national improvement, but denied, and by the vote of the House negatived, the power to construct roads or canals of any character, whether military, commercial, or for the transportation of the mail. It was not until the last Administration, that the broad power to the extent now claimed, limited only by the arbitrary discretion of Congress, was asserted and attempted to be maintained by the Executive and by Congress. It was not until that period that its dangers were fully perceived.

The President had manifested, in the message before us, that he had been an attentive observer of its progress, and its probable, if not its inevitable consequences. He could not shut his eyes to the constant collisions, the heart-burnings, the combinations, and the certain corruption to which its continual exercise would tend, both in and out of Congress.

He urged his colleagues to exercise their constitutional authority to consider the veto by expressing “the opinions which we entertain, and not make a false issue, growing out of a personal assault upon the character or motives of the Chief Magistrate.”

He turned to comments by Representative Chilton, whose remarks had not been reported in the *Register*. Representative Polk summarized those comments:

We were asked if Congress were to be controlled by one man; and, for one, the gentleman informed us he would not submit to it. The gentleman should learn, if he does not know, that the constitution had conferred upon the President the power which he had, in this instance, exercised; and if the gentleman thinks he should not exercise it, he should seek an amendment to the constitution.

By denying the power to construct roads and canals; by refusing to assume the exercise of any doubtful power; and by deeming it safest to refer the question to our common constitution, the President had deprived himself of a powerful branch of executive patronage and influence, and has thereby given the most conclusive evidence of his integrity of purpose, and the strongest refutation of the affected and stale cant of his enemies, that, because he was once a leader of the armies of his country, he would be disposed in the civil Government to assume more powers than legitimately belonged to him.

As in this case, the power of the veto often had been exercised on constitutional grounds, but “instances were to be found where the power had been exercised wholly upon the grounds of the inexpediency of the measure.” A single instance, he said, made the point:

On the 28th of February, 1797, General Washington returned, with his objections, to the House in which it originated, a bill which had passed Congress, and which had been presented to him for his signature, entitled “An act to ascertain and fix the military establishment of the United States.” He withheld his signature from this bill, not because of the unconstitutionality of its provisions, but because, in his opinion, it was inexpedient to pass it.

(The 1797 veto was President Washington’s second and last veto. The first veto in the country’s history occurred on April 5, 1792, when he vetoed a bill that changed the

method of dividing seats in the House of Representatives that would have increased northern representation. The bill, President Washington wrote, violated the constitutional provision on the size of the House. Congress, instead of trying to override the veto, passed a new bill that President Washington concluded was consistent with the Constitution.)

Whether later vetoes were based on the Constitution or inexpediency, the “exercise of this constitutional power by the Executive, has never been received with alarm, but, on the contrary, had been regarded as it was intended to be, as a necessary and wholesome check upon the acts of the Legislature. Let the remark of the gentleman pass. It demands no more especial notice.”

Representative Polk did not want to repeat the arguments he had stated before passage of the bill in the House. He hoped, though, that his colleagues would consider whether voting on overriding the veto “upon this precise measure, in the first year of a new administration, might resuscitate the almost forgotten principles of the constitution, and put an end to a system which cannot end in good, and must lead to the most ruinous consequences”:

He was prepared to sustain him to the utmost of his poor ability; and he confidently believed that he would receive the hearty thanks of a generous country for his course, and not be requited by the unjustifiable Billingsgate abuse which we had this day heard poured upon him. He would detain the House no longer.

Representative Barbour spoke at length “in vindication and justification of the Chief Magistrate of the Union, against the strong animadversion in which gentlemen had indulged towards him because he had dared to do his duty.” After praising President Jackson extensively, Representative Barbour asked:

And has it come to this, that it is cause of complaint that the Chief Executive Magistrate, constituting, as he does, a co-ordinate branch of the Legislature, has ventured to perform his constitutional function, in dissenting from a law, which, in his judgment, would be ruinous in its consequences? Was it in the contemplation of those who framed the constitution, that the President should be set up as a mere pageant, with powers possessed in theory, but never to be reduced to practice? Or was it intended that this veto upon legislation, like every other power, should be exercised, whensoever the occasion should occur to make it necessary? Do not gentlemen perceive that they might, with as much reason, complain that the Senate had negatived one of our bills; for they, too, are only a co-ordinate branch of the Legislature, as is the Executive Magistrate . . . .

I congratulate my country that, in this instance, the Chief Magistrate has displayed as much of moral, as he heretofore did of physical courage – as much decision and energy in the cabinet, as he heretofore did in the field – by which he will, in some degree, at least, arrest the progress of a system which, in its unrestrained career, threatens to produce more mischief than any man, either in or out of Congress can pretend even to estimate.

I heard with surprise, nay, with astonishment, the bitter, the acrimonious, and, I must add, the unjustifiable invective, which the member from Ohio poured forth in a torrent against the Chief Magistrate upon this occasion.

The main purpose of the gentleman seemed to be to inculcate the opinion that the rejection of the bill in question was with a view to acquiring popularity! What, sir, an attempt at popularity! Look, for a moment, at the circumstances of the case, and then tell me whether this opinion can be sustained.

The bill was not only carried by a majority, as it must have been, but by a decisive majority of both Houses of Congress. Can any man suppose that a President, who set out upon an adventure in quest of popularity, would make his first experiment against a question which, by passing both Houses of Congress, seemed to carry with it the approbation of the States, and the people of the States? On the contrary, if he were going for himself, rather than for his country, would he not, by approving the bill, have just floated down the current of apparent public opinion, without encountering the least impediment in his course? . . . Sir, it is any thing but seeking after popularity, in the noxious sense in which that expression has been applied to him.

He thought the people of the country would appreciate President Jackson's action in now disinterestedly seeking constitutional rightness rather than approval. Indeed, he would find popularity – “not of that mushroom kind which is acquired without merit, and lost without fault, but that more noble kind which is always bestowed by all good men as the just reward of virtuous actions, and is always withholden from those who, without deserving it, endeavor to acquire it.”

One lesson that had “grown out of our republican system, is this, that the blessings of freedom cannot be enjoyed without a frequent recurrence to fundamental principles”:

It would seem, sir, that the period of about thirty years constitutes a political cycle. Thirty years ago, at the opening of the present century, our Government was drawn back to its original principles; the vessel of State, like one at sea, had gotten upon a wrong tack, and the new pilot who was then placed at the helm brought it again into the right course, for the purpose of reaching its destination.

He was referring to the election of Thomas Jefferson in 1800 as the country's third President. Representative Barbour continued:

In the progress of a long voyage, it has again declined from its proper course; and I congratulate the whole crew that we have found another pilot with enough of skill in navigation and firmness again to correct the declination.

Representative Barbour agreed with President Jackson that the Congress had the power to appropriate funds for purposes that were national in character, unless corrected by an amendment to the Constitution. He had doubts about the amendment option:

Is it not the part of wisdom, as well as patriotism, to submit this question to the States in the form of amendment, rather than press on against the known will of a large portion of them? The States feel a deep sense of loyalty to the Union; but

they feel, too, that they have rights to demand, as well as duties to perform. Let us not place them in a situation where they may be driven to a course that would be called patriotism by some, and rebellion by others; but which, by whatsoever name it might be called, would endanger the success of our great experiment, the benefits of which concern the whole human family. The course suggested by the Chief Magistrate is calculated to avert these dangers. When members on this floor maintain any principles, they have no weight but that which belongs to them as individuals; but when a suggestion comes from the Executive, and especially accompanying his rejection of a bill, it brings with it all the authority to which the opinion of a branch of the Government is entitled. An issue is thus made up between him and Congress, which will cause the people to deliberate; and thus we may hope that it will be calmly decided by them, so as to put the subject forever to rest.

In closing, Representative Barbour said that if he ever were President, "I would rather go down to posterity upon the historic page as one who, like the present Chief Magistrate, had, with the moral courage, the ardent patriotism, and lofty disinterestedness of the ultimus Romanorum [last of the Romans], thrown himself into the breach and breasted the storm in doing his duty, than, by a different course, continue to be President through a long and protracted life."

Representative Vance of Ohio explained that his view of President Jackson would not be affected by the veto, "either for or against that individual." The Congressman had always advocated a system of internal improvements:

He stated that, by that system, the west must stand or fall. Unless it be sustained, the west can never have any participation in the appropriations of the General Government. As soon as the wealth derived from emigration shall be exhausted, the West must be drained of every dollar, unless this system be continued. It is only by its continuance that the posterity of those who live in the West can be prevented from becoming hewers of wood and drawers of water to the eastern States.

Unlike many observers who thought of President Jackson as a supporter of internal improvements, Representative Vance had predicted the course the Administration was taking:

It was clear that he had so far succeeded in concealing his real feelings on the subject, as to deceive those gentlemen. They had, however, gone hand in hand with the gentleman from Tennessee, and had gained the victory. They had attained the triumph, and now they were receiving their reward. When this message came into the House, it struck a damp to the feelings of those individuals, who then felt the final destruction of all their fond hopes.

Kentucky Representative Bell, a strong Jacksonian, took exception to Representative Stanbery's comments, "not more because of the unprecedented manner of the attack upon the message which had been the subject of remark, than of the nature of the allusion which had been made to a bill not now before the House." At the time of the remarks,

Representative Bell had been so angry that he tried to get the floor, but the Speaker had looked away:

Although the first moment of excitement is passed, and I have not now those strong feelings with which the extraordinary conduct of the member from Ohio at first inspired me, yet I appeal to the House – to every member of it, whatever may be their political partialities, to say whether that member, in availing himself of the parliamentary privilege of considering the message as emanating from the “ministry,” not from the President, and in speaking of it freely under that pretext, had not assumed the manner of a blackguard.

[Here Mr. B. was reminded by the Chair that it was not in order to indulge in personal remarks.]

He questioned whether Representative Vance had deserted President Jackson because of the veto. “Before the message was heard of, the member from Ohio had shown such symptoms of disaffection, as left the friends of the administration no room to doubt his final intentions; and he has only availed himself of this evasion to unmask himself.”

He referred to the debate over a bill to remove Indians to west of the Mississippi River, a measure that some friends of the Administration had opposed:

I know there are many such who voted against the Indian bill – there are doubtless many such who will oppose the doctrines of the message of yesterday; but, sir, there are others who will not fail, as they have not failed, to make those measures a pretext for open opposition, when, in fact, they had been long since secretly false and recreant to their profession. None, however, who observed the movements of individual members during the progress of a recent measure, would fail to see that the line was distinctly drawn between the false and the real friends of the administration, who united to oppose that measure.

[Here Mr. DODDRIDGE called Mr. B. to order.]

(Representative Philip Doddridge was an Anti-Jacksonian from Virginia.)

Returning to Representative Vance’s remarks about potential diminished expenditures for the West, Representative Bell said he was a friend of the West, “to which I belong by birth; and I promise that gentleman to go along with him, side by side, in asserting its claim to be regarded in the distribution of the favors of this Government – its claim to a fair portion of whatever funds shall be appropriated to internal improvement; but I differ with him as to the mode of applying them”:

I contend that the half a million which it would require to extend the Zanesville road through Kentucky, and to make it permanent, applied, under the direction of the Legislature of that State, to various roads of smaller extent, leading from her interior secluded and fertile districts to the great outlets which nature has already provided for carrying off the productions of the whole West, would secure a greater actual amelioration of the condition and prospects of the people of that State, than two millions expended upon any free great road, extending quite

through the State, and belonging to any great system of national improvement, executed under the wasteful superintendence of the General Government.

I affirm that the same increased proportion of actual advantage and amelioration would attend the application of a small amount to similar objects in Ohio, or in any other western States, under the direction of the local authorities, over a larger sum administered by the General Government. Sir, I had intended, when I rose, to pursue this part of the subject much further, but neither my feelings nor the temper of the House will, at this time, permit the subject to be discussed in an argumentative storm.

Representative Jacob C. Isacks of Tennessee said he was devoted to President Jackson, and had been long before the 1828 election:

But on the present question he differed from the President – and what of that? We have [said Mr. I.] differed before.

He pointed out that during the Congress when he was a Representative and Jackson a Senator, “we often differed; but there was then a class of subjects we did not differ upon”:

We voted together (I speak from memory, not records) on the survey bill, on the bill to subscribe stock to the Chesapeake and Delaware canal, on the bill for the construction of the road from Canton to Zanesville, in Ohio, and on the bill appropriating fifty thousand dollars to remove obstructions in the Mississippi river. I do not say, and must not be understood to mean, that by those votes either he or I stand committed for this bill; but, for myself, I will say that, under the influence of opinions formed during the period in which those bills were discussed, and which opinions have never since been changed or shaken, I did, upon mature reflection, vote for this bill when it was here before; my opinion, notwithstanding the arguments by which the President’s objections are so powerfully urged, remain the same; and if I live, I will vote for it again. And do I expect by that to offend the President? Not so. If I were to do it, it would but prove that I am what I am, and he is not Andrew Jackson!

President Jackson was not the sort of person who was capable of “resentment for honest consistency in others.” If he were that type of person, Representative Bell would tell him, “to you, Mr. President, I owe no responsibilities; to none but God and my constituents do I acknowledge responsibility, and these I will discharge as I may.” He joined Representative Bell “in that appeal to the people, and, so far as I can, will cheerfully stake the fate of internal improvement, yes, and my own fate, politically upon that issue.”

Representative William Kennon, Sr., a Jacksonian from Ohio, pointed out that no matter how long they debated the veto, it “would not change a single vote.” Therefore, he moved to vote on the question. The House voted 105 to 76 to proceed to the question of the veto. The House then voted on whether President Jackson’s veto would be overridden. The tally was 96 to 90. The record summarized, “So the bill, not being supported by two-thirds of the House, was rejected.”

In view of the House action, Senate action was not needed. The Maysville Road bill was dead.

### **The Effect of the Veto**

Those who had thought the veto would lessen President Jackson's popularity were proven wrong. As Secretary Van Buren stated in his autobiography, "It was indeed received with unbounded satisfaction by the great body of the disinterested and genuine friends of the Administration throughout the Country." He cited a toast in Norfolk at a public dinner: "The rejection of the Maysville Road Bill it falls upon the ears like the music of other days."

Van Buren cited another example. Representative Robert Ramsay of Pennsylvania, "an excitable but honest man and true patriot," was "irritated almost beyond endurance by the *veto*." After the close of the congressional session, Representative Ramsay "followed us from the Capitol to the White House . . . and, presuming on the strength of his friendship for the General, fairly unbraided him for his course":

The latter bore his reproaches, for such they really were altho' intended only as a remonstrance which he thought allowable in a devoted friend, with a degree of mildness that excited my admiration, begging the dissatisfied representative to say no more upon the subject until he had seen his constituents and venturing to prophesy that he would find them pleased with the veto. The worthy Pennsylvanian received the intimation as an additional injury and parted from us in exceedingly bad humor.

A short time afterwards, as I was one day approaching the President he held up to me in an exultant manner, a paper which proved to be a letter from our good friend Ramsay in which he announced the confirmation of the General's prediction and acknowledged that, in that case at least, the latter had known his constituents better than he himself had known them.

As Specht reported, President Jackson and Secretary Van Buren were relieved by the reception. On June 25, 1830, Van Buren wrote to Jackson that the veto was working "its way nobly. Your friends exalt and your enemies cower." In a June 26 reply, Jackson agreed:

The veto works well, we have nothing to fear from it. It will lead to stability in our government, and a system of internal improvement that will be . . . beneficial to our country, keeping the agency and powers of the Federal Govt. within its proper sphere, and the States to manage their own concerns in their own way.

On July 12, President Jackson again wrote to Secretary Van Buren that "the veto, has become what my enemies [sic] neither wished, or expected, very popular . . ."

Specht also pointed out that constitutional theorizing could not "quiet the vocal opposition. Much of the misunderstanding that developed centered mainly around Jackson's motivation." As was observed at the time, President Jackson had approved internal improvement bills before the veto, with the stock subscription being the main

difference in the case of the Maysville Turnpike. Moreover, the message seemed to indicate he was concerned about retiring the budget deficit before turning the surplus over to the States, but he would approve other internal improvement bills after the veto. Thus, as Specht wrote, “Jackson only contributed to the confusion.”

Even modern historians find the scenario confusing. Historians writing about Henry Clay – who was not in Congress during the debates on the Maysville Bill and would return in 1831 as a Senator – have questioned the purity of the reasoning behind the veto. The Heidlers, in their biography of Clay, stated:

Jackson, in fact, usually treated internal improvements as political plums and consequently signed more bills to fund them than any one of his predecessors. Yet in May 1830, he suddenly announced a constitutional objection to the Maysville Road and vetoed the bill funding it. The Maysville Road was really an extension of the National Road through Kentucky to the Natchez Trace, a project that would have facilitated travel between the Ohio and Tennessee rivers. Despite the obviously national aspect of the Maysville Road, its length fell entirely in Kentucky, and Jackson described it as a purely local venture that benefited only one state at the expense of the others.

Some laud Jackson’s Maysville Road veto as a courageous state paper, but it was actually an expedient political gesture. Posing as the nation’s protector, Jackson walloped Henry Clay by injuring Kentucky. Secretary of State Martin Van Buren used it to soothe southern states’ rights men anxious about growing federal power that could threaten slavery while satisfying flinty northerners who had financed many of their own internal improvements and objected to paying for those in other states. Jackson ran a relatively low risk of permanently alienating westerners with the veto, and he gained allies elsewhere. He was able, for instance, to erode southern support for South Carolina Nullifiers.

On that point, Van Buren wrote:

Col. Hayne, of South Carolina, at the great Charleston dinner given to inaugurate nullification, and thro’ its means to put that Administration to the severest trial that any had ever been exposed to in our Country, spoke of the *veto* as “the most auspicious event which had taken place in the history of the Country for years past.”

Professor Maurice G. Baxter, in his book about Henry Clay, explained how the veto infuriated Clay, who had used the former road, known as the Old Limestone Road, on his travels between Kentucky and Washington:

When Clay traveled from Lexington to the East, he began his trip on a primitive road with wicked twists and turns and forbidding hills to Maysville, sixty-four miles to the northeast on the Ohio, thence up that river to Wheeling and on the National Road to the capital. He shared the frustrations and delays of fellow Kentuckians on the first leg of the journey; and as sentiment for improvement of the Maysville Road mounted, he was very interested on both personal and political grounds.

The bill that passed Congress calling for subscription in turnpike company stock was not an unusual measure at the time:

Jackson was poised to kill the measure. Here was a good opportunity, he thought, to make a statement checking the current trend toward consolidated power at the expense of states' right and of the Treasury. No doubt, another motive was to strike at an adversary by denying Clay's home town its coveted turnpike. The president's principal adviser was Secretary of State Van Buren, who years later in his autobiography recalled how he participated in the decision. Considering himself a latter-day Jeffersonian strict constructionist who had forged the new Democratic party as a North-South alliance, Van Buren had long opposed the idea of national involvement in developing transportation. Now as cabinet member and presidential companion, he had urged the chief executive to take a firm stand. In fact, he prepared a "brief," as he called it, laying out the reasoning. Giving this document along with his earnest advice to Jackson, he saw the Maysville bill as an excellent occasion to take the necessary step. Whether one can accept this ex parte recollection as wholly reliable history is a legitimate question, but there is probably something to it . . . .

Not surprisingly, Clay and his disappointed ranks found much in the veto message to criticize. They had no doubt whatsoever that the Maysville Road had national, not merely local importance . . . .

Clay voiced his sentiments in a speech during the Mechanics' Collation in the Appollonian Garden in Cincinnati on August 3, 1830. After discussing the American System, nullification, and other subjects, he turned to the veto. He began:

If any thing could be considered settled, under the present Constitution of our Government, I had supposed that it was its authority to construct such internal improvements as may be deemed by Congress necessary and proper to carry into effect the power granted to it. For near twenty-five years the power has been asserted and exercised by the Government. For the last fifteen years, it has been often controverted in Congress, but it has been invariably maintained in that body, by repeated decisions pronounced after full and elaborate debate, and at intervals of time implying the greatest deliberation.

Numerous such appropriation acts had been approved, including "no less than twenty odd laws have been passed in relation to a single work." He did not name the project, but he was referring to the Cumberland Road:

This power, necessary to all parts of the Union, is indispensable to the West. Without it, this section can never enjoy any part of the benefit of a regular disbursement of the vast revenues of the United States. I recollected perfectly well that, at the last great struggle for the power in 1824, Mr. P. P. Barbour, of Virginia, the principal champion against it, observed to me, that if it were affirmed on that occasion, (Mr. Hemphill's survey bill) he should consider the question settled. And it was affirmed.

Now, thanks to President Jackson's veto message, "we are told that this power can no longer be exercised without an amendment to the Constitution!" He could not believe, he said, that the message "really expressed the opinion of the President of the United States." If he believed the message did express the President's views, "in consequence of the unfortunate relations which have existed between us, I would forbear to make any observation upon it." After all, "not every paper which bears the name of a distinguished personage, that is his, or expresses his opinions." He illustrated this point with a reference to King George III:

We have been lately informed that the unhappy King of England, in perhaps his last illness, transmitted a paper to Parliament, with his royal signature attached to it, which became an object of great curiosity. Can any one believe that that paper conveyed any other sentiments than those of His Majesty's Ministers?

Returning to President Jackson, Clay continued:

It is impossible that the Veto message should express the opinions of the President, and I prove it by evidence derived from himself. Not forty days before that message was sent to Congress, he approved a bill embracing appropriations to various objects of internal improvement and among others to improve the navigation of Conneaut Creek.

Clay had never heard of the creek, he said, but was advised that it was in Pennsylvania and discharged into Lake Erie, in a corner of Ohio, with navigation on it of about 7 miles:

Is it possible that the President could conceive *that a National object*, and that the improvement of a great thoroughfare on which the mail is transported for some eight or ten States and Territories is not a National consideration? The power to improve the navigation of water courses, no where expressly recognized in the Constitution, is infinitely more doubtful than the establishment of mail roads, which is explicitly authorized in that instrument! Did not the President, during the canvass which preceded his election, in his answer to a letter from Governor Ray of Indiana, written at the instance of the Senate of that respectable State, expressly refer to his votes given in the Senate of the United States, for his opinion as to the power of the General Government, and inform him that his opinion remained unaltered?

Clay pointed out that Senator Jackson had voted an appropriation for the Chesapeake and Ohio Canal, "which is only about fourteen miles in extent":

And do we not know that it was at that time, like the Maysville road now, in progress of execution under the direction of a company incorporated by a State? And that, while the Maysville road has a connection with roads east of Maysville and south-west of Lexington, the Turnpiking of which was contemplated, that canal had no connection with any other existing Canal?

The Veto Message is perfectly irreconcilable with the previous acts, votes, and opinions of General Jackson. It does not express his opinions, but those of his advisers and counsellors, and especially those of his Cabinet.

Clay did not know which members of the Cabinet had written the message but “we can not doubt it. Three of the five who, I believe, compose it . . . are known to be directly and positively opposed to the power; a fourth, to use a term descriptive of the favorite policy of one of them, is a *non-committal*, and as to the fifth, good Lord deliver us from such friendship as his on internal improvements.” He had heard, but could not verify it, that “some of the gentlemen from the South waited upon the President, whilst he held the Maysville bill under consideration and told him that if he approved of that bill, the South would no longer approve of him, but oppose his administration.”

If, indeed, the message was the work of the Cabinet, the members “would deserve severe animadversion for having prevailed upon the President, in the precipitation of business, and perhaps without his spectacles, to put his name to *such* a paper and send it forth to Congress and to the nation.”

He had read the paper repeatedly, Clay said, and each time, “I never can peruse it without thinking of diplomacy, and the name of Talleyrand, Talleyrand, Talleyrand perpetually recurring.” Talleyrand (1754-1838) was a crafty, cynical French clergyman and diplomat who survived succeeding changes of authority before and after the French Revolution (May 1789-November 1799). “It seems to have been written in the spirit of an accommodating soul, who, being determined to have fair weather in any contingency, was equally ready to cry out, good Lord, good Devil. Are you for internal improvements?” What reminded him of the flexible Talleyrand was that the text of the veto supports the view that the Constitution provides the authority and the view that it does not:

Whatever party was uppermost, you would see the head of Talleyrand, always high among them, never down. Like a certain dexterous animal, throw him as you please, head or tail, back or belly uppermost, he is always sure to light upon his feet.

He turned to some of the “reasons, if reasons they can be called, of this piebald message.” First was that the approval of appropriations for internal improvements “has produced discord” in Congress and that “to restore harmony to the National Councils it should be abandoned, or which is tantamount, the Constitution must be amended”:

The President is therefore advised to throw himself into the minority. Well – did that revive harmony? When the question was taken in the House of the people’s Representatives, an obstinate majority still voted for the bill, the objections in the message notwithstanding. And in the Senate, the Representatives of the States, a refractory majority stood unmoved. But does this Message mean to assert that no great measure, about which public sentiment is divided, ought to be adopted in consequence of that division? Then none can ever be adopted.

Apply that principle to the American Revolution, and the country would have remained English colonies. Similarly, the War of 1812 was opposed by many people. What would become of the tariff, the Indian removal bill, or other measures considered during the present session of Congress “if the existence of a strong and almost equal division in the public councils ought to have prevented their adoption?” The country, if that were the case, presented “a most remarkable spectacle”:

*It is that of a majority of the Nation having put the powers of government into the hands of the minority.*

Next, the veto message proclaimed the desire to eliminate the national debt. An Act of 1817 approved an annual appropriation of \$10 million for the debt's retirement. Nearly \$150 million of the principal and interest had been paid before the start of the Jackson Administration:

During that of Mr. Adams, between forty and fifty were paid, whilst large appropriations of money and land were made, to objects of Internal Improvements, than ever had been made by all preceding administrations together.

Only about \$50 million of debt remained to be retired, and a considerable portion of that likely would occur during President Jackson's present term:

The redemption of the debt is, therefore, the work of Congress; the President has nothing to do with it, the Secretary of the Treasury being directed annually to pay the ten millions to the Commissioners of the Sinking Fund, whose duty it is to apply the amount to the extinguishment of the debt. The Secretary himself has no more to do with the operation than the hydrants through which the water passes to the consumption of the population of this city . . . .

I have seen, in some late paper, a calculation of the delay which would have resulted in its payment, from the appropriation to the Maysville Road, and it was less than one week! How has it happened that under the administration of Mr. Adams, and during every year of it, such large and liberal appropriations could be made for Internal Improvements, without touching the fund devoted to the public debt, and that this administration should find itself balked in its first year?

Clay also addressed the claim that the Maysville and Lexington Road was not a national road, but a 60-mile local road within a single State:

If, as that document also asserts, the power can in *no case* be exercised until it shall have been explained and defined by an amendment of the Constitution, the discrimination of National and Local roads, would seem to be altogether unnecessary. What is or is not a National Road, the Message supposes may admit of controversy, and is not susceptible of precise definition. The difficulty which its authors imagine, grows out of their attempt to substitute a rule founded upon the extent and locality of the Road, instead of the *use* and *purposes* to which it is applicable. If the road facilitates, in a considerable degree, the transportation of the mail to a considerable portion of the Union, and at the same time promotes internal commerce among several States, and may tend to accelerate the movements of armies, and the distribution of the munitions of war, it is of national consideration. Tested by this, the true rule, the Maysville Road was undoubtedly National.

Judged by some of the items Senator Jackson had approved, the road was undoubtedly national:

But this view of the matter, however satisfactory it ought to be, is imperfect. It will be admitted that the Cumberland Road is National. It is completed no further than Zanesville in the State of Ohio. On reaching that point two routes present themselves for its further extension, both National and both deserving of execution. One leads northwestwardly, through the States of Ohio, Indiana, and Illinois, to Missouri, and the other southwestwardly through the States of Ohio, Kentucky, Tennessee, and Alabama, to the Gulf of Mexico. Both have been long contemplated. Of the two, the southwestern is the most wanted, in the present state of population, and will probably always be of the greatest use. But the north-western route is in progress of execution beyond Zanesville, and appropriations, towards parts of it, were sanctioned by the President at the last session. National highways can only be executed in sections, at different times. So the Cumberland Road was and continues to be constructed. Of all the parts of the south-western route, the road from Maysville to Lexington is most needed, whether we regard the amount of transportation and travelling upon it, or the impediments which it presents in the Winter and Summer months. It took my family four days to reach Lexington from Maysville in April, 1829.

The same scheme that had been used to defeat the tariff, Clay said, was being used to undermine internal improvements. The roads are attacked separately, hence the rejection of the Maysville Road, the Fredericktown Road, and the Louisville Canal:

But is this fair? Ought each proposed road to be viewed separately and detached? Ought it not to be considered in connexion with other great works which are in progress of execution, or are projected? The policy of the foes indicates what ought to be the policy of the friends of the power.

The blow aimed at Internal Improvements has fallen with unmerited severity upon the State of Kentucky. No State in the Union has ever shown more generous devotion to its preservation, and to the support of its honor and its interest, than she has. During the late war, her sons fought valiantly by the side of the President on the glorious 8th day of January, when he covered himself with unfading laurels.

Clay said that Kentucky's representatives in Congress had voted appropriations for works of internal improvement in other States, but not one cent of the Treasury had been expended on any public road in the State. The State had contributed to the elevation of President Jackson to his present office under the belief, based on Senator Jackson's actions and his assertions during the election that he was friendly to the power of appropriations for internal improvements, only to learn, to their mortification, of his decision on the Maysville Road.

As if that weren't enough, opponents of internal improvements had taken to assailing the character of its friends. He cited a toast delivered in South Carolina on July 4th by someone he'd never met who wished Clay would "be driven so far beyond the frigid regions of the Northern Zone that all Hell could not thaw me." Clay asked:

Do you believe it was against *me*, this feeble and frail form, tottering with age, this lump of perishing clay, that all this kindness was directed? No, no, no. It was against the measures of policy which I have espoused, against the system which I have laboured to uphold, that it was aimed. If I had been opposed to the Tariff and Internal Improvements, and in favor of the S. Carolina doctrine of nullification, the same worthy gentleman would have wished that I might be forever fanned by soft breezes, charged with aromatic odors, that my path might be strewn with roses, and my abode be an earthly paradise.

He concluded by pointing out that he was “now a private man, the humblest of the humble, possessed of no office, no power, no patronage, no subsidized press, no Post Office Department to distribute its effusions, no army, no navy, no official corps to chaunt my praises and to drink, in flowing bowls, my health and prosperity”:

The present Chief Magistrate has done me much wrong, but I have freely forgiven him. He believed, no doubt, that I had done him previous wrong. Although I am unconscious of it, he had *that* motive for his conduct towards me.

To this day, his words were “perverted and distorted, my acts misrepresented.” Every day, “more than a hundred presses daily point their cannon at me, and thunder forth their peals of abuse and detraction.” They were not, he said, really criticizing him. “That is impossible. A few years more, and this body will be where all is still and silent.” No, he said, it was “against the principles of civil liberty, against the Tariff and Internal Improvements, to which the better part of my life has been devoted, that this implacable war is waged. My enemies flatter themselves that those systems may be overthrown by my destruction. Vain and impotent hope!” Long after he was gone, he said, those measures and their offspring would survive.

As Baxter put it:

The Kentuckian responded with scathing denunciations, and yet he predicted the veto would be self-defeating. Jackson had poorer prospects for reelection two years hence, Clay said, because of the damage his action inflicted upon his popularity, not only in the West but across the land. Soon after news of the veto arrived, Clay urged National Republican leaders in the state to hold meetings and circulate counteracting addresses. This occurred. Following his advice they called for a constitutional amendment to replace the requirement for a two-thirds vote to override a veto with one for a mere majority. Already the main thrust against Jackson was a charge of excessive executive power. Though the proposed amendment did not have a promising prognosis, these meetings also spurred thinking about a presidential nomination, perhaps a surer remedy.

Nevertheless, as the Heidlers wrote in their Clay biography:

Jackson’s popularity made the plan impractical, however. Indeed, Jackson’s popularity seemed to sweep all before it; but he was also careful not to take chances. It was apparent that he had carefully timed his Maysville veto to avoid antagonizing congressmen he needed to pass one of the major initiatives of his first term, Indian removal. He waited until that had narrowly passed, and not until

the following day did he issue his Maysville veto. [Baxter, Maurice G., *Henry Clay and the American System*, The University Press of Kentucky, 2004 edition]

Van Buren's autobiography provided his take on Clay's reaction:

It was the consciousness of the soundness of the positions taken in the *veto*-Message that produced the raving debates in the House when it was first presented to that body, and it was doubtless a similar consciousness that forced Mr. Clay in a speech on the Message delivered at Cincinnati, shortly after its appearance, so far to forget the proprieties of his position to compare the Message to the paper sent by George III, during his insanity, which, tho' it had his name attached to it, could not be said to have spoken his sentiments, and to exclaim that he could not read it without having the name of Talleyrand! Talleyrand! Talleyrand! continually recurring to his mind.

As Professor Larson summarized, the Jackson veto may have reflected "legitimate doubts about the progress of internal improvements since the end of the Monroe administration," but internal improvement initiatives were "not producing harmony and political happiness":

On its face Jackson's argument echoed Madison's concerns in 1817: both presidents feared the corrupting implications of a scramble for funds in a national democratic legislature. The temptation for congressmen to gratify ever more numerous demands from their constituents seemed to Jackson virtually to guarantee overspending, requiring finally direct taxes to pay for extravagant internal improvements.

In a country facing bitter sectional divides, philosophical arguments about the powers of the central government, and political ambition and resentments, "early, zealous, and full consideration" to resolve the internal improvements debate was not possible. In 1832, with the presidential race underway between President Jackson and Henry Clay, Congress could not resolve the matter, "but not for lack of interest in internal improvements," as Professor Larson put it:

From the beginning of the session anti-improvers announced a desire to settle forever the "question of national internal improvements," yet one by one members of the popular chamber added to a \$30,000 package of improvements until, at \$1.2 million, it scandalized James K. Polk and reminded North Carolina's Thomas Hall of a "pile of logs" rolled up by the "log rollers" – they ought to set fire and burn it!" This "demoniacal system" of internal improvement, Hall concluded, struck "more directly at the vitals of the sovereignty of the States" than that "canker of our peace and harmony, the tariff itself." Nevertheless, the House passed this well-fatted barrel of pork, 99 to 75, the Senate agreed, and Jackson gave his silent assent (although Clay later heard that Jackson intended to "suspend the execution" of parts of this bill to which he objected). Apparently nobody wished to go home empty-handed in the closing months of the 1832 presidential canvass.

Martin Van Buren, in his autobiography, summed up the outcome of the Maysville Road veto:

The reader will judge for himself as to the degree of success with which the views sketched in my note to the President of the 4th of May, before given, were carried out.

A great step had been taken towards removing from Congress an incubus which had for years weighed upon it in the shape of unavailing effort to establish a useful system of internal improvement under its auspices and by its authority. Whilst the time of that body was wasted in unfruitful debates and its capacity for usefulness in the channels designed for its action by the Constitution impaired, every thinking and fair minded man saw that to establish such a system previous amendments to the Constitution were absolutely indispensable. A step in advance had been taken but we knew very well that more was to be done and that other positions must be assumed to make that step available . . . .

*America's Highway 1776-1976* stated:

The Maysville Turnpike veto not only put an end to all thought of national aid to local road improvements, but it also forestalled any efforts that might be made to provide Federal aid to such genuinely national promotions as the Baltimore and Ohio Railroad. Over 20 years would pass before Congress would provide any significant subsidy for railroads.

### **The Maysville Turnpike After the Veto**

Although the veto of the Maysville Turnpike bill was a blow to the corporation intending to build the road, it was not a fatal blow. An 1895 history of Kentucky highways explained:

In July of the same year [as the veto] the legislature of Kentucky made it lawful for the governor to subscribe not exceeding \$25,000 to the stock of the company, none of which could be paid until three times that amount had been paid in by the stockholders of the company. During the same year Paris subscribed \$30,000; Lexington, \$13,000; Millersburg, \$5,200; Nicholas County, \$8,000; and Maysville, \$10,000 additional. With added subscription 31 miles were soon under contract. In 1831 the State subscribed \$50,000, and during the next five years the total amount of State aid and other stock amounted to \$213,200, just one-half of the entire cost of the road. [Crump, M. H., *Kentucky Highways*, Office of Road Inquiry Bulletin No. 13, U.S. Department of Agriculture, 1895]

The four-mile segment from Maysville to Washington was completed in November 1830. It was the first road in Kentucky with a macadam pavement.

The 67-mile turnpike was completed in 1835. It included 13 tollgates and 6 covered bridges. Construction of the Maysville Turnpike cost \$426,460, an average of \$6,662.50 per mile.

Karl Raitz and Nancy O'Malley, in their book about the road, wrote:

Toll fees, paid at tollhouses constructed at roadside every five miles, were differentiated on the basis of the amount of wear or damage a vehicle or animal was thought to impart to the road, and enforced by legal statute. Light, wide-wheeled vehicles, for example, were favored with lower tolls, whereas owners of heavy, narrow-wheeled carriages and wagons paid higher rates. The state optimistically presumed that its investment in turnpike stock would be repaid by profit garnered from tolls; hence, the legislature passed a succession of laws regulating toll fees and setting penalties for vandalizing milestones, turnpike gates, and tollhouses. People seeking to avoid paying tolls by detouring through farm fields to evade the toll-houses were, if caught and prosecuted, liable for a fifteen-dollar fine and court costs. Shunning the pike, as it was termed, could be controlled if farmers built fences along their road frontage, thereby forcing road travelers to remain on the road.

The turnpike eased travel in the corridor:

All traffic on the surveyed and stone-paved Maysville Turnpike, especially stagecoaches and freight wagons, benefited substantially from its reduced grades, new bridges, and resilient surface. Coach lines that had struggled with poor conditions on the old road and delays caused by bad weather now found that their vehicles could average eight miles per hour on the newly rock-surface turnpike. The entire trip from Lexington to the Ohio River at Maysville now took less than one day. From the mid-1830s to the early 1840s, as many as three stage lines served the Maysville-to-Lexington route, running in “opposition” or competition with one another along the road . . . .

The trip from Maysville to Lexington included stops every 10 miles to change horses.

Although the turnpike was seen as meeting the region’s transportation problems, Raitz and O’Malley outlined several problems. First, “there were few country roads linking small hamlets and rural farmsteads with one another or with the turnpike.” Most roads were just paths worn through the farms and countryside. High tolls were a second problem, particularly for farmers who could not afford them:

Third, though the Maysville Turnpike Company adapted a version of the McAdam road-building technique, the road was nevertheless poorly built in some sections, and bridges were either badly constructed or placed on improperly engineered abutments that threatened to collapse if undermined by high water. The road required constant maintenance. When repairs were not forthcoming, whether because of a shortage of toll revenues or a lack of materials or knowledge on the part of those assigned to the task, road quality suffered and travel slowed.

In view of the “dearth of professionally trained engineers in Kentucky,” the State created the Board of Internal Improvement in 1835 “to provide statewide oversight of road- and river-transportation-system development.”

In 1838, the board found that the “Maysville Turnpike was in generally good condition, excepting those sections that were not drained by culverts and ditches where seeps and runoff water so softened the roadbed that heavy wagons cut through the stone covering.”

Some of the bridges needed to be buttressed. The problems were compounded by limited toll collection:

The scanty toll returns were probably adequate to support nothing more than superficial maintenance. Road repair was further hampered by property owners whose land adjoined the road but who refused to allow the turnpike company to open stone quarries on their land or charged very high prices for stone.

On June 22, 1838, President Jackson's veto was cited in a case involving Milus W. Dickey, a contractor who carried U.S. mail from Maysville to Lexington. As a mail carrier, Dickey thought he should be exempt from paying the tolls. Chief Justice George Robertson of the Kentucky Court of Appeals disagreed:

Can the carrier of the United States mail have a right, either legal or moral, to use the bridge of a private person, or of an incorporated company, without paying pontage? That he would have no such right is, in our judgment, indisputable.

Dickey, as a mail contractor, had a "right to transport the mail on any public road he may prefer or choose to adopt between Lexington and Maysville, [but] he cannot do so, nor had congress power to authorize him to do so, without paying for the use, if demanded, a just compensation, and that is – prima facie, at least – what other persons are required to pay for a similar use of it":

After refusing, as it did, by the President's veto to contribute anything to the construction of the Maysville and Lexington turnpike, the general government could not, with any semblance of consistency, justice, or grace, claim the right to use and impair it, by carrying the mail upon it, in coaches, without paying to those who did make it with their own private means, as much for the use and dilapidation of it as they have a legal right to exact and do receive, without objection, from all others who enjoy the use of it, by traveling upon it in carriages.

In sum, Dickey "may be, justly and constitutionally, compelled to pay the prescribed toll for such use as he shall elect to make of it for his own advantage and convenience."

The turnpike company struggled through the decades to maintain the road and return dividends to the State and other stock holders:

During the Civil War – 1861 to 1865 – Maysville Turnpike toll revenues declined precipitously, and road quality deteriorated because of deferred maintenance. After the war, railroads and interurban rail lines became progressively more competitive, and they increasingly siphoned business away from the turnpike. Toll collections failed to provide sufficient income to repair the pike, and people's disgruntlement at the prospect of paying tolls for access to a poor-quality road intensified. By the late 1880s the traveling public was in high dudgeon over regressive tolls and inferior roads. An anti-toll road movement garnered broad public support, and in 1892 and 1894 the Kentucky legislature passed bills that permitted cities and counties to acquire sections of toll roads within their jurisdictions through purchase of state-owned stock. The legislature followed, in 1896, with a new road law designed to provide free roads by permitting county

courts to acquire all turnpikes within their jurisdiction by lease, gift, purchase, or contract. By 1900 counties had acquired most of the state's turnpikes, often at bargain prices. That part of the Maysville Turnpike in Fayette County, for example, cost the county only \$1,900 per mile to obtain . . . .

The Maysville Turnpike's toll road epoch ended some seventy years after it began, though the route would carry that name in vernacular place descriptions, on maps, and even on official road signs for decades thereafter.

The lifespan of the Maysville Turnpike was typical throughout the country. By the 1890's, the toll turnpikes were in bad shape, with no way for the companies to repair them. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, under pressure from advocates of the Good Roads Movement, States took over the turnpikes to operate them as toll-free public roads.

During the 20<sup>th</sup> century, Kentucky highway officials upgraded the roadway, as Henderson and O'Malley explained:

Many sections underwent realignment. Curves were straightened, steep grades were lowered, and bypasses were built. Many of these realignments created closed cul-de-sacs or bypass road segments. Today's travelers can still see some of these orphaned loops, which detach from and reattach to the main road. It is ironic, however, that other evidence of the early automobile road corridor – relic gas stations or motel buildings – is nearly absent.

A route that closely approximated the surveyed right-of-way for the Maysville and Lexington Turnpike received substantial Federal-aid highway funding in the 20<sup>th</sup> century and would be designated as part of U.S. Route 68, a 560-mile route from I-75 in Findlay, Ohio, to U.S. 62 in Reidland, Kentucky.

[Wilson, Samuel M., "The Old Maysville Road," *Second Annual Report of the Ohio Valley Historical Association*, Proceedings, November 28 and 29, 1908, The Ohio State Archeological and Historical Society, 1909; Raitz, Karl, and O'Malley, Nancy, *Kentucky's Frontier Highways: Historical Landscapes Along the Maysville Road*, University Press of Kentucky, 2012]

### **The Jacksonian View**

In all, President Jackson vetoed 12 bills, seven by pocket veto.

Shortly after vetoing the Maysville Road bill, he vetoed a bill on May 31 authorizing a stock subscription of \$90,000 in the Washington Turnpike Road Company, which planned to complete a turnpike from Washington to Rockville as part of an effort to build a turnpike road between Washington and Frederick, Maryland, where it would connect with Maryland's turnpike extension of the Cumberland Road. His brief veto message cited his veto of the Maysville road bill as providing the reason for his action. The Senate failed to override the veto on May 31, 1830, by a vote of 21 to 17, below the two-thirds of yeas required to override.

Specht wrote:

While not as famous as the Maysville veto, the Washington Turnpike veto is still extremely important. The road obviously was within the limits of one state and therefore could be considered local and not national in character. The real significance of the veto was that Jackson once again rejected the idea that stock subscription in a private corporation was within the realm of the national government. For him, Congress had to devise another means of aiding these types of internal improvement projects.

The 21st Congress had approved two other internal improvements during the first session, one authorizing a subscription for stock – 1,000 shares at a cost of \$100 a share – in the Louisville and Portland Canal Company and a bill appropriating funds for lighthouses, light-boats, monuments, and buoys, and improving harbors and directing surveys. The canal was designed to eliminate the Falls of the Ohio, the one hindrance to shipping along the Ohio and Mississippi Rivers – an obstacle President Jackson was well aware of from his trips between The Hermitage and Washington. Under Acts of May 13, 1826, and March 2, 1829 (2 days before President Jackson’s inauguration), the general government had subscribed to a total of \$290,000 in company stock. Because of President Jackson’s goal of eliminating the national debt, Specht speculated that he never considering signing either of the 1830 bills:

In May, before the bills had been given final approval in Congress, he began preparing extensive notes on his objections to both bills. His notes, simply called “The Portland and Light House Bill,” restated many of the ideas of the Maysville veto. He discussed the constitutional limitations placed on the power of Congress to construct roads and canals within one state or appropriate funds for local projects. He again stated that the national debt must first be paid and an amendment to the Constitution passed before any true system of internal improvement could be implemented.

His objections to the canal bill involved stock subscription. “He believed any projects with which the federal government was involved ‘under authority to regulate commerce, should be separated from state corporations . . . or sole [sic] by [the] Govt . . . .’” Although the canal and other similar projects could “be considered as falling under this head,” he exempted the Cumberland Road:

Unlike the Cumberland Road, long considered as truly national, “these [canal projects] are of recent occurrence [sic], and cannot be supported as constitutional, growing out of long usage and acquiescence of the states.” To be considered as national, these projects “should be separated from the state . . . by purchase of these interests, and freed from all . . . tolls, as all other national objects are where improvements have been made for the benefit of commerce.”

The Portland Canal bill and provisions in the lighthouse bill, Specht wrote, “were concerned with the same purpose, unobstructed navigation of the Ohio River, and were self defeating.” A section of the lighthouse bill called for a survey of the falls of the Ohio River, which the canal was intended to carry traffic around:

But his major concern was with the need for devising a means of determining those projects of national interest in the area of lighthouse construction and river improvements. He believed that there was ample precedent for allowing the regulation of commerce clause in the Constitution to govern the improvement of rivers and harbors as well as the building of lighthouses. Such an application of the commerce clause presented some difficulties. For Jackson there seemed “to be two requisites to bring a river within the constitutional provision. First: it must be a navigable stream or a channel of commerce; Secondly: it must be a channel of commerce among the states.” When there was doubt concerning whether a proposed river or harbor project was within these guidelines, he suggested “a preliminary inquiry and survey, with the view of ascertaining whether they [doubtful projects] are navigable, and are the channels of commerce with foreign nations, or among the several states . . . .” If the report were affirmative, the project could continue. He was “unable to arrive at any more satisfactory means of ascertaining” national projects. This whole problem would occupy more of his time during his second term of office.

Jackson’s notes concluded with more thoughts on the role of the federal government and its relationship to the Constitution and state government:

Being solely [imposed] with the conviction that the extension of the powers to make internal improvements beyond the limit I have suggested, even if it be deemed constitutional, is subversion of the purity of the legislation, the interests of the people and the spirit of our country, I earnestly recommend to Congress to refrain from it except in relation to improvements already begun . . . .

He obviously had grave doubts, then, about extending the power of the federal government in this area, even with a constitutional amendment. Even more important, this last phrase indicated that he believed projects already begun could be continued by Congress unless they directly violated the Constitution. This is another indication of the rationale for his continued approval of such projects as the Cumberland Road.

With Congress adjourned, he left the two bills unsigned, thus issuing pocket vetoes. (The Portland Canal company used private revenue to complete the 2-mile canal in 1833, over budget and 6 years late.)

### **President Jackson’s Second Message**

With the veto notes in hand, President Jackson began preparing a section on internal improvements for his second annual message to Congress. He gave the notes to Secretary Van Buren, who completed this section of the bill, as Specht noted:

Unlike the Maysville veto, however, Van Buren specifically and clearly explained Jackson’s objections to federal stock subscriptions in private corporations.

President Jackson sent the message to Congress on December 7, 1830. He covered the usual wide range of topics subject to presidential consideration. It included a lengthy section on internal improvements, beginning with a discussion of the two bills he had pocket vetoed. He said the two bills had been submitted almost as Congress adjourned, and he had not had time before Congress adjourned “to give these bills the consideration which was due to their character and importance.” He would now address his reasons for not signing them.

The practice of funding lighthouses and other means of rendering navigation “safe and easy, is coeval with the adoption of the Constitution, and has been continued without interruption or dispute.” As foreign commerce increased and was extended into the country’s interior, these improvements “received a corresponding enlargement.” The appropriations “were authorized upon the same principle, and the expense defrayed in the same manner”:

That these expenses have at times been extravagant, and disproportionate, is very probable. The circumstances under which they are incurred, are well calculated to lead to such a result, unless their application is subjected to the closest scrutiny. The local advantages arising from the disbursement of public money too frequently, it is to be feared, invite appropriations for objects of this character that are neither necessary nor useful.

The number of light-house keepers is already very large, and the bill before me proposes to add to it fifty-one more, of various descriptions. From representations upon the subject, which are understood to be entitled to respect, I am induced to believe that there has not only been great improvidence in the past expenditures of the Government upon these objects, but that the security of navigation has, in some instances, been diminished by the multiplication of light-houses, and consequent change of lights, upon the coast. It is in this, as in other respects, our duty to avoid all unnecessary expense, as well as every increase of patronage not called for by the public service.

It was, he wrote, “indisputable, that whatever gives facility and security to navigation, cheapens imports; and all who consume them are alike interested in whatever produces this effect.” He would have signed the bill if it had contained only direct appropriations for such purposes. “The one now returned does so in several particulars, but it also contains appropriations for surveys of a local character, which I cannot approve.” Congress could keep that objection in mind for future bills.

Next, he turned to the practice of subscribing to the stock of private corporations. “I mean not to include a practice which has obtained to some extent, and to which I have, in one instance, in a different capacity, given my assent – that of subscribing to stock of private associations.” He did not mention the instance, but he was referring to his vote as a Senator in the 18<sup>th</sup> Congress for a bill authorizing subscription of stock in the Chesapeake and Delaware Canal Company.” (Martin Van Buren, in his autobiography, suggested that the vote could be justified, in retrospect, as involving “a work of national importance.” In this same regard, he cited Senator Jackson’s vote in support of the

General Survey Act of 1824, which called for surveys of roads and canals of national importance.)

President Jackson, having acknowledged a contrary vote during his time in the Senate, explained that:

Positive experience, and a more thorough consideration of the subject, have convinced me of the impropriety as well as the inexpediency of such investments. All improvements effected by the funds of the nation, for general use, should be open to the enjoyment of all our fellow citizens, exempt from the payment of tolls, or any imposition of that character. The practice of thus mingling the concerns of the Government with those of the States or of individuals, is inconsistent with the object of its institution, and highly impolitic. The successful operation of the federal system can only be preserved by confining it to the few and simple, but yet important objects for which it was designed.

A different practice, if allowed to progress, would ultimately change the character of this Government, by consolidating into one the General and State Governments, which were intended to be kept forever distinct. I cannot perceive how bills authorizing such subscriptions can be otherwise regarded than as bills for revenue, and consequently subject to the rule in that respect prescribed by the Constitution. If the interest of the Government in private companies is subordinate to that of individuals, the management and control of a portion of the public funds is delegated to an authority unknown to the Constitution, and beyond the supervision of our constituents; if superior, its officers and agents will be constantly exposed to imputations of favoritism and oppression . . . .

The power which the General Government would acquire within the several States by becoming the principal stockholder in corporations, controlling every canal and each sixty or hundred miles of every important road, and giving a proportionate vote in all their elections, is almost inconceivable, and in my view, dangerous to the liberties of the people.

The bill authorizing stock subscriptions in the Louisville and Portland Canal Company afforded “a striking illustration” or how additional appropriations for the same purpose could follow “when the first erroneous step has been taken by instituting a partnership between the Government and private companies.” That step called for a third stock subscription, “when each preceding one was at the time regarded as the extent of aid” from the general government.

The accompanying lighthouse and navigation bill also contained appropriations for a “survey of the bed of the river, with a view to its improvement, by removing the obstruction which the canal is designed to avoid. This improvement, if successful, would afford a free passage of the river, and render the canal entirely useless.” This example illustrated the “improvidence . . . in relation to internal improvements on local matters, even with the best intentions on the part of Congress.”

He turned to the two turnpike bills. His veto message on the Maysville bill had detailed his objections, which Congress had not been able to overcome in the votes on override. His veto of the Washington Turnpike Company had referred to the reasoning of the Maysville veto, but now he provided a more detailed explanation of his thinking about the Maryland bill.

In November 1805, the General Assembly of Maryland had passed “An Act to incorporate a Company to make a Turnpike Road from the line of the District of Columbia where it crosses the Post Road leading from George-Town to Frederick-Town, through Montgomery and Frederick Counties.” The road was to go through Rockville and Clarksburg in Montgomery County to the main square at Patrick Street in Frederick. A summary by the Montgomery County Historical Society states:

This act was not carried out, but at the November session in 1812 (Chapter 182), it was revived and amended, with a different list of persons to receive subscriptions and carry it into effect. There was a proviso in the Maryland law that the turnpike act would not go into effect until a law of the United States authorized the turnpike’s extension into the District of Columbia to Georgetown and in 1813 President Madison signed a bill [on February 15, 1819] authorizing construction of the road from the District of Columbia line into George Town. In 1816 the Maryland General Assembly passed an act for alteration of the turnpike between Georgetown and Rockville . . . . Completed by 1823, the turnpike was the first paved road in the county . . . . [Levin, Jonathan V., “Old Georgetown Road: A Historical Perspective,” The Montgomery County Story, The Montgomery County Historical Society, May 2002]

On January 14, 1829, Representative George C. Washington of Maryland brought the bill on up for debate on authorizing a subscription of stock in the Washington and Fredericktown Turnpike Road Company. The pending question was on filling the blank for the number of shares with “give thousand.” (A grand nephew of President Washington, he would become president of the Chesapeake and Ohio Canal Company after leaving the House in 1837.) He discussed the status of the road:

It had been incorporated for the purpose of making a turnpike road from this city to Fredericktown, in Maryland. Of this distance, the portion extending from this city to Rockville, fourteen miles, had been finished, and in use for some years; to aid in completing the residue, the Legislature of Maryland had required a certain contribution from certain banks in that State, as a condition of their incorporation. This aid had been applied by the company in completing the end of the road adjacent to Fredericktown, and in the construction of an expensive bridge over the Monocacy creek. This left a gap in the middle portion of the road, of twenty-one miles. The present bill was intended to provide for the completing of this portion.

He compared the investment to the roads for western States:

It was in vain that the Government had expended such large sums for making roads in the Western country; while this gap was left in the line of communication, it prevented effectually the speedy passage of the mail to the westward. Not longer ago than last winter, the mail stage had been actually stalled on this part of the road, containing the mails for nine Western States: besides this, during the winter season, those States were deprived of the use of this road in conveying their produce to Washington, the road being utterly impassable for loaded wagons.

Even at so late a period of the year as the close of the last session of Congress, a stage had been upset, which contained ten members of the House. It was true no bones had been broken or lives lost, (but this might perhaps be accounted for from the fact that they were all Western man.)

Representative Stewart agreed with the need to complete the turnpike:

So bad was the state of the road at present, that produce coming from the West for the Washington market was, from necessity, turned aside to Baltimore; and travellers, whose business called them to this city, were often compelled to go round by the way of Baltimore, thus travelling eighty miles instead of forty.

Georgia Representative Gilmer wondered why the general government was needed in this case. Stock in the company “now yielded six per cent, and was likely to yield twelve. If this were the fact, could it be possible that the road needed any aid from Government?”

Representative Stewart agreed that the stock yielded 6 percent in dividends. “But the gentleman from Georgia must recollect, that that which yielded six per cent. was on the road between Washington and Rockville. The remaining portion passes through a very poor country, which could yield it no aid, and the State of Maryland would not aid it, because it went to turn aside the produce from Baltimore to Washington. If this gap was filled up, the United States would have an uninterrupted line of turnpike road all the way from Washington city to Zanesville, in Ohio.”

The bill directed the Treasury Department to purchase stock in the turnpike company, but also required the President to appoint five of its managers. These actions were contingent on the General Assembly of Maryland amending State legislation authorizing the company to permit these Federal additions.

President Jackson, in his second annual message to Congress, explained why he vetoed the bill:

In my objections to the bills authorizing subscriptions to the Maysville and Rockville road companies, I expressed my views fully in regard to the power of Congress to construct roads and canals within a State, or to appropriate money for improvements of a local character. I, at the same time, intimated my belief that the right to make appropriations for such as were of a national character had been so generally acted upon, and so long acquiesced in by the Federal and State

Governments, and the constituents of each, as to justify its exercise on the ground of continued and uninterrupted usage; but that it was, nevertheless, highly expedient that appropriations, even of that character, should, with the exceptions made at the time, be deferred until the national debt is paid, and that, in the meanwhile, some general rule for the action of the Government in that respect ought to be established.

These views were “not necessary to the decision of the question then before me,” but they were sufficiently important that he raised them to “exert a powerful influence upon the future operations of our political system.”

His duty was to veto bills if, in his view, they did not comply with the Constitution or because of inexpediency. If people did not agree, they would show it in the next election. A public man could find no better way to “appeal with greater advantage or more propriety, than the judgment of the people.”

Given the importance of preserving the balanced Federal-State system created by the Constitution, he earnestly hoped people would agree with his views for effecting “the greatest extent of public good in regard to the subject of internal improvement, and afford the least ground for sectional discontent”:

I will now only add an expression of my conviction – a conviction which every day’s experience serves to confirm – that the political creed which inculcates the pursuit of those great objects as a paramount duty is the true faith, and one to which we are mainly indebted for the present success of the entire system, and to which we must alone look to its future stability.

Given the great diversity of the interests of the States, based on differences in situation, climate, population, and pursuits, they naturally are jealous of benefits awarded to the other States. The duty of Federal officials was to manage the affairs of the general government “to neutralize their effects as far as practicable, by making the beneficial operation of the Federal Government as equal and equitable among the several States as can be done consistently with the great ends of its institution.”

Internal improvement funds “have been distributed in very unequal proportions amongst the States.” The estimated cost of internal improvements projected and partially surveyed amounted to more than \$96 million:

That such improvements, on account of particular circumstances, may be more advantageously and beneficially made in some States than in others, is doubtless true; but that they are of a character which should prevent an equitable distribution of the funds amongst the several States, is not to be conceded. The want of this equitable distribution cannot fail to prove a prolific source of irritation among the States.

We have it constantly before our eyes, that professions of superior zeal in the cause of internal improvement, and a disposition to lavish the public funds upon objects of this character, are daily and earnestly put forth by aspirants to power, as

constituting the highest claims to the confidence of the people. Would it be strange, under such circumstances, and in times of great excitement, that grants of this description should find their motives in objects which may not accord with the public good? Those who have not had occasion to see and regret the indication of a sinister influence in these matters in past times, have been more fortunate than myself in their observation of the course of public affairs. If to these evils be added the combinations and angry contentions to which such a course of things gives rise, with their baleful influence upon the legislation of Congress touching the leading and appropriate duties of the Federal Government, it was but doing justice to the character of our people to expect the severe condemnation of the past which the recent exhibitions of public sentiment has evinced.

To “remedy the evil,” a “radical change” was needed. To provide a fair balance of funding to the States, he repeated his idea that after the public debt was eliminated, the balance should be paid among the States “in proportion to the number of their representatives, to be applied by them to objects of internal improvement.”

This idea, over the years, had raised objections that merited consideration. First, some objected to the distribution of funds on the basis of membership in the House of Representatives. Some suggested that imports might be a better method of apportionment, or the size of the territory. President Jackson thought representation was best, but did not think it was indispensable:

There may be considerations appertaining to the subject which would render a departure, to some extent, from the rule of contribution proper. Nor is it absolutely necessary that the basis of distribution be confined to one ground. It may, if, in the judgment of those whose right it is to fix it, it be deemed politic and just to give it that character, have regard to several.

A second objection was that such a distribution “would produce improvident and oppressive taxation to raise the funds for distribution.” He had said in his first message that the tariff would leave the general government a considerable surplus well into the future. Revenue from that source would suffice for his plan, but he could not agree that the distribution “would tend to the encouragement of improvident legislation of the character supposed.” He believed that “every abuse of power in that regard by agents of the people will receive a speedy and effectual correction at their hands”:

The views which I take of the future, founded on the obvious and increasing improvement of all classes of our fellow citizens, in intelligence, and in public and private virtue, leave me without much apprehension on that head.

The third objection was that the distribution plan would result in construction of works of a local character “to the exclusion of such as are general and as would consequently be of a more useful character.” In some cases, the interests of the individual States would not coincide with the general interest of the country. If that was a concern, “discretion might be reserved to Congress to direct, to such improvements of a general character as the States concerned might not be disposed to unite in, the application of the quotas of those

States, under the restriction of confining to each State the expenditure of its appropriate quota”:

It may, however, be assumed as a safe general rule that such improvements as serve to increase the prosperity of the respective States in which they are made, by giving new facilities to trade, and thereby augmenting the wealth and comfort of their inhabitants, constitute the surest mode of conferring permanent and substantial advantages upon the whole. The strength as well as the true glory, of the confederacy is mainly founded on the prosperity and power of the several independent sovereignties of which it is composed, and the certainty with which they can be brought into successful, active co-operation, through the agency of the Federal Government.

Over the years, schemes of national internal improvement had been proposed, “which, from their extent and seeming magnificence, were readily regarded as of national concernment; but which, upon fuller consideration and further experience, would now be rejected with great unanimity.” By contrast, the plan he proposed would derive importance partly from its certainty, as well as the likelihood “that the moneys set apart for these purposes would be more judiciously applied and economically expended under the direction of the State Legislatures, in which every part of each State is immediately represented.” The truth of this statement “cannot, I think, be doubted.” This would especially be true in the newer States with their lesser population.

The final objection was that the plan “would create a discreditable and injurious dependence on the part of the State governments upon the Federal power.” Under the plan, each State would receive national revenue “as a matter of right, and from a fund to the creation of which it had itself contributed its fair proportion.” At present, the States, “in their sovereign character,” had to petition Congress “for such allowances out of the National Treasury as it may comport with their pleasure or sense of duty to bestow upon them.” Clearly, President Jackson said, the first option “is most compatible with the efficiency or respectability of the State Governments.”

In sum, the fact that the proposed distribution of the surplus among the States involved difficulties to be resolved was not a reason to abandon the idea. If difficulties were sufficient to end an attempt, the Constitution would not have been drafted. “The framers of that sacred instrument had greater difficulties to overcome, and they did overcome them”:

It is beyond the power of man to make a system of government like ours, or any other, operate with precise equality upon States situated like those which compose this Confederacy; nor is inequality always injustice. Every State cannot expect to shape the measures of the General Government to suit its own particular interests. The causes which prevent it are seated in the nature of things, and cannot be entirely counteracted by human means. Mutual forbearance, therefore, becomes a duty obligatory upon all; and we may, I am confident, count on a cheerful compliance with this high injunction, on the part of our constituents . . . .

After all, the nature of the subject does not admit of a plan wholly free from objection. That which has for some time been in operation is, perhaps, the worst that could exist; and every advance that can be made in its improvement is a matter eminently worthy of your most deliberate attention.

If anyone had an idea “better calculated to effect the objects in view,” President Jackson hoped that person “will feel it their duty to direct attention to it, as they must be sensible that unless some fixed rule for the action of the Federal Government in this respect is established, the course now attempted to be arrested will be again resorted to.”

He closed the internal improvements portion of his message by saying:

Any mode which is calculated to give the greatest degree of effect and harmony to our legislation upon the subject – which shall best serve to keep the movements of the Federal Government within the sphere intended by those who modelled and those who adopted it – which shall lead to the extinguishment of the national debt in the shortest period, and impose the lightest burdens upon our constituents, shall receive from me a cordial and firm support.

President Jackson wrote to his longtime military aide and supporter John Coffee about the message on December 28, 1830. The message, the President wrote, “candidly” presented his views:

He believed it would “prevent m’ch loggroling [sic] legislation, being assured, that I will negate all such, and put down the corrupting system of union with corporations, and appropriations for local objects.

Sky described the immediate impact of the Maysville Turnpike veto on the Cumberland Road:

As he warned after his veto of the Maysville Road veto, Jackson would sign bills that appropriated funds for national projects but not bills that vested jurisdiction in the federal government. This left Congress with two choices from 1829 through 1835: (1) continue to appropriate funds from the federal treasury to repair the road without the help of federal tolls; or (2) turn jurisdiction over to the states to care for and maintain the road through the toll revenue that they could themselves collect.

### **The Road as of 1830**

The documents accompanying the President annual message included General Gratiot’s report, dated November 19, 1830, on civil construction. The report included entries on the Cumberland Road west of the Ohio River. General Gratiot had not yet received a recent report on the condition of the road west of Zanesville, but noted that an inspection report in August “stated that the arrangements adopted by the Superintendent for its progress were judicious, and conducted with zeal, and that the instructions of the Department in relation to it were strictly observed.”

The report stated of the road in Indiana:

Under the contracts of last year, this road has been opened and grubbed the whole distance through the State, and the operation of grading it is now in progress. Stone being scarce, bricks and wood will be chiefly used in the construction of the bridges and culverts, which will not be commenced until next year.

For the road in Illinois, General Gratiot reported:

Contracts have been made for opening and grubbing this road between the eastern boundary of the State and Vandalia, a distance of 66 miles, of which the 59 miles east of Vandalia are to be finished by the close of this year; the remainder by the 1st of April, 1831. The contracts are made on very low terms, involving an expenditure of about \$11,000.

Secretary Eaton submitted the report to the Senate on the road west of Zanesville on December 30, 1830. The report, dated November 17, 1830, from Superintendent James Hampson covered progress in 1830. He explained that Commissioner Knight had surveyed and marked the line between Zanesville and Columbus in June 1829. Now, in 1830, contracts had been entered into in August "for the construction of bridges, culverts, &c., for the graduation, and for a cover of three inches of metal, forming the first stratum, on 26 miles only." The section was from the west end of the bridge across the Muskingum River to a point "55 poles west of the Erie and Ohio canal":

Much progress had been made in procuring materials for the masonry: upwards of 2,000 perches of stone were laid in bridges and culverts; the clearing and grubbing were nearly all completed, the graduation considerably advanced, and much stone deposited for the cover on many of the contracts, a portion of which was reduced to its proper size, (not exceeding 4 ounces,) agreeably to McAdam's system of road making.

In addition to reporting on work through Columbus and beyond, Hampson discussed the unfinished portion of the road east of Zanesville:

By the middle of April the contracts were completed, and the road was at that time finished with a cover of nine inches of metal, according to McAdam's system, from the Ohio to Muskingum river, a distance of 73 miles 97.36 poles.

On the older section of the road east of Zanesville, "many landslips had taken place . . . whereby the ditches and drains had become much obstructed, the water thrown on to the metalled part of the road, which was receiving great injury, and the side roads had become much damaged by the operation of the weather":

The sliding of earth is incident to all newly constructed roads, when deep excavations are made, whatever care may be taken in sloping the bank to the proper angle. This is occasioned by the different degrees of adhesiveness which various kinds of earth possess. I much desired to remove those landslips, and to

perform any other labor necessary to keep the road in great order, until it became perfectly smooth and firm. This service was commenced in September, and performed with the continuance of operations on the other divisions of the road . . . . A large portion of the stone was applied in places where it was most needed; the side roads were repaired where they required it, the ditches and drains put in order, and both greatly improved.

Much work was done to “preserve the general smoothness of the surface desirable to prevent water from standing on the road, which, if permitted, would inevitably destroy it.” However, work had to be halted on June 16, when “I received information that the funds applicable to this end of the road were exhausted, with instructions to dispense with the rakers and others employed in the service.” Since then, no additional work was performed on the road east of the Muskingum River. The public interest would have been advanced if work could have continued. “A small sum of money expended in labor continually applied would be preferable to large amounts expended at distant periods, when the injuries have become so extensive as to require large expenditures for their repair.”

He estimated that a total of \$165,910.24 was needed to complete the road east of Zanesville and the work underway west of that city:

Should the whole of the above estimated sum be appropriated, a judicious application of it will leave the eastern division of the road in good order for the time. That division extends from the Ohio river opposite Wheeling, to the Muskingum river at Zanesville. It will leave the 1st division west of the Muskingum, extending from Zanesville to a point a few poles west of the Erie and Ohio canal, with all its bridging complete, and a cover of 6 inches of metal, which will answer the present purpose for travelling, but an additional three inches of metal, it is conceived, will ultimately be required. The 2d division west, extending from the point last named into the town of Columbus, being 27 miles 81.76 poles, will have its bridges and culverts constructed, and the graduation finished; and the 3d division, extending 14 miles west from a point in Columbus, will have its bridging, culverts, and graduation complete . . . . All the above will form a line of road in Ohio of upwards of 140 miles in extent, equal to any other road of the same extent in the United States.

Superintendent Hampson offered a few general remarks:

The contractors are generally worthy and enterprising men, and, with very few exceptions, have either completed their work, or are likely to do so, with credit to themselves. The contracts have been taken on terms advantageous to the Government, and in a few instances probably below their real value.

The portion of the road already finished has fully proved the excellency of the McAdam system. A very great amount of travelling has been performed on it, with comparatively but little injury. It will, however, eventually become greatly injured, unless suitable provisions should be made to keep it in repair. How this

can be best effected, it will be for the wisdom of Congress to devise. There is perhaps no road that could be kept in good repair at less expense. Great facility has already been afforded for the safe and speedy transportation of the mail, for commercial intercourse, and for travelling generally. Emigration is rendered comparatively easy, and has greatly increased. The same distance can now be accomplished, with greatly increased weight, by the same power, in much less than half the time that was required on the former road through the same country – not to speak of the injury to horses, carriages, &c., which is now greatly obviated. [*Report from the Secretary of War*, In compliance with the resolution of the Senate, transmitting reports from the Superintendent of the Cumberland road, for 1829 and 1830, 21st Congress, 2d Session, January 3, 1831, Doc. No. 17]

On December 16, 1930, the House asked the Department of War for a report on the Cumberland Road in Indiana, including the amount expended and what amount would be required to complete it. Secretary Eaton replied to Speaker Stevenson the following day with a report from General Gratiot dated December 17. He reported:

The timber has been removed and the bed of the road grubbed on the whole line across the State of Indiana, and the contractors are now employed in the graduation of it.

Expenditures in 1829 amounted to \$50,000 and in 1830 to \$60,000, for a total of \$110,000. He also calculated an estimate to complete the road:

For the part east of Vandalia:	\$203,429.77
For that west of the same place:	\$290,153.18
<u>Total</u>	<u>\$493,582.95</u>
From which deducting the amount already appropriated:	\$110,000,00
There will be required to complete the work agreeably to the estimate:	\$383,582.95

He added:

As the contracts for clearing off the timber and grading have, however, been made on terms much more advantageous than those anticipated by the Commissioner who made the estimate, it is probable that so large a sum as the above will not be required for completing the road; but the reduction, if any, cannot be now stated with any accuracy; and it is also to be remarked that the cost of the parts of this road already constructed in Ohio has generally exceeded the estimates.

He forwarded a report from Superintendents Homer Johnson and John Milroy. They reported that under the Act of March 2, 1829, work began in Indiana under instructions from the War Secretary on May 18, 1829:

These instructions contemplated the cutting and removing the timber from the eighty feet [sic], grubbing the centre thirty feet, and grading the same.

After they had placed advertisements in newspapers for the work, they received additional instructions from the War Department dated July 7, 1829:

These instructions changed the manner of operations, and directed that the money appropriated be so applied as to open a road through the whole distance across the State, by cutting down and removing the timber the whole width of eighty feet, and the stumps on the centre, thirty feet, to be cut low &c.

Under these new instructions, the project was advertised again and the work was awarded, but “discretionary instructions, dated 26th September, 1829, were received from the Secretary of War to grub the centre thirty feet.” The Superintendents let out the new grubbing directions, primarily to the former contractors. The work “progressed as fast as could have been expected (with few exceptions) under existing circumstances”:

It is well known to the Department that this road, in crossing the State of Indiana, passes over a low, flat country; a great part of which being very muddy, and even covered with water during the fall, winter, and spring seasons, the grubbing could not be done; besides, last fall and spring were remarkably wet seasons. This road is now opened the eighty feet, and the centre thirty feet grubbed, the whole distance through the State, a distance of 149 miles. [*Cumberland Road*, Letter from the Secretary of War, 21st Congress, 2d Session. Ho of Reps. Treas. Dept., December 21, 1830, Doc. No. 12]

On January 7, 1831, the House adopted a resolution asking for two things. First, the House asked for an accounting of funds for the Cumberland Road in Indiana. Second it asked “whether another appropriation will not be necessary and proper, in order to the continuation of the work.”

In a letter dated January 8, 1831, Secretary Eaton pointed to his report of December 17, 1830, regarding the cost. On the second point, he wrote that “it is to be remarked, that the available funds will be but little more than sufficient to cover the cost of completing the present contracts, which will probably be done by the first of September.” He added:

Should no further appropriation, therefore, be made during the present session of Congress, the construction of the road will be necessarily suspended from that date until the appropriation for 1832 shall become available; and to prevent this interruption of the work, an appropriation, at this time, of about \$60,000, appears to me necessary and proper. [*National Road in Indiana*, Letter from the Secretary of War, 21st Congress, 2d Session, Ho. Of Reprs. War Dept., January 10, 1831, Doc. No. 36]

Citizens of the borough of Washington, Pennsylvania, sent a petition to the House and Senate, the key point of which was:

Whereas the United States' road from Cumberland to Wheeling is rapidly going to ruin, and unless immediate and through [sic] repairs be made, will shortly become impassable; and whereas not only the interest of this section of the country would be greatly advanced by the preservation and improvement of the road, but, such are the important facilities and advantages afforded by it in the transportation of the mail, and in the promotion of social and commercial intercourse between the eastern and western States, that the public have a deep stake in preventing this monument of national greatness from going to destruction;

*Therefore, resolved,* That it is the opinion of this meeting that a sufficient sum ought to be appropriated immediately by Congress for putting this road into a state of complete repair, and that some measure for its future and permanent preservation ought to be adopted. [*Pennsylvania*. Inhabitants of the Borough of Washington – Cumberland Road, 21st Congress, 2d Session, Ho. of Reps., January 24, 1831, Doc. No. 78]

### **Report of the Committee on Internal Improvements**

In response to the lengthy discussion of internal improvements in President Jackson's second annual message, the House on December 17, 1830, asked for reports on internal improvements from the Secretary of Treasury, Secretary of War, and the Chief Engineer of the Army. President Jackson submitted the reports to the House on January 5, 1831. The War Department submitted lengthy lists of internal improvements, including the Cumberland Road, with columns for the States involved and the estimated cost of construction. The Treasury Department submitted a table on disbursements by project and in each State. The reports did not include statements, comments, or suggestions for future developments.

The Treasury Department's list of expenditures included the following from the days when the department was responsible for the Cumberland Road:

Construction Cumberland to Wheeling:	\$1,667,325.20
Repair:	<u>\$25,000.00</u>
Total:	\$1,692,225.20

For expenditures by the War Department, Treasury's report included:

Repairing Cumberland Road:	\$145,000.00
Continuation of Cumberland Road:	\$605,749.00
Continuation west of Zanesville:	\$118,212.82
Continuation through Indiana:	\$37,000.00
Opening road through Illinois:	\$2,000.00
Payment to John McClure for repairs:	\$510.00
Survey of road Zanesville to Florence:	\$175.28

Survey from Cumberland via Winchester To the District of Columbia:	\$1,533.49
Survey of Cumberland Road to the The District of Columbia:	\$1,438.13

The War Department provided the estimated cost of completing works commenced by the Engineer Department. For the Cumberland Road, the estimates were:

Repairs, Cumberland to Wheeling:	\$230,274.00
Continuation in Ohio:	\$1,023,076.92
Continuation in Indiana:	\$493,582.05
Continuation to Vandalia, Illinois:	\$210,883.81

Among projects surveyed, but on which work had not commenced, the estimates included:

Road from Zanesville to Florence:	\$2,195,477.75
Road from Washington to Fredericktown:	\$118,833.15

Extension of the Cumberland road from Vandalia to Jefferson City, Missouri, was included in the list of works projected and partially surveyed:

Extension to Jefferson City:	\$1,000,000
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The House forwarded the reports to the Committee on Internal Improvements, which prepared a report that the chairman, Representative Hemphill, introduced to the House on February 10, 1831. The report began:

The essential benefits to a nation from good roads and canals, and the improvement of water courses, are so universally acknowledged, that the committee will not investigate the subject by tedious reasoning.

The report summarized the history of internal improvements in the country. After discussing seaborne travel along the coast and on eastern rivers, the report cited James Madison's comment, previously cited, in *The Federalist Papers*, No. 14, about "Roads will be every where shortened, and kept in better order . . ." and Representative Madison's introduction in 1796, of a resolution calling for a survey of a north-south road through the Atlantic States, with a view to establishing a foundation for a system for their improvement. The report continued:

As soon as the funded debt of the Revolution was nearly extinguished, and Louisiana acquired, the improvements of the country were commenced. Mr. Jefferson caused a reconnaissance and survey to be made of a road between the city of Washington and New Orleans.

This was the survey discussed earlier by Isaac Briggs at the request of President Jefferson in 1804.

The report continued:

In 1806, Congress authorized the construction of the Cumberland road, thereby assuming the principal power for which the real friends of the policy have ever since contended. In 1808, Mr. Gallatin's celebrated report appeared, exhibiting much solid information on the subject; but the attitude of our relations soon after with England and France, and the final declaration of war against England, retarded the execution, while it evinced, in the strongest manner imaginable, the propriety of this policy. It was seen from actual experience, that the money wasted in consequence of the want of national improvements would have been sufficient to construct the chief of those of the most prominent character.

After the war, the spirit of internal improvement again revived.

The report recalled the history of the Bonus Bill, which President Madison vetoed in his last act before leaving office; and the Secretary of War's report of January 7, 1819, on roads and canals. It continued:

After many appropriations for the repairs of the Cumberland road, and other acts of Congress manifesting their steady pursuit of this subject, a select committee, in 1822, was raised, which on the 2d of January, brought in a report, accompanied with a bill to procure the necessary surveys, plans, and estimates, to be made, of the routes of such roads and canals as the President might deem of national importance, in a commercial or military point of view, or necessary for the transportation of the mail.

President Monroe signed the General Survey Act on April 30, 1824, also signing that session a bill authorizing the subscription of stock in the Chesapeake and Delaware Canal Company. "At this period, Mr. Monroe seems to have yielded to the current of public opinion, as far as is necessary for most practicable purposes." To date, "This magnificent undertaking has likewise received the countenance of the United States, by the subscription to its stock of a million of dollars":

Acts passed to improve the navigation of the Ohio river, by removing bars and other impediments; to free the Mississippi from the danger of snags and sawyers, and for the clearing of many other rivers. In accordance with the same spirit, the Cumberland road, without reference to the assent of the State, was continued from Canton, in Ohio, to the Muskingum river, at Zanesville, in that State; and its further extension; a variety of roads in the territories, and for military purposes, had been effected; and at the last session, Congress passed laws to subscribe for stock in the Maysville and Lexington Turnpike Company, by a vote in the House of Representatives of 96 to 87; for stock in the Washington and Frederick Turnpike Company, by a vote of 74 to 39; and for stock in the Louisville and Portland Canal Company, by a vote of 80 to 37.

In the two last cases, there was little if any doubt as to the nationality or expediency of the object; and the principle of the policy alone governed the

members. They present the fairest test of the opinion entertained by the representatives of the people, concerning the propriety of subscribing for stock in private companies. Wherein, then, it is most respectfully asked, consists evidence of a change in the public mind on this interesting subject? It may be presumed that the message alludes to those public prints which justified the veto on the Maysville road bill? Is it not a fair answer, that the opinion, thus partially ascertained, was founded on a belief that the road was of a local, and not a national character. Whether it was or was not, is immaterial at the present moment; because it never was pretended, by the friends of internal improvements, that Congress had power over mere local and State objects: and, for this reason, they have always disputed the right to distribute money, generally, among the States, for internal improvements, as the money, in that case, might be expended on local objects, over which Congress had no authority . . . .

The committee are aware of no instance in which Congress can distribute money generally among the States, unless it be in the case of education, which is clearly distinguishable from that of internal improvements.

The report looked to restrictions on State power in Section 10 of Article I of the Constitution, such as:

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, *enter into any Agreement or Compact with another State*, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. [Italics added.]

In ratifying the Constitution, the States yielded some of the authority they had as sovereign States under the Articles of Confederation:

[Where] the object of any internal improvement embraces two or more States, the committee will observe, that, antecedent to the Union, the States, as separate sovereignties, could have entered into negotiations and treaties to execute any extended line of road or canal; but, after its adoption, they were excluded from forming any compact with each other without the assent of Congress. The States, then, have wholly surrendered the power under which alone they could have effected great leading and permanent roads or canals, for their mutual accommodation, and cannot regain it by the mere exercise of their own wills. If the power be not extinct, it is wholly within the control of the United States, and must fall within the scope of the authority over the subject expressly delegated to Congress, and be directly incidental to them.

Similarly, “the power to regulate commerce among the States is granted in the same words with that to regulate commerce with foreign nations”:

In the one case, it is agreed that imports can be cheapened by public works; the same reason will apply the power to cheapen the transportation of inland trade, that being of importance equal to foreign commerce; and the power must be as

necessarily incidental to the express power.

This directly incidental power carries with it the full means of execution and protection, and does not rest on the undefined tenor of continued and uninterrupted usage, which is said to have been employed “at the expense of harmony.”

The committee will pursue this subject no farther than to say that, in their opinion, the same constitution which legalises the removal of brambles for the free passage of the surveyor’s chain, gives equal right to construct the contemplated work. That there is no partition of power. If Congress can act at all, it can act with effect; if it can make a road or a canal, it can employ the accustomed means of the country to keep the work in repair.

In relation to the subject of internal improvements, that there is a line between national and merely State objects, of a sound and practical meaning, is generally admitted; and where this line is, the wisdom of Congress must decide in each case as it arises.

The precise line between national and State improvements was indefinite. “But a road or canal, even of a doubtful character as to its nationality, would benefit the country; so it would seem that no federal power can be exercised with less cause of alarm”:

The President, after carefully revolving in his mind the whole subject, has formed these opinions – that it is improper and inexpedient to subscribe for stock in private associations; that, unless an entire stop be put to the practice, certain bad consequences will follow; and that the course heretofore pursued to advance the internal improvements of the country, is the worst, perhaps, that could exist.

Among the reasons for these opinions, it is asserted, that, when an improvement is effected by the funds of the Union, the citizens ought to enjoy it without being compelled to pay tolls, that money so raised ought to be subject to the rule of revenue; that discredit might result from the Government’s embarking with its constituents in joint stock associations; and that, in certain instances, the control of a portion of the public funds would be delegated to an authority unknown to the constitution.

The committee could not see “how the General Government can aid in the internal improvements of the country, in most cases, with greater propriety than by subscriptions in companies incorporated by the respective States.” Under the 1924 General Survey Act, Congress could have the benefit of the opinion of United States engineers as well as exercising “its own judgment on the utility and national character of the work”:

Congress, it is believed, will never be disposed to act without the cooperation of the States, except in a national work, in which the States or individuals, for want of interest or adequate resources, are unwilling to embark, or, if commenced, are unable to continue and complete. Such cases, in the opinion of the committee,

may be considered as of the first national class, and cannot be included under any specific system.

For the new States, “internal improvements are the only objects of magnitude alike advantageous to the new States and to the Union.” Therefore, “it is by acting on these alone that Congress can equalise the public benefits of the country.” To aid these States, no policy could exceed internal improvements:

In what direction will they look for their sales and barter? It must certainly be towards the seas and manufacturing districts. All their national highways will be calculated to meet the eastern improvements; namely, those of New York, Pennsylvania, Maryland, Virginia, North and South Carolina, and Georgia. The Cumberland road, the Chesapeake and Ohio canal, the canals of James river, or Roanoke, and others, yet farther to the south, are all designed to conquer the mountains between these two great sections of our common country.

The committee also commented on congressional critics of internal improvements:

The opponents to the immediate execution of internal improvements, speak, repeatedly, of *judicious* plans and *systems*, without disclosing their idea upon any practicable scheme to supplant that which they condemn. The sincerity of their motives is not questioned, although the tendencies of their scruples cause only procrastination, and leave us equally as unenlightened. What system have the States adopted to regulate improvements between the different parts of their respective territories, better than that hitherto pursued by the United States?

The report also discussed another argument:

It has also been urged that the project of national improvements with the funds of the Union creates corrupt passions and excites vicious practices. If the mere allegation of corruption is to check the prosecution of internal improvements, it will interpose a barrier against all public works; for it is equally applicable, whether the improvements are to be completed by the States or by the Federal Government. The human heart will remain unchanged, and the motives of influence can never be eradicated. If a road is to be located for sixty or one hundred miles, the individuals interested in the route will be actuated by the same zeal, and practice the same means to gratify their wishes, whether the improvement is to be effected by a county, by a State, or by the United States.

One of President Jackson’s arguments was that thus far, the country had expended \$5 million for internal improvements, while surveys covered projects that would cost \$96 million. “The committee, apprehending some mistake on this head,” asked for reports from the executive departments on internal improvements undertaken and those surveyed. The reports received from President Jackson covered “objects which the committee, heretofore, *had not included under the head of internal improvements*”:

Their idea was, that the term internal improvements did not embrace works affording facilities to foreign commerce; that the popular acceptance confined it to roads and canals in the interior of the country, and to the clearing of rivers above tide water. It appears from the Treasury documents, that the item of “five millions of dollars and upwards,” for internal improvements, embraces not only expenditures for roads and canals, but, also, the expenditure of the Government, *since its commencement, “in building piers, improving and preserving ports, bays, and harbors, and removing obstructions to the navigation of rivers.”*

The latter objects, and others of a similar character, make up nearly one half of what is called “expenditures for internal improvements.”

The works usually considered internal improvements included 50 distinct works, consisting of 43 river and harbor projects and “roads, now under construction, all of which, except the Cumberland road, are in the Territory of Michigan.”

Because works actually in progress amounted only to \$3,732,000, “no fears need be entertained of the caution which Congress will always observe in making appropriations of money.”

On the subject of the Maysville Road, Louisville Canal and the Washington and Frederick Turnpike, the committee “will barely remark that the two latter, in their judgment, are clearly of national character. The one connects the seat of Government with the whole western country, and the other is greatly interesting to nine or ten States.”

The committee had more to say about the Maysville Road veto:

The Maysville road lies in the heart of a fine country, and the travelling on it is continual. It is calculated to facilitate the trade of a rich portion of the Union with Pittsburg, the lakes, and the towns and villages lying on the Ohio and Mississippi rivers, onwards to New Orleans.

The veto dismissed the road as merely a 65-mile road in one State. The committee pointed out that the road “is in a direct line, and designed as a link in the contemplated national road, through the States of Ohio, Kentucky, Alabama, and Mississippi, to the great southwestern mart in the State of Louisiana, passing by many towns; traversing States abounding with iron ore and the various productions of the soil, calculated for military defence and internal trade.”

The committee concluded:

If we desire to be an example to the other nations of the earth, let us not fold our arms. It is the employment of the mind, and the activity of the body, that bestow true glory on a nation. We can perform no action more beneficial to ourselves and posterity, or afford no precedent of more valuable instruction to others, than to improve the national advantages of a country which the beneficence of

Providence has given us to dwell upon, and which is surpassed by none within the compass of the globe.

When can we expect a more favorable opportunity to pursue this great and good cause, on a scale intrinsically worthy of its importance, and of the extensive resources of this powerful nation?

If station gives influence to individual opinions, the committee are fortified with those of the President's two predecessors, who agreed in sentiment that the time had arrived to prosecute national improvements with the funds of the Union. Mr. Monroe used these emphatical words when the public debt was more than double its present amount: "It is of the highest importance that the question should be settled. If the right exists, it ought forthwith to be exercised."

The committee will trouble the House with only a few additional remarks.

A change of public sentiment by the great body of the people is intimated, and made, in part, the foundation of future action.

The people, ever watchful of the true interest of the country, embarked early in this cause, and persevered in a manner the most remarkable and praiseworthy. Although checked by the vetoes of two Presidents, and not cheered heartily by the countenance of any, they never abandoned the pursuit of this important object: and, at the commencement of the present administration, after the severest contest the country had ever witnessed, the representatives of the people, coming fresh from among them, and acquainted with their feelings and wishes, manifested again their unrelaxed zeal in favor of promoting their country's prosperity by national improvements.

If there is any change of public opinion, it is important that it should be known.

No citizen reveres the voice of this tribunal more than our Chief Magistrate, and none can give more accurate information on the subject than the immediate representatives of the people.

The committee therefore offer the following resolution:

*Resolved*, That it is expedient that the General Government should continue to prosecute internal improvements by direct appropriations of money, or by subscriptions for stock in companies incorporated in the respective States. [*Internal Improvement*, Report, Ho. Of Reps., 21st Congress, 2d Session, February 10, 1829, Rep. No. 77]

Specht summarized the results:

Congress obviously did not want to accept the President's decision as the final word on the issue.

During the second session, the 21<sup>st</sup> Congress passed one bill for preservation of the Cumberland Road in Ohio and another for appropriation for extension of the road west of Wheeling.

The Ohio General Assembly had passed “An act for the preservation and repair of the United States’ road” on February 4, 1831, subject to the consent of Congress. On February 17, Senator Jacob Burnet of Ohio introduced a letter from Governor Duncan McArthur regarding the State act. The Senator summarized the State act’s purpose:

Mr. B. remarked, that the first section of that law, and the first clause of that section, declared that the act should not take effect, or be in force, until the consent of Congress had been obtained; that, by the general provisions of the law, the Governor was authorized to erect toll-gates within the State, on such parts of the road as have been, or might hereafter be, finished, at distances not less than twenty miles; that the law established a rate of toll; that it required the money collected to be paid into the State treasury, and kept in a separate fund, to be called the United States Road fund, the whole of which was to be expended in the repair and preservation of the road, and for no other purpose whatever, and that no more money should be collected than might be necessary for that purpose. He also said, that the rights and privileges of the United States, and of every individual State were secured by the provisions of the law; that the mail was to pass free; that all persons in the service or employ of the United States, or either of them, was to pass free of toll; and that the law contained provisions for the punishment of persons who might be detected in the perpetration of malicious mischief, injurious to the road.

On February 25, he brought up a bill declaring the consent of Congress in the State act. After briefly recalling the provisions of the State act, he explained that the purpose of his bill “was nothing more than to give the consent of Congress to an act of the State of Ohio, for the preservation and repair of so much of the national road as lies within the limits of that State.” He emphasized that officials in Ohio understood that the jurisdiction of this road was exclusively vested in the United States; that the General Assembly had no power to legislate on the subject without the consent of Congress”:

It was well known, he remarked, that the road would soon become entirely useless, if an arrangement were not made, without delay, for the purpose of keeping it in repair; that, as the road had been constructed by Congress, at a great expense, it was unreasonable to rely on them for yearly appropriations of money from the national treasury, to keep it in a state of preservation; that the road, being once completed, ought to sustain itself without imposing a further burden on the national treasury; that this description of internal improvement could not be carried to any great extent, if every new construction, when completed, was to be followed by a new annual charge on the treasury of the nation.

The purpose of the State act was to address that need. He pointed out that the proposed toll was “unusually low; much less than is commonly charged on other roads of a similar character”; that the provisions were “just and reasonable”; and that the State would not

derive any revenue from the tolls except what was needed to repair and preserve the road:

If the road could be preserved without a tax on them, or on the General Government, they would prefer to have it remain as it is now, free and unencumbered with toll gates; but, said he, that is impossible; the road cannot be preserved without constant repairs, which necessarily require a constant supply of money . . . .

I feel confident that every Senator present, whatever may be his opinion on the delicate question of internal improvement, can vote for this bill without committing himself on any principle connected with that question, because it involves no principle of that character. It will leave the questions of constitutional power and constitutional right where they now stand, to be adjusted and settled as would be the case had this law never been thought of.

It would relieve Congress of approving appropriations to repair the road in Ohio; it would relieve the general government “from the tax and labor of preserving her portion of the road.” Clearly, “Congress would soon become weary of making yearly appropriations for that purpose; and that whenever these appropriations should be required, there being no substitute provided, the road would go to ruin, and the money already expended would be lost to the nation.”

Senator Hayne said he liked the bill, but he would like to amend it, if possible “to introduce a provision into the bill providing for its cession . . . and it would release the United States from all future legislation on the subject.” In that event, Maryland, Pennsylvania, Virginia, and the other States could make a similar application to Congress, and their wishes once granted, the United States would be relieved from an almost continual drain on the treasury.” He added that the construction of the Cumberland Road “was an unfortunate event for the country”

Senator Burnet, in response, pointed out that 2 years earlier, “many of the members of both Houses were opposed to a cession of the road.” He was concerned that if such an amendment were added to his bill, it “would certainly induce a protracted debate, which, at this late hour of the session, must be fatal to the whole project.” He hoped Senator Hayne, who indicated general support for the bill as is, would vote for it and postpone his amendment to another time.

Senator George Poindexter, who had represented Mississippi beginning in its territorial days, saw two objections. One would be resolved if the provision suggested by Senator Hayne were incorporated. The bill was based on the assumption that Congress could transfer the right to erect toll-gates to the General Assembly of Ohio, “a power which the Congress of the United States did not itself possess”:

The matter had been more than once discussed in Congress, and bills providing for raising a revenue from tolls, for the repair of the road, had been rejected. If,

then, Congress did not possess the power, could the right be transferred by Congress, to the Legislature of the State of Ohio?

The only way it could be done, he said, was by ceding the Ohio portion of the road to that State. “If the power were not given in this way, he could not see in what other way it could be done, when Congress did not possess the power itself.”

His second concern was that under the bill, “the justices of the peace in the State of Ohio were to exercise jurisdiction over offenders against the law, and to enforce its provisions.” The Constitution spelled out the judicial branch of government:

Can we travel out of the course laid down for us in the constitution, and give an authority to State officers to enforce our laws – give them a jurisdiction which we have no authority to do by the constitution?

. . . The course which he should prefer, and which should be pursued, was, to cede that part of the road to the State of Ohio, passing through her boundaries, and so on to other States, to the whole length of the road: for this was the worst Government in the world to have the management of the roads.

Senator Edward Livingston of Louisiana said that Senator Poindexter “mistook a little, the provisions of the bill.” It did not grant a power to erect toll-gates or to enforce laws. Disputes might arise on those issues. It simply gave assent of the Congress to the State of Ohio to do so.

He did not favor ceding the road:

Mr. L. remarked that it was the State of Ohio which gave the power referred to the justices of the peace, and not congress; we, in sanctioning her law, simply assent that she shall have the power to give the jurisdiction to these officers expressed in the bill, and do not appoint them ourselves.

Senator Poindexter was not convinced. “If the assent of Congress was necessary to give effect to a law of the State of Ohio, then we certainly transferred to her a power to do that which she could not do herself.” The erection of the toll-gates and houses and the actions of the justices of the peace were “entirely dependent on our will; and, in granting them the power sought to be obtained, we were going beyond the provisions of the constitution.”

Senator Livingston argued that the situation was essentially the difference between a compromise and a lawsuit:

Might not two parties being at variance, one offer a compromise for the settlement of their differences, and the other refuse, because, he would say, if I do agree to a compromise, you will say, that I admit you have the right on your side? As to the justices of the peace, when they came to act, it would not be by virtue of any law of Congress, but under the provisions of the law of Ohio.

Senator John Forsyth, the former Representative from Georgia who now served in the Senate, could not vote for the bill. He agreed with Senator Poindexter. "The State of Ohio asked of us a jurisdiction which we could not give, said Mr. F., because we had not the power." He would prefer to cede the road to the State to do with as it will. "He was willing to surrender every section of the road to the States interested, if they would keep it in repair."

Ohio Senator Ruggles said this bill was the third effort to keep the road from going to ruin. Bills for preservation of the road had been before Congress without success in some cases. The bill to construct toll-gates had been vetoed. This bill was the third and best attempt:

Some measure, to keep the road from dilapidation and ruin, should be speedily resorted to. It was the best road in the country; but, unless early attended to, must go to decay. He thought the bill prescribed the best course that could be adopted, and hoped it would pass. Ohio did not ask for or want the road; she simply wished the power to preserve it from destruction.

He added that if the bill assenting to the Ohio law passed, the other Cumberland Road States might enact similar laws

Senator Burnet pointed out that the "national road . . . had given rise to questions of doubtful or disputed jurisdiction. Some thought the United States held jurisdiction"; others disagreed. Without addressing the point, Ohio had "passed a law, exercising a jurisdiction in part, with a proviso that it should not be carried into effect without the consent of Congress":

The whole amount of the matter then was, that the contending parties, by this bill, consented that Ohio should take charge of the road, for the purpose of preserving it, leaving the question of right as it heretofore stood – unsettled and undecided.

If Congress assented, the powers stated in the Ohio bill came from the State, not Congress. "If a State, said he, by statute, gave jurisdiction to her own tribunals and officers, Congress, by expressing its approbation of the measure, will not become the grantor of that jurisdiction; it would still be an authority derived exclusively from the State."

The Senate then voted, without recorded yeas and nays, to order the bill to be engrossed for a third reading.

On February 26, after brief discussion, the Senate voted 29 to 7 to pass the bill.

Two days later, Representative Vinton of the Committee on Internal Improvements, reported the Senate bill assenting to the Ohio law, "with an amendment, affecting the tolls and exemptions from tolls on the Cumberland road; which being read, a considerable debate arose." The House rejected the amendment, 63 to 80. "The main

question was put, viz. Shall the bill be read a third time? and passed in the affirmative without a division.”

The third reading occurred on March 1. Representative Joseph Duncan of Illinois moved to recommit the bill to the Committee on Internal Improvements with an instruction to insert the amendment introduced by Representative Vinton. Without it, he objected strongly to the bill:

He was not altogether satisfied with the amendment proposed by the gentleman from Ohio, but it would, in his opinion, afford some protection to the rights of his constituents, and all those residing in the States west of Ohio, who must, if this bill passes, pay nearly all the expense of keeping the road in repair, as Ohio had, by the provisions of this bill, which she had submitted for the acceptance of Congress, and which had passed the Senate, and was now on its passage, exempted her own citizens, in nearly every possible case, from the payment of toll, and consequently taxing the citizens of other States, not only to keep the road in repair, but to pay an officer at every twenty miles. Mr. D. said that this measure must drive his constituents, and all the people west of the Ohio, from the road, as they could not and would not pay so unjust a tax, especially as the road was made by compact, and out of the funds of Indiana, Illinois, and Missouri, as well as those of Ohio.

He was referring to Section 4 of the State law setting toll rates. After listing the tolls for different types of vehicles and animals, it continued:

*Provided*, That nothing in this act shall be construed so as to authorize any tolls to be received or collected from any person passing to or from public worship, or to or from any musters, or to or from his common business on his farm or wood land, or to or from a funeral, or to or from a mill, or to or from his common place of trading or marketing, within the county in which he resides, including their wagons, carriages, and horses or oxen drawing the same . . . .

Ohio was being short-sighted in this regard because if Congress assented to exemption of its citizens from paying the tax, surely Maryland, Pennsylvania, and Virginia would seek the same exemption of their citizens “so as to make Ohio pay a portion of the tax at last”:

[B]ut he could see no hope for his constituents, except to tax the citizens of Missouri travelling to the Atlantic cities; and then, he said, this tax would make it impossible for his constituents to drive their stock on this road, and would render it of little use to them.

The bill, if passed as is, was “calculated to destroy the road, and was, in his opinion, a covert blow aimed at the whole system of internal improvements.”

Representative Mercer supported the motion to recommit the bill to committee for amendment:

He dwelt on the acknowledged importance and value of this great national work, and insisted that it was incredible that the House could ever mean to let it go to ruin. But the law enacted by the Legislature of Ohio contained such provisions as were calculated rather to injure than to preserve the road.

The passage of wagons with narrow wheels was encouraged by going toll free, while a heavy tax was laid on wagons with broad wheels, “the use of which consolidated the road, and ought to have been more favored than travel of any other kind.” He agreed that the State law exempted Ohio residents from the toll. “Mr. M. referred to several particulars in support of the representation he had made, and contended that the act ought to be remodified before it was assented to.”

Representative William W. Irvin of Ohio opposed recommitment of the bill, calling it “tantamount to its rejection, and before next session the road would become useless.” He disagreed with the argument that Ohio taxpayers would not pay for the road:

Gentlemen seem to forget that Ohio had paid a large proportion of the money which had been already expended on this work; but how much, he would ask, had Illinois contributed? Less he believed than Ohio had paid towards making the road on this side [of] the river. It was not to be expected the Government should continue contributing to the repairs of the road; and yet, unless it were repaired from time to time, it must go to destruction. The only system that gave any promise of saving this great national work, was the exaction of toll by the States through which the road passed.

His Ohio colleague, Representative Vance, favored recommitment because he considered “the arrangements of the law as it now stood to be palpably unjust”:

Those persons through whose property the road now ran, and whose estates had thereby been increased in value more than fifty per cent., were allowed to use the road free of toll, because they resided upon it; while those who lived in more distant parts of the State, and whose farms had, therefore, enjoyed much less of the benefit, were heavily taxed, together with citizens of other States who passed over the road.

Kentucky Representative Wickliffe opposed recommitment, arguing that Representative Vance’s argument “would certainly be a very powerful one if addressed to the Legislature of his own State, but it must be well known to that gentleman that a great proportion of the members of the House denied the power of Congress to interfere on the subject of tolls in any form.” Representative Wickliffe believed Congress had the power to construct a road through a State, but not the right erect toll-gates on it:

It was utterly vain to hope for any bill, in that House, which should regulate the tolls to be paid in Ohio; and he, therefore, was desirous that the several States through which the national road passes, might take charge of their respective portions of it.

If the General Assembly of Ohio found that its law was palpably unequal in operation, “no doubt her own sense of justice would induce her to modify it.”

Because he believed that recommitting the bill meant that Congress would be called on for more appropriations, he called for a vote on the original bill:

The question being taken, it appeared that there was no quorum voting; whereupon, Mr. MERCER moved to lay the bill on the table. On this motion, Mr. ALEXANDER demanded the yeas and nays, which being taken, stood – yeas 68, nays 115.

So the motion to lay the bill on the table was lost.

The call for the previous question was now sustained; and the main question being put on ordering the bill to its third reading, it was carried – yeas 89, nays 60.

The House would pass the bill, which President Jackson signed on March 2. It consented to the Ohio law without change.

On March 1, the House, sitting in the Committee of the Whole, considered a bill for continuation of the Cumberland Road in Ohio, Indiana, and Illinois that the Senate had passed during the first session of the 21<sup>st</sup> Congress. The bill had been put on the table in the House following Senate passage but not yet considered. Representative Thomas Irwin of Pennsylvania proposed an amendment appropriating \$100,000 from the general Treasury “for the purpose of repairing the Cumberland road east of Wheeling.”

Representative Thomas H. Crawford, a Jacksonian from Chambersburg, Pennsylvania, opposed the amendment. Preserving “the great public work” was highly desirable, he said. No one “wishes the destruction of this monument, at once of the liberality of his Government, and of the fidelity with which its engagements are fulfilled.” Important as it was, “the real magnitude” of the issue involved looking at the larger implications:

If the United States are to repair as well as to make, my word for it, they will soon cease to make. If this Cumberland road system is to be persevered in, and annual calls are to be made upon the treasury for the repair of public works, we shall soon have funds for no other purpose. How many of these projects have been already submitted for consideration? How many are every day originating and bringing forth? They can scarcely be recorded; but if you take one in many of them, as advisable or fit, and calling for the exercise of the United States’ power, you will soon have as many as your treasury can sustain, and the funds which should be applied to the extension of their benefits, by laying down and constructing others, will be exhausted in preserving those which have been already made.

The road east of Wheeling, he pointed out, was 130 miles long, but he asked what would be needed for it to reach Jefferson City, Missouri. “If I were the enemy, as I am the

friend of internal improvement, I would desire no surer mode of undermining the system – no more, ultimately, and at no distant day, fatal course, to be pursued in relation to it.” At present, internal improvements were popular, but “it will soon cease to be so if funds are continually demanded, not to construct roads and canals, but to preserve from ruin and decay those which have been, or those which shall have been made, at an immense expense of treasure, instead of drawing the means of support from the accommodation which they afford the traveler.” Nothing the opponents of internal improvement could do would destroy its popularity more than what its friends were proposing.

He said that each year, they were assured that the year’s appropriation was the last. For example, he noted that regarding the appropriation of \$100,000, approved on March 3, 1829, “it was particularly said it should be the last; and yet, within a shorter time than one year, and at the very next session of Congress, we are asked for another one hundred thousand dollars.” He recalled the long delay in considering the Senate bill:

And here I will ask, why has this bill, reported at the last session, not been acted on? Why has it been suffered to sleep upon this table? Is it because it was too weak to stand alone? I do not affirm that this was the consideration which governed those who had it in charge; but, now and forever, I protest against the practice of attaching to appropriations that are deemed indispensable, propositions of weak or doubtful policy – of making a nucleus of what almost all approve, to which to append measures that cannot sustain themselves.

He went through expenditures for the Cumberland Road to date, then suggested:

Let us, then, at once refuse this appropriation, and authorize the erection of gates to collect toll, for present and future repair; thus shall we oblige those who use the road to preserve it – economize funds for other, and, if not equally valuable, certainly very valuable and desirable improvements, and retain for the system the strength and support of public opinion.

Continuing on the present course would not only undermine support for efforts by the United States, but “discourage private and State effort for the extension of those communications which add so much to the beauty, so much augment the strength, and multiply the resources of any country.”

Coming to his conclusion, he pointed out that the Cumberland Road, “first and last, has cost a prodigious sum of money,” which he estimated to be \$3,059,604.63, counting bills during the present session:

To the appropriations for making roads, that are proper objects for General Government effort, I go cheerfully and willingly, though I do not always think that the money is prudently or economically expended. Upon this system of repair, I will not enter at all. For any constitutional method of raising toll, preferring one mode to another, but preferring any to none, I will vote; but I cannot consent to wither a system so exuberant with good – to dry up a fountain, whose waters, if not scattered and thrown upon the ground where they cannot be

gathered, are sufficient to refresh and invigorate us all. In one word, I will not aid this lavish expenditure of money – this squandering of it, might I not say, upon a single object, to the exclusion of others requiring, perhaps not in so great a degree, but still requiring the assistance of the Government.

Representative William McCreery, a Pennsylvania Jacksonian from Washington County, observed that “unless the appropriation now asked for be granted, the road would inevitably go to ruin; and the only question to be determined was, whether it was the true policy of the Government to grant an appropriation to repair the road, and adopt some measure for its permanent preservation, or to abandon this great national work, and lose all that has been heretofore expended, and thus deprive the people and the Government of all the advantages contemplated in the construction of this road.”

He noted that his colleague favored erecting toll-gates:

[But] he would ask him, what would be the use of gates on a road that could not be travelled! And unless an appropriation should be now made, that would be the case with this road in a short time . . . .

He begged of the House to consider the situation in which this part of the Cumberland road was placed; it was locked up from the respective States, in the hands of the General Government; so that if the States through which it passes were disposed to repair it, they have not the power. All we ask is, that the General Government put the road in such repair as will justify the collection of toll, and we have no objection to making the travel keep it in repair in future.

Having promised not to detain the House with a speech as this late date in the session, “he would only express a hope that the House would not deprive the public of this useful and important road, but would grant the small sum now asked for, which was indispensably necessary to preserve the road from utter ruin.”

With the debate concluded, the Committee of the Whole rejected the amendment (vote not reported), and reported the bill to the House.

When the bill came up on March 2 before the full House, Representative Irwin renewed his motion from the previous day’s Committee of the Whole debate, to add \$100,000 for repair of the road east of Wheeling. He and Representative Crawford explained their views in summary. After some additional brief discussion, the House rejected the amendment, 53 to 94.

An amendment proposing \$10,000 for extending the road west of Vandalia was rejected, as was another proposing \$5,000 for a different route west of Vandalia “by the intervention of the previous question, on motion of Mr. POLK”:

The bill was then ordered to a third reading – yeas 78, nays 67; and was subsequently passed by yeas and nays – yeas 89, nays 66.

President Jackson signed the bill on March 2, 1831. Overall, it appropriated \$244,915.85 for the Cumberland Road:

- \$100,000: For opening, grading, and making the road west of Zanesville;
- \$950: For repairs on the said road during 1830;
- \$2,700: To pay individuals for work previously done east of Zanesville;
- \$265.85: For arrearages for the survey from Zanesville to Jefferson City;
- \$66,000: For opening, grading, and bridging in Illinois;
- \$75,000: For opening, grading, and bridging in Indiana, including a bridge over White River near Indianapolis, and progressing work to the eastern and western boundaries.

The funds were to come from the general Treasury, to be replaced from public land sales revenue in the compact States.

Section 2 provided that:

*And be it further enacted,* That, for the immediate accomplishment of these objects, the superintendents heretofore appointed, or hereafter to be appointed, in the states of Ohio, Indiana, and Illinois, shall, under the direction of the President of the United States, separately superintend, in a faithful manner, such parts of said road as may be designated to each, and disburse the money, each giving bond and security as he shall direct, and shall receive such compensation as, in his opinion, shall be equitable and just, not exceeding to each, that heretofore allowed by law to the superintendent of the Cumberland road, in the state of Ohio.

Specht summarized the results of the legislation completed in 1831:

During March of 1831, the President signed a variety of internal improvement bills sent to him by Congress. He approved a river and harbor improvement bill which appropriated over \$400,000 for thirty separate projects. Another bill appropriated \$41,000 to continue road construction in the Michigan and Arkansas Territories and \$200,000 to improve the navigation of the Ohio and Mississippi Rivers. Appropriations amounting to \$241,000 were allocated to continue the Cumberland Road in Ohio, Indiana, and Illinois. The President also signed bills providing for a land grant for a canal in the Florida Territory, allowing Ohio eventually to assume control of the Cumberland Road, and allocating approximately \$250,000 for construction of lighthouses, beacons, monuments, and the placing of buoys.

Specht summarized the impact of President Jackson's second annual message:

All the internal improvement legislation the President signed during this congressional session was well within limits he had placed in his earlier messages . . . . Jackson had attempted to explain his views on the subject as clearly as possible in his second annual message, but great confusion still existed.

In notes that Specht located, Secretary Van Buren pointed out none of the bills signed had been for local roads or canals. Specht continued:

For Van Buren, the local nature of a project seemed to be the major cause of concern. In his view this principle was the most important aspect of both the Maysville Road and Washington Turnpike vetoes. Van Buren could still not detect the essential weakness in this argument. Stock subscriptions were the only means that the federal government then had to finance the construction of roads and canals directly, with the exception of assisting the Cumberland Road and territorial roads. If the President viewed this process as unconstitutional, the local or national character of a project which involved stock subscriptions was unimportant. The local or national nature affected only river and harbor improvements bills, and Jackson had said that stricter and more consistent guidelines should be set up in this area.

### **Concluding President Jackson's First Term**

With other issues to consider in 1831 and early 1832 – the President's opposition to the second Bank of the United States, tariffs, and friction in the Cabinet resulting from the Petticoat Affair – Jackson had little time to consider his concerns about internal improvements. President Jackson, in his third annual message, sent to Congress on December 6, 1831, mentioned internal improvements only in passing (“The laborer is rewarded by high wages in the construction of works of internal improvement, which are extending with unprecedented rapidity”).

However, in a document of November 21, 1831, accompanying the message, Secretary of War Lewis Cass discussed the Cumberland Road based on suggestions that General Gratiot of the Engineer Department had made:

Unless provision be soon made for the repair and preservation of the road constructed by the United States from Cumberland to the Ohio river, that expensive and useful work will be ruined. Many parts of it are now so seriously injured as to render travelling difficult, and sometimes dangerous. The destruction of this great connecting link between the Atlantic and the Western States, which, with a light transit duty, and a proper system of administration, would last for ages, cannot be anticipated without great concern. The continuation of this road in the State of Ohio is free from this danger. With the assent of the General Government, that State has established toll gates, and levies a moderate duty upon that part of the road within her jurisdiction which is finished.

I consider it my duty to bring this matter before you, in the hope that it will engage the attention of Congress, and that a similar system for the preservation of the road from Cumberland to the Ohio river will be adopted. If it were placed by the General Government in proper repair, and then surrendered to the States, respectively, through whose territories it passes, under the same conditions as were annexed to the cessions of the road in Ohio, there is reason to believe that

the arrangement would receive the sanction of those States, and that a permanent system and adequate means would be provided for the preservation of this work, and in a manner not burdensome to the communication upon it. If this be not done, or some other expedient adopted, the road will soon fall into a state of entire dilapidation.

In response to a House resolution adopted January 6, 1832, Secretary Cass forwarded a response on the condition of the Cumberland Road east of Wheeling. The resolution asked for “an estimate of the sum which will be necessary to make a thorough repair of the national road from Cumberland to Wheeling.” General Gratiot had responded to Secretary Cass’s request for a response by forwarding a letter from Superintendent Wever dated May 25, 1827. The estimate in the letter, General Gratiot explained, was “the most to be relied upon for accuracy, of any other information in reference to the repair of that road in possession of this department.” He added only one caveat:

I will here remark that the actual condition of the road is represented to be as bad as it was at the date of Mr. Wever’s report, and that, consequently, the full amount estimated by him will be required, at this time, to give it a thorough repair on the plan which he suggests.

Superintendent Wever had begun his review on May 13, 1827, at Wheeling, and proceeded over the whole road. He began his summary by describing how the road was constructed in layers with a substratum of stone about 1 foot in height, with the stones “laid edgewise, but on the balance they appear to have been laid promiscuously, regard having been alone paid to the general regularity of the thickness of the pavement formed with them and the evenness of its surface. Upon this substratum was broken a superstratum of stone, of a size so as to pass through a ring of three inches diameter, of about six inches in thickness.”

His first task, therefore, was to estimate the cost of repairing the road as built:

By preserving the original work unmolested, that is, permitting the pavement to remain as it is, only repairing it where its unity is broken, it is believed that the road can be put in very good travelling condition . . . .

He estimated that doing so would cost \$230,274.

Second, Wever considered the cost of reconstructing the road on the McAdam plan. In February 1826, such a plan was estimated to cost \$278,983.68 for the entire 130 miles of road between Cumberland and Wheeling. “Since that time, the superstratum or cover of reduced stone has worn and washed away to an extent almost incredible, and has shewn that too much reliance was placed upon the layer of large stone in that estimate, as there are not so many of them of as good a quality as was then supposed.” Therefore, he added \$50,000 to the estimated cost, giving the sum of \$328,983.68.

Clearly, the McAdam plan would cost more than basing repairs on the current roadway design, but Wever’s main point, as cited earlier, was:

Notwithstanding this great difference of cost, I would, most unhesitatingly and decisively, give the preference to the McAdam plan. In doing so, I would be influenced by the fact, that when done, the work would be more permanent, and could be kept in good order at a less expense, and the graduation would be moderated, which is a most desirable object. If the repair be made upon the old plan, the cover of small stone will grind and wear away rapidly, because of the stubborn, unyielding, and inflexible solidity of the substratum. There is not, there cannot be in the present substratum, any of the yielding elasticity to heavy pressure so essential to the preservation and durability of artificial roads which are covered with metal.

The most recent appropriation at the time for the work, \$30,000, would not cover either option. Therefore, “as every part of the road requires some repair, and almost every part will sustain further injury unless some repair be speedily made, I would respectfully suggest, for your consideration, the propriety of first applying the appropriation to such objects as are indispensable to preserve it from that further injury . . . .” These few steps would save parts of the road “from utter destruction, until Congress shall devise some efficient and permanent system for the preservation of this most important monument of the national beneficence.”

In an echo of David Shriver’s laments many years earlier, Wever concluded:

It is very much to be regretted indeed, that this road had not been confided to the superintendency of a qualified person as soon as it was made, and the requisite funds placed at his disposal, to make such constant and regular repairs as artificial roads require. Had this been done, a small sum, judiciously expended, would have not only kept the road in good repair, but would really have improved its condition. Constant and close attention is more particularly necessary to artificial roads as soon as they come out of the contractors’ hands, and for some time thereafter, than at any subsequent period. [*Road – Cumberland to Wheeling*, Letter from the Secretary of War, Ho. of Reps, War Dep’t, 22d Congress, 1st Session, January 12, 1832, Doc No. 52]

A Senate resolution, adopted on February 1, 1832, had asked the Department of War for “the report of the superintendent of the Cumberland road west of Zanesville, in the State of Ohio, for the year 1831.” Secretary Cass forwarded an extract of the report on February 9. Lieutenant S. Tuttle reported from Zanesville:

The grade of the 5th, 7th, 8th, 9th, and 10th miles west of Columbus had been completed, and those sections have been received. The grade of these sections, and in fact of the sections generally, is admirably well executed.

It is supposed, that, by this time, the 4th, 6th, and 11th miles are likewise completed in the same manner. The 1st and 2d sections were in a state of great forwardness, and will shortly be completed with a covering of good coarse screened limestone gravel.

The 3d and 13th miles are still much behind, and but little work in progress on either.

The culverts and small bridges are in progress, but they are not progressing as rapidly as I could wish.

The bridge over Big Darby creek will be received as finished on my next tour of inspection, it being reported completed.

The bridge over Little Darby creek is in progress, and its abutments nearly half done.

The 21 miles west of the Muskingum are completed and received, and the travelling is allowed upon them, with the exception of the 17th mile, which has not been received on account of the inferior quality of the stone; this stone being broken subsequent to the commence of the summer.

If the stratum of 3 inches of good stone of either lime or flint should be added to the present 6 inches, it is my opinion that this road would prove equal to any of the ordinary road east of this place.

At the time of his report, Lt. Tuttle had just returned from a tour of inspection and examination of quarries near the site of projected construction. "I find the stone of those quarries prove much better than was anticipated, and sufficiently near to the respective positions, say not exceeding 6 miles." However, the stone ran "in veins of good and bad qualities, and that much care will be required in selecting them." [*Report from the Secretary of War*, February 13, 1832, 22d Congress, 1st Session, Public Documents Printed by Order of the Senate of the United States Senate, Vol. II, February 13, 1832, Doc. No. 58]

### **Election Year - 1832**

With elections for President, the House, and one-third of the Senate ahead in 1832, Congress was considering an internal improvement bill introduced by the House Committee on Ways and Means. Unlike the Cumberland Road bills that were red flags setting off lengthy, acrimonious debates, the bill moved through the Senate and House without the usual detailed discussions of constitutional authority. Much of the debate centered on the specific projects from around the country that would be included in the bill.

The Cumberland Road was one of those projects. On March 31, 1832, Representative Gulian C. Verplanck of New York, chairman of the Committee of Ways and Means, brought up the bill, which included an appropriation of \$4,000 for repair work already completed on the Cumberland Road east of Wheeling. The work had been done by a mail contractor, Lucius W. Stockton, principal owner of the National Road Stage Company, also known as the Old Line. Representative Verplanck explained the provision:

The road had become so bad in many places as to be impassable to the mail. In consequence of a representation from a very enterprising and active mail contractor, the Postmaster General had applied to the Secretary of War to authorize the expenditure of as much as might be necessary to remove the impediment, by a temporary repair of the road. And though that officer refused to give any direct pledge to the contractor on the subject, he had assured him there were precedents wherein Congress had reimbursed expenditures made under such circumstances. The contractor had thereupon proceeded on his own funds, without charging interest or compensation for his trouble, to repair the road; which he had done in a very effectual manner, considering the sum expended.

Representative Crawford “strenuously opposed the appropriation”:

Last session, he observed, the House had refused to grant \$100,000 for the repairs of the road, and yet they were now called on to sanction an expenditure of \$4,000 made by the authority of the Postmaster General and the Secretary of War, for repairs of this very road. He asked the House if they were prepared to allow the executive officers to expend money not only without the consent of Congress, but where one branch of the Congress, as in the case of the Cumberland road, had actually refused to make an appropriation. He hoped the amendment would be rejected, and rejected it would be, except gentlemen were for establishing the most dangerous of all precedents, by taking out of that House the controlling power which they possessed, and of right ought to exercise over the public expenditure.

Kentucky Representative Wickliffe, whose primary concern was securing an appropriation to remove obstructions along the Mississippi and Ohio Rivers caused by recent floods, disagreed with Representative Crawford. Stockton had expended the money “in so public spirited a manner, [and] repaired the road from his own private funds.” Representative Wickliffe asked if Stockton “should be permitted to lose his money, when the public derived such essential advantages from its advance.” He added that the small amount expended by the contractor had “been applied more to the improvement of the road than the \$100,000 voted by Congress for that purpose five or six years ago.”

Ohio Representative Irvin pointed out that “\$900 had been voted in 1830 for repairs of the road, of a similar character to the vote asked for on the present occasion. Not a voice was heard from the West.” He wondered “why there should be any objection to this trifling sum for the repairs of the great channel of communication between the Atlantic States and the whole Western country.”

These arguments did not convince Representative Crawford:

He considered that the immense sums of money, so improperly expended on that road, had done more than any other thing to prejudice the great cause of internal improvement, of which he [Mr. C.] was as ardent a friend as any gentleman in

that House. In answer to the appeal of Mr. Wickliffe, he said he would have the gentleman lose the money; he had expended it without proper authority, for he knew of no mode of applying the public money to any purpose, without the vote of Congress.

Representative Stewart, the road's great advocate, took the side of the contractor. The War Department, which had "encouraged, if not sanctioned" the repair, had informed Stockton "by a letter from that department that there were precedents of similar expenditures, for the repayment of which appropriations had been made by Congress." Under the circumstances, "the House could not, and ought not to refuse to reimburse this person for money so usefully expended in the public service." He added "by stating the importance of the works which had been performed at so trifling an expense."

Representative Benjamin C. Howard of Maryland said he would agree with Representative Crawford if the Post Office Department or the War Department had expended the funds without congressional authorization. In this case, they "had merely assented to the necessity of the repairs, and had offered to state to Congress that such necessity existed, and that, in their opinion, the contractor ought to be repaid." The House had the discretion to do so, and he thought it ought to do so.

Virginia Representative Archer disagreed with his Maryland colleague because "he could not help considering the matter before the House one of a very grave and important nature." He reminded the House of the "doubt and discussion" about the constitutional authority of Congress to appropriate funds for repair of the Cumberland Road. Now that a private individual had used his own funds to repair the road, "the difficulty no longer existed":

So far from it, they might get money for the purpose, not only without an order of that House, but without even an order from the Executive.

The two departments had, properly, refused to pay for the repair:

And yet the money had been expended, and a claim was now preferred for its repayment. It had been said that this was a question of no importance. What! would gentlemen say it was an unimportant question, whether an individual citizen should be permitted to do that which it was a question of great doubt whether Congress itself could do? It was true the sum claimed was inconsiderable; and, as an individual, no one would wish this person to be the loser; but if he did lose it, he would but suffer the penalty for his officious intrusion into a business with which he had no right to interfere. Mr. A., in conclusion, observed that, if the House thought proper, the money must go; but he, for one, should enter his protest against this and all similar appropriations of the public money.

Representative Thomas F. Foster of Georgia said that when he had heard about this measure, he had looked into it:

And he found that these repairs were the doings of the mail contractor, who was bound to convey the mail betwixt Wheeling and Baltimore. What was the plain truth of the matter? The road became bad, and this contractor applied to the Postmaster General for power to make repairs he deemed requisite. Did the Postmaster General give him such authority? No. He looked round for somebody else to do this, and fixes on the Secretary of War! What, he would ask, had that officer to do with the carrying of the mail? The very fact of the Postmaster General transferring the application to the Secretary of War, showed, in his [Mr. F.] opinion, that the former knew he had no power to act in the matter. Well, what did the Secretary of War do? He wrote back to the contractor that a similar case, which would authorize these repairs, had happened the preceding year. Here the House would see the effect of precedent. The Secretary tells him, however, that he will not pledge himself for the repayment, but that, if the repairs and improvements were made, he would submit the matter to Congress at its next meeting. It was, then, on his own responsibility, that this mail contractor had expended his money; and, more than this, it was for his own benefit, inasmuch as he was bound by his contract to convey the mail in some way or other. On certain other routes it had happened that, on account of the state of the roads, the stage had not been able to pass for months, and the mail had to be conveyed in little wagons.

Representative Foster worried that if Congress appropriated funds to compensate Stockton for his unauthorized expenditure, Congress would be encouraging other individuals “who chose to take upon himself to repair the public roads” and must, “in common fairness” be compensated as well.

Representative Richard Coulter of Pennsylvania, who lived in Westmoreland County along the State’s east-west turnpike, said “he resided in a part of Pennsylvania whose local interest would be more benefited by the destruction than the repair of this road; yet he scorned to be governed by considerations of that nature.” To promote the public good, he “thought that the enterprising and high-spirited individual who had made these repairs, ought to have his advances reimbursed to him.”

He also addressed Representative Archer’s expression of alarm against the appropriation. “But what was the ground that the gentleman had taken in reference to the appropriation for the Turkish mission?” On March 16, Representative Archer, at the request of the Committee on Foreign Affairs, had advocated that Congress reimburse Commodore David Porter, representative to Turkey in the Ottoman Empire, for using \$6,000 of his own funds when appropriated funds were insufficient for the required gifts to the Turkish leader in exchange for signing a trade treaty. Representative Coulter explained that the State Department could not reimburse Commodore Porter, but promised to ask Congress for relief:

And what said the gentleman from Virginia in that case? Did he say that it would be a dangerous precedent? So far from it, he had insisted that the House was bound in honor to redeem the implied pledge of the department. The House had responded to the gentleman’s appeal on that occasion, and Mr. C. thought that

this was a stronger case. Here the advance had been made by a private citizen, who received no compensation for his services. Admitting that he was bound by contract to transport the mail, and that no allowance was to be made for storm or flood, yet it would have taken more time if undertaken on individual responsibility, and the public service would in the meanwhile have suffered.

If Representative Archer wished to respond to these comments, he did not have an opportunity when the Committee of the Whole rose and the House adjourned.

Although the House debated other aspects of the bill, the Cumberland Road came up again on May 3 when Representative Mercer, on behalf of the Committee on Internal Improvements, introduced an amendment appropriating \$100,000 for the Cumberland Road west of Zanesville; \$10,000 for a bridge over the Scioto River; \$100,000 for the Cumberland Road in Indiana; and \$70,000 for the road in Illinois. On motion of Representative Wickliffe, the appropriation for the Scioto River bridge was stricken before the amendment was approved, 58 to 51.

A few moments later, Representative Thomas McKennan, who lived along the road in Washington, Pennsylvania, moved a separate bill to appropriate \$328,983 to complete repairs of the road east of Wheeling, the erection of toll-gates and houses, and transfer of the road to the States:

I live, said Mr. McK., upon this road. It passes through the whole extent of my district, and such is our isolated location, that we are cut off from the hope of deriving any immediate benefit or advantage from any of the other great national objects of improvement which are prosecuted by the General or State Governments. It is a work of incalculable interest and importance to my constituents, to the whole West, and, as I conceive, to the whole nation . . . .

This work, Mr. Speaker, is a magnificent one; magnificent in extent. It traverses seven different States of this Union, and in its whole distance will cover an extent of nearly eight hundred miles. Magnificent in the difficulties overcome by the wealth of a nation, and in the benefits, and advantages, and blessings which it diffuses, east and west, far and wide, through the whole country. It is, sir, a splendid monument of national wealth and national greatness, and of the deep interest felt by the Government in the wealth, and prosperity, and happiness of the people.

He noted the constitutional debates about internal improvements, but concluded that the question of “constitutional power in making appropriations for this road, is not open: it is settled and decided.”

The Cumberland Road, he said, had been built at considerable expense without any “regular, constant, permanent system for its repair and preservation.” Repair funds “have been uniformly withheld till the road was in a state of almost absolute ruin, and have been comparatively of little service – they have been swallowed up in filling the chuck-holes produced by the constant and heavy travel on the road.”

He quoted Secretary Cass's comments about the need to upgrade the road before passing it on to the States to operate it as toll roads. He added:

These are the views of the head of the War Department, and many members of this House, from a personal knowledge of the facts, can fully corroborate and sustain his statement as to the condition of the road; and one of my colleagues has letters from gentlemen of the first respectability along the route, which prove that, during the last winter and spring, wagons and stages have been, in many places, compelled to double their forces, abandon the road, and pass through the woods and fields adjoining. The road is, there, in a miserable state; and the Legislatures of Pennsylvania and Maryland, previous to their acceptance of it, ask that it shall be so repaired, and its condition so improved, as to justify them in exacting from those who travel upon it a toll or tax for its use and enjoyment.

After reading the provisions of the two State acts, Representative McKennan continued:

And now, Mr. Speaker, let me ask, is not this a most reasonable, just, and proper condition? Would it not be altogether unreasonable to expect them to receive the road, and relieve the United States from the burden of keeping up their own work on any other terms? Would it not be palpably unjust for those States to compel the public to pay for the privilege of travelling upon a road which is almost impassable? Should this course be adopted, destruction to the travel on the road must be the inevitable consequence; and the friends of the road and of the whole West must protest against such a procedure. With all our efforts, we must and will resist such a course.

Because he took it for granted that an appropriation would be made, "the only remaining inquiry is as to the amount which shall be so appropriated; and here we have some difficulty and embarrassment":

The road must be put into a state of thorough repair; and to make it a complete and substantial and permanent one, all experience, and the information of scientific and intelligent men, who have devoted themselves to the subject, show that the road ought to be taken up from its foundation, and the stone broken to the bottom, or else the protuberances levelled, and a thick covering of stone, finely broken, placed upon the solid foundation.

If Congress appropriated a sufficient sum, "this will be the last drain upon the treasury for this object."

As for the amount, he referred to Superintendent Wever's estimate based on a "minute personal examination of the work, and in whose judgment the utmost confidence may be reposed." He also referred to the opinion of Jonathan Knight, "the distinguished engineer on the Baltimore and Ohio railroad, and who has had the best opportunity of knowing the state and the condition of the road." Representative McKennan asked the clerk to read the letters (not recorded in the *Register*) before moving to fill the blank in the bill with \$328,000, the estimate that Superintendent Wever had made and that the

War Department had submitted. (Knight estimated the needed work would cost \$374,000.)

In response to Representative McKennan's speech, Representative Crawford "contended at length in opposition to the principle that this road was to be first repaired and then given up to the several States." So much money had already been expended on the road that "there was no likelihood that applications on the subject would ever cease." He could vote for a small sum, such as \$70,000 or \$80,000, but not enough "for the purpose of making a McAdamized road." It should satisfy those States if the road were improved to compete with the roads those States had made:

If you establish the principle that you are to transfer them in the best condition of which they are susceptible by the expenditure of money, what will be the consequence? Will not those States, through whose territories they lead, use them as free roads, until they become almost impassable, and then address the Congress of the United States for an appropriation to place them in their original, or a better than their original, condition, and urged this very act as a justification of their application. The suggestion is fully sustained by the course which had been pursued in regard to the Cumberland road.

He favored toll-gates because, "I take it to be the true principle, that every road shall sustain itself," and he was ready to advocate on behalf of the Pennsylvania legislature. That's why he would vote for appropriations to improve the road, up to "some reasonable limit."

The road had cost \$1,720,395.63 "being an average between thirteen and fourteen thousand dollars per mile." Now they were asked for "this enormous appropriation – enormous, I repeat, when we consider to what it is to be applied." As for Jonathan Knight, who lived along the road in Washington County, Representative Crawford knew him well and considered him "a most respectable gentleman." However, Knight did not work for the government and had no reason to make a detailed estimate of costs to restore the Cumberland Road. "He has probably the same knowledge on the subject that belongs to every gentleman who occasionally travels on this turnpike."

Representative Crawford also knew Superintendent Wever well and "esteem him highly. Let us look for a moment at what he says." In February 1826, Representative Crawford said, Wever had estimated that remaking the road on the McAdam plan would cost \$278,983.68 for the entire 130 miles. Since then, damage to the road had increased the estimate for the same work by about \$50,000 or a total of \$328,983.68. Representative Crawford quoted Wever's endorsement of the McAdam plan, cited earlier, despite the difference in cost.

Representative Crawford pointed out that the "foregoing contemplates not so much the repair as the making of a road." When the two States asked for the road to be put in good repair, "they did not ask, or think of asking, that it should be McAdamized . . . . The condition was and is, that it shall be put in such order as will enable it to compete on equal grounds with the other passages to the West." Speaking for Pennsylvania, he said,

“To suppose, then, that she desired it to be made a bowling green, and thus in effect a free road for the next five or six years, is to believe that the Legislature was either blind to her interests, or willfully negligent of the great trusts confided to it.”

Moreover, Superintendent Wever had estimated that putting the existing road in “very good travelling condition” would cost \$230,274. Since then, \$151,778 had been expended, leaving a balance of \$78,496 to put the road in good condition. “And yet the very document which, in connexion with facts, shows that eighty thousand dollars, or less, will be sufficient for the proposed object, is relied upon as sanctioning the application for three hundred and twenty-eight thousand nine hundred and eighty-three dollars.” He did not want to wholly defeat the bill, but unless the amount appropriated by the bill were reduced “to something like the sum I have indicated, I hope it will be rejected.”

Representative Stewart, noting that the road was vitally important to his constituents, said “it would be a culpable dereliction of duty on his part to suffer the remarks just made by his colleague to pass unnoticed.” The House had often “witnessed the warm and persevering opposition of that gentleman [Mr. Crawford] to every thing connected with the Cumberland road; and why, it might be inquired, does this gentleman, professing to be a decided friend to internal improvements, oppose an appropriation to be expended not only in his own State, almost in his own neighborhood?” This was especially odd since Representative Crawford “has just voted for large appropriations to continue this road through Ohio, Indiana, and Illinois, yet to the presentation of the part already completed in his own State he is decidedly opposed!”

He said that Representative Crawford was willing to put up toll-gates, but not to make it a “bowling green”:

. . . his plan of erecting gates, without adequate repairs, if not a bowling green, would make it green in another way; it would expel the travel, and the grass would grow upon it, and what then? Why, then, sir, said Mr. S., the trade and travel being thus forced to seek another route, would necessarily pass through the town [Chambersburg] where his colleague happened fortunately to reside.

Whether the sum of \$328,983 was appropriated now, or only a part now and the balance at the next session, might not make a difference because the full amount probably could not be expended during the current construction season:

More than two-thirds of the whole sum now asked would be expended in Pennsylvania; and shall her representatives be found opposed to it, and especially his colleague, [Mr. Crawford,] through whose district the Pennsylvania canal actually passed some forty or fifty miles? How could the gentleman justify his vote just given to continue this road through the Western States, and yet oppose the preservation of it in his own?

This statement indicates that Representative Crawford had voted for the Mercer Amendment on May 3 (the yeas and nays were not recorded in the *Register*).

As for Representative Crawford's comment that the road, at upwards of \$13,000 per mile, had wastefully squandered the public's money and had done great injury to the cause of internal improvement, Representative Stewart pointed out that his colleague "carefully avoids stating the facts and circumstances which attended the execution of this work, which entirely disprove the inference of wasteful extravagance":

Most of this road, it will be recollected, was constructed in the midst of uninhabited and almost inaccessible mountains, where provisions and supplies had been transported with difficulty, and at great expense, thirty and forty miles. Much of the work was also done during the late war, when labor and supplies of all kinds cost, it is well known, one or two hundred per cent. more than they now do; yet, under all these circumstances, so well calculated to increase the expense of construction, more than three-fourths of the whole of this road, extending from Cumberland to Washington, had been actually made and finished for a fraction over nine thousand dollars per mile. The question, however, is not how much has this road cost, but how is it to be preserved.

Having failed to procure adequate annual appropriations for its repairs, and seeing that the repairs when made were soon swept away and rendered useless for want of some permanent system of constant and regular superintendence, the States through which the road passes have at length determined, with the assent of Congress, to take it under their own care, and preserve it by a system of moderate tolls; thus relieving this Government from all further trouble with it.

Regarding the condition of the road, he held in his hand about 20 letters "from citizens of the highest respectability, residing on and near this road, giving full and detailed accounts of its present condition." He read several of the letters (not recorded in the *Register*) then summarized, "it appears that the road was in a most ruinous condition, its original foundations entirely broken up, and thus rendered in many places utterly impassable":

During the late winter and spring, it appeared that the mail stages, and travelers generally, had frequently to quit the road, and make their way through fields and forests. The mail stage, drawn by six horses, had frequently stuck fast in the road, till additional force was obtained to relieve it. Such, in fact, was the condition of this road, on which some gentlemen seemed disposed to erect gates and exact tolls after a slight repair . . . . The gentleman might as well scatter the money itself over the road, as to repair it in the way he had proposed; the one would do as much good as the other.

In closing, Representative Stewart said:

To the delegation from Pennsylvania, he appealed, with confidence, to grant this pittance, from a common and overflowing treasury, to sustain the people of a portion of their own State, who were borne down by the burdens, while they enjoyed none of the benefits, of the millions annually expended in more favored

portions of that commonwealth. He called on Maryland to support this measure, and prevent the establishment of a non-intercourse between their great metropolis (Baltimore) and the Western States. And, finally, he appealed to the whole House to aid in the adoption of this measure, and thereby relieve itself and this Government from all future trouble with this subject, and preserve and perpetuate this proud monument of national munificence, this powerful bond of national union.

Representative Philip Doddridge, who represented the Wheeling district of Virginia, recalled how President Jefferson had “first conceived and first proposed” the plan for the road:

Mr. Jefferson sought the first occasion to put his plan into execution at the time of erecting [sic] the State of Ohio out of part of the Northwestern Territory, and of admitting it into the Union. At this time Mr. Jefferson and his friends William B. Giles and John Taylor, of Caroline, may be justly considered as among the leaders of that political party who contend for a strict and limited construction of all constitutional grants of federal power. But they did not hold with the doctrines of the present day as to what is called the tariff policy, either in point of constitutionality or expediency, nor entirely with the modern doctrines of the same party, in relation to internal improvements. Whether Mr. Jefferson or Mr. Giles were of opinion that Congress could not construct and regulate roads crossing the territory of a State, or of part of it, for general national purposes, by virtue of any of the constitutional grants of power or not, is not certain.

Representative Doddridge invited his colleagues to consider Representative Giles’s 1802 report recommending use of the value of public land in Ohio to fund road construction to and through the State:

And yet the power proposed to be exercised by Mr. Giles’s report is not given in terms, nor does the report attempt its vindication from the power of making war, or of regulating internal commerce. On the contrary, the public lands are spoken of as a source of revenue – “an important source of revenue,” and the expenditure of part of it recommended on those broad principles of sound policy maintained by the federal party then, and by the friends of the tariff and of internal improvement now, and at all times.

The States through which the road would pass had to give their consent because the road was primarily intended to benefit the territory that would become a State, rather than the States in which it would be built. He did not believe that President Jefferson thought consent was necessary, but considered it advisable to maintain harmony among the States and the general government, especially since one of the three States, Pennsylvania, was planning its own east-west turnpike across its width to access western commerce:

It is scarcely possible that Mr. Jefferson ever conceived the absurd and dangerous innovation of adding to the constitutional powers of the Union others derived from the mere concession of a single State, not assented to by a convention of the

people of the States, nor adopted as an amendment of the constitution, but merely on the sanction of an ordinary act of legislation.

As had been pointed out, Representative Doddridge said, Congress had appropriated and Presidents had approved funds for lighthouses and other facilities from the country's start in compliance with Article 1, Section 8: "To regulate commerce with foreign nations and among the several States, and with the Indian tribes." They provided security and advanced the transportation of people and goods by water in foreign and domestic trade. He wondered "if the power to afford these aids to our commerce conducted on the water has, to this day, been questioned by none, why are not similar aids to transportation by land justified by the same construction?" While the Cumberland Road would be useful in war and is useful for transportation of the mail, that was not why President Jefferson signed the 1806 Act. His goal was "the stability and permanency of the Union, promoted by a mutual cultivation of the interests of all its parts." That same rationale applied as the road was extended to the west, consistent with the compacts accepted by Congress in Enabling Acts for their statehood.

The commercial value of the Cumberland Road could not be denied as it moved west, although the western States had the advantage of water transportation via the Ohio River that was not available to connect Ohio with the eastern States. Work on the extension continued:

Great progress has been made, and is now making, in the unfinished parts of the road in Indiana and Illinois, as far as Vandalia. It may be fairly estimated that about one-half of the whole distance from Cumberland to Jefferson city has been done, or one-half of the whole expense incurred, should it be the pleasure of the Government hereafter to pursue the work in Missouri.

The amendment under consideration, however, concerned only the sections of the Cumberland Road in Maryland and Pennsylvania. If the measure passed, and the States took over operation of the road, "Congress can never again be called upon for further expenditures on that object."

He pointed out that the Committee of Ways and Means included \$300,000 in the present bill for work on the road west of Wheeling. Under the circumstances, he thought that "to refuse to add the bill to repair the Cumberland road east of Wheeling, and assenting to the laws of Pennsylvania and Maryland, would evince an inexcusable partiality." West of Wheeling, Congress would be funding construction of a road where none existed. Refusing funds for it now would only postpone the expenditure later. "The refusal would destroy nothing in being."

West of Cumberland, he said, the road existed, having been built at a cost just less than \$2 million:

The road must be recovered, and every year it is delayed the greater will be the cost. In a little time all business on it must be suspended. A French engineer, being once asked how to make the worst road in the world, answered, first make

the best, and let it shift for itself. This has been the case with the Wheeling road. It would be even now impossible to re-cover it by tolls, and unless we make at least a good beginning this year, we will pay the more for our delay.

He was willing to accept a smaller amount, with the balance to be appropriated later. But in the meantime, he said:

Let me ask gentlemen why they would prosecute the road west of the Ohio, and let the eastern part of it go to ruin. A gentleman from South Carolina [Mr. McDuffie] has described the road from the Ohio to the Mississippi as rather a private local benefit than a public advantage, more useful to gentlemen who prefer travelling by land to travelling by water. In this view there is much more reason than some of us might be willing to admit. While I will most cheerfully vote for the continuance of this road to Jefferson city, and for bridging every river in its course, I look upon its continuance westward as sinking into tenfold insignificance when compared to the importance of its preservation east of Wheeling. Between Wheeling and St. Louis, there is a constant safe communication by water. The rivers north of the Ohio furnish means of water communication with the Government of each State east of the Mississippi; but over the mountains there is no such communication. There is no comparison between the business done from Wheeling, westward, by land, (great as that business is,) and that down the water. Yet all the freights and travel from Wheeling, by water and by land, have to pass over the road from Cumberland to Wheeling. To suffer this, therefore, to fall into ruins, and yet prosecute the improvement westward, would be the height of folly.

He disagreed with Representative Crawford's fear that this appropriation would lead to a system of repairs at public expense. "He is precisely wrong; it is the end of that system." No repairs would have been made or justified, in the first place, if Representative Crawford's State, Pennsylvania, had not been hostile to the road:

This hostility has ceased, and Pennsylvania has liberally proposed to preserve the road within her limits, and Maryland has done the same.

And if they did so, "Congress can have no reason for interfering, nor will there be any necessity for it." Those States agreed to President Jefferson's consent to construction of the road, "and those States cannot act against them but with our assent, and this we propose to give by the amendment under consideration."

The Committee of the Whole then "negatived" the McKennan Amendment appropriating \$328,983 for the Cumberland Road each of Wheeling, including the erection of toll houses and transferring the road to the States it passed through.

The *Register* reported:

Mr. Vance proposed a third section to the bill, going to repeal so much of the act for the continuation of the Cumberland road as enabled the President to appoint a

superintendent of that work, and to place it under the management of the Engineer Department. This amendment was agreed to.

After a few additional actions unrelated to the Cumberland Road, the House adjourned.

On May 5, 1832, the House took up amendments to the appropriation bill for internal improvements. First was the amendment compensating Lucius Stockton for his expenditures in repairing a section of the Cumberland Road east of Wheeling. Chairman Mercer of the Ways and Means Committee introduced copies of the correspondence of the Postmaster General with the War Department on this subject. After a brief rehash of the earlier discussion of the matter, the *Register* stated that the “item was then concurred in by a large majority.”

After considering other provisions, the House turned to items for continuance of the Cumberland Road west from Zanesville. Representative William H. Ashley of Missouri moved an amendment to extend the road from Vandalia to Jefferson City “and advocated the motion by a short speech.” After a brief debate about the obligation of the Federal Government to extend the road, the House rejected the Ashley Amendment, 55 to 69.

Ohio Representative Vance introduced his amendment, rejected by the Committee of the Whole, repealing the power of the President to appoint a superintendent of the road in Ohio. The House agreed to the amendment “by a large majority.”

On May 18, Representative McKennan submitted the amendment, previously rejected by the Committee of the Whole, to the internal improvement bill regarding repair of the Cumberland Road east of Wheeling, including erection of toll-gates and houses as well as transfer of the road to Maryland and Pennsylvania. The amount of the appropriation was left blank:

Mr. McK. explained that the object of the present appropriation was to put the road in a state of repair, to be then given up to the States of Pennsylvania and Maryland, who had passed in their respective Legislatures acts by which they agreed to take charge of the road, and levy a toll thereon in future, so as to make the receipts of the toll pay for the repairs of the road.

Virginia Representative Alexander raised a point of order, as explained in the *Register*:

It appeared to him strange that an amendment of this kind should be introduced into the present bill, whilst there was a separate bill for the same object before the House. The chair decided that the amendment was in order.

Representative Crawford “contended at length in opposition to the principle that this road was to be first repaired and then given up to the several States.” As he had stated before, he might vote for the amendment if it were for a smaller amount, such as \$70,000 or \$80,000, but not “for the purpose of making a McAdamized road.”

Representative Mercer, who lived in Loudoun County, Virginia, noted that he was a disinterested party because he had no land along the road. He thought the report of the Secretary of War on the condition of the road would satisfy Representative Crawford on the necessity of its repair. "He wished, if any repairs were to be made, that they would be well done."

Representative Stewart "advocated, with much animation and at considerable length, the appropriation," but the *Register* did not detail the remarks.

Asked by Representative John Davis of Massachusetts what amount should be inserted in the blank, Representative McKennan replied \$328,923.

That amount was too much for Representative Davis. To avoid unending appropriations for repair of the road, he agreed that it should be put in repair because the States would not agree to take it over "if it was in the dilapidated and unproductive state in which it was represented to be." Since they already had done something similar in Ohio, which had accepted the newly completed roadway for conversion to toll operation, the eastern States might well object. "If they did not now make an appropriation to get rid of the road altogether, they must be every year called on to repair it." Still, he thought \$150,000 "was as much as could be economically expended between this and the meeting of the next Congress."

Representative McKennan and Representative Doddridge were "perfectly willing to accept the suggestion of the gentleman from Massachusetts."

Representative Crawford pointed out that although the amount was reduced, "they would yet be required, as avowed by gentlemen, to make another appropriation for the whole estimate at a future time."

Kentucky Representative Johnson thanked Representative Davis "who came forward in a spirit of liberality and conciliation to make a proposition which he trusted the gentleman from Pennsylvania would accept." He added that with the session nearing an end, "he hoped it would be accepted without wasting their time in further discussion of the amendment."

Several members were concerned about the reference in the provision to erection by the general government of toll-gates and toll-houses. Representative Joseph LeCompte of Kentucky asked for a reading of the amendment. After the reading "he declared that he was in favor of the road, and had always voted for it; but he saw something in it about toll-gates, to which he was averse on principle, and as leading to amalgamation, which he disliked." If the language remained in the amendment, he would, "with regret," vote against it.

Representative Wickliffe, who also objected to the reference, moved that his colleagues vote to eliminate it, "being very well assured that after the road was repaired, it was for the benefit of the several States to accept it without having that condition tacked to it." He warned "friends of the road" not to insist on retaining the language. "If they did, the

whole object they had at heart, of repairing the road, would be defeated.” He once, “in a dark hour” believed he had voted for a bill including toll collection, but “now objected to this clause, not on account of the expense to be incurred by the erection of the houses or gates, but because the general principle was involved, whether the House had the power to erect these things.”

Representative McKennan observed that the idea was to provide funds that State-appointed commissions would use to erect the toll facilities.

“The question was then put on Mr. Wickliffe’s amendment, and negatived.”

Before the House could vote on the appropriation of \$150,000 for the repairs, Representative Samuel F. Vinton of Ohio moved an amendment to the Cumberland Road amendment stating: “that the acts of the Legislatures of Pennsylvania and Maryland should be printed, and appended to the act of this present session of Congress.” His purpose was “to obviate any difficulty which might hereafter arise on the subject of these toll-gates, or other matters.”

Representative McKennan agreed to the modification, after which the House approved the Cumberland Road amendment, 90 to 72.

After the House considered other matters, Kentucky Representative Letcher introduced an amendment to appropriate \$3,000 for the salary of the superintendent of the Cumberland Road, in lieu of his former salary of \$6 per diem and a percentage of disbursements.

After brief debate, the House considered an amendment by Representative Henry G. Lamar of Georgia reducing the salary to \$2,000. The House rejected the amendment, 30 to 82. The Letcher Amendment was then agreed to without a recorded vote.

Representative Stewart introduced an amendment for “an appropriation due for arrears and services to a former superintendent of the Cumberland Road.”

Representative Vinton objected “lest this gentleman, who had already squandered large sums of the public money, might be again selected for appointment to a similar office.”

Representative Polk expressed “his astonishment that the House would continue to receive amendment after amendment, and regretted that, as he meant to vote against the bill *in toto*, he could not move the previous question thereupon.”

In a similar vein, Representative Ralph I. Ingersoll of Connecticut was concerned that “the whole bill would be so loaded that it must finally break down; to avert which, he called for the previous question, which being sustained, and the main question ordered.” The McKennan Amendment passed, 102 to 66.

On May 19, after some discussion of the role of the general government in advancing internal improvements, the House approved the overall bill, 99 to 75.

The bill went to the Senate where a jurisdictional dispute arose on May 22 about whether the bill should be sent to the Committee on Roads and Canals or the Committee on Commerce. Senator Hendricks, who was chair of the Committee on Roads and Canals, offered a motion referring the bill to his committee. Senator Clay urged the Senate to refer the bill to the Commerce Committee:

He thought it was proper to look to practical results; and he was apprehensive that if the bill was sent to the Committee on Roads and Canals, it would reach a harbor there from which it would not be able to make its escape. He was desirous to send it to a committee which was not hostile to its objects.

Mississippi Senator Poindexter proposed a split referral:

Mr. POINDEXTER asked if it would be in order to refer so much of the bill as related to the Cumberland road to the Committee on Roads and Canals, and the residue of the bill to the Committee on Commerce. The bill was of a mixed character. The Cumberland road appropriation stood there as a unit, to use the court phrase, and ought to be sent to the Committee on Roads and Canals.

Maine Senator Holmes favored the Commerce Committee:

Mr. HOLMES regarded the bill as a complete jumble; part of it might go to any committee, for it embraces almost every thing. But as the principal items were commercial in their character, he was in favor of sending it to the Committee on Commerce.

Senator Josiah S. Johnston of Louisiana, who was a member of the Commerce Committee, favored his committee:

. . . said the object seemed to be to take this bill from the Committee on Commerce, to which it had, year after year, been given, and give it to the Committee on Roads and Canals, a committee which was so constituted, either from design or from accident, as to be hostile to the bill.

The debate on referral ended as described in the *Register*:

Mr. HENDRICKS said that, although the Committee on Roads and Canals could not go the lengths of some Senators in their construction of the constitutional powers of Congress, there was great liberality in that body. He insisted that there were other items than the Cumberland road in the bill, which rendered the reference to the Committee on Roads and Canals a proper one. But, as he would decline the responsibility of hazarding the fate of the bill, he would withdraw his motion.

The motion was then withdrawn, and the bill was referred to the Committee on Commerce.

On June 22, the Senate considered the bill briefly, without discussing the Cumberland Road, and the question taken on the third reading. The Senate approved, 26 to 13. The Senate completed action on the bill on June 23, with perfunctory discussion and by a vote of 28 to 14, passed it.

President Jackson signed “An Act making appropriations for certain internal improvements for the year one thousand eight hundred and thirty-two” on July 3, 1832. It appropriated funds for projects around the country, including the Cumberland Road east of the Ohio River to enable transfer of the road to the States:

For repairs of the Cumberland road east of the Ohio river, and other needful improvements on said road, to carry into effect the provisions of an act of the General Assembly of Pennsylvania, entitled “And act for the preservation and repair of the Cumberland road,” (a) passed the fourth day of April, one thousand eight hundred and thirty-one; and of an act of the General Assembly of the state of Maryland, entitled “An act for the preservation and repair of that part of the United States’ road within the limits of the state of Maryland,” (a) passed the twenty-third day of January, one thousand eight hundred and thirty-two, to which said acts the assent of the United States is hereby given to remain in force during the pleasure of Congress, the sum of one hundred and fifty thousand dollars, to be expended under the direction of the War Department, under the superintendence of an officer of the engineers; and which said acts are hereby directed to be printed and appended to the laws of the present session of Congress.

Consistent with Representative Vinton’s amendment, the official print of the law included copies of the Maryland and Pennsylvania legislation. The States agreed to accept responsibility for the road. The Maryland law stated that it was enacted because the road “is, in many parts, in bad condition, for want of repairs.” As a result, the law provided:

That, as soon as the consent of the government of the United States shall have been obtained, as hereinafter provided, that part of the United States’ road, commonly called the National road, within the limits of the state of Maryland, shall be taken under care of the state of Maryland; and the governor and council of this state shall be and they are hereby authorized to appoint a superintendent of that part of said road lying within the limits of this state, who shall hold his office for three years from the date of his commission, and who shall, at the time of his appointment, and during his continuance in office, reside in Allegany county; whose duty it shall be to exercise all reasonable vigilance and diligence in the care thereof; which superintendent, after his appointment, shall have full power and authority to build toll-houses, and erect toll-gates at suitable distance: *Provided*, That the number of gates aforesaid shall not exceed two on the whole distance within the limits of this state.

The law specified the conditions for toll collection, the price of the toll, penalties for infractions, accounting for toll revenue, and other specifics of the new method of financing road upkeep.

Section 13 added this preliminary requirement:

*And be it further enacted,* That this act shall not have any force or effect, until the Congress of the United States shall assent to the same; and until so much of the said road as lies within the limits of the state of Maryland be first put in a good and complete state of repair, by an appropriation made by the Congress of the United States to repair the same, and to pay the expenses of building a toll-house or toll-houses, and erecting a toll-gate or toll-gates, to be built and erected by the superintendent to be appointed by the governor and council of this state; to be expended under the authority of a superintendent to be appointed by the President of the United States . . . .

The Pennsylvania law was enacted because “that part of the Cumberland road lying within the state of Pennsylvania is in many parts in bad condition, for want of repairs, and as doubts have been entertained whether the United States have authority to erect toll-gates on said road, and collect toll . . . .” Therefore, upon consent of the government of the United States, the law appointed commissioners, by name, to erect toll-houses and toll-gates in accordance with the terms provided in the law. Section 10 provided:

*And be it further enacted by the authority aforesaid,* That this act shall not have any force of effect until the Congress of the United States shall assent to the same, and until so much of the said road as passes through the state of Pennsylvania be first put in a good state of repair, and an appropriation made by Congress for erecting toll-houses and toll-gates thereon, to be expended under the authority of the commissioners appointed by this act . . . .

The two State laws did what many Members of Congress desired by taking responsibility from the general government for the road. However, they imposed a condition, namely that the road be placed in a condition of good repair, that would require additional appropriations by Congress.

In addition, the Act appropriated \$5,868 to “enable the Secretary of War to pay Lucas W. Stockton the amount expended by him on the repairs of the Cumberland Road” in 1831.

The Act also addressed the Cumberland Road west of Wheeling. It appropriated \$100,000 for continuing the road in the State of Ohio west of Zanesville; \$100,000 for the road in Indiana including: the erection of bridges over the east and west branches of White Water, and other small streams, with a view to bringing the road into immediate use; and \$70,000 for continuing the road in Illinois. The funds were to come from the general Treasury, with the amounts to be replaced by revenue from land sales as provided for in the Enabling Acts for the three States.

The final section of the Act stated:

*And be it further enacted,* That so much of the second section of the act for the continuation of the Cumberland road, approved March third, one thousand eight hundred and twenty-five, as authorized the President, with the advice of the

Senate, to appoint a superintendent thereof, be, and the same is hereby, repealed, and that the work in the state of Ohio be continued by the War Department, under the superintendence of an officer of engineers.

Professor Larson described what had happened during the 22<sup>nd</sup> Congress:

From the beginning of the session anti-improvers announced a desire to settle forever the “question of national internal improvements,” yet one by one members of the popular chamber added to a \$30,000 package of improvements until, at \$1.2 million, it scandalized James K. Polk and reminded North Carolina’s Thomas Hall of a “pile of logs” rolled up by the “log rollers” – they ought to set fire and burn it! This “demoniacal system” of internal improvement, Hall concluded, struck “more directly at the vitals of the sovereignty of the States” than that “canker of our peace and harmony, the tariff itself.” Nevertheless, the House passed this well-fatted barrel of pork, 99 to 75, the Senate agreed, and Jackson gave his silent assent (although Clay later heard that Jackson intended to “suspend the execution” of part of this bill to which he objected). Apparently nobody wished to go home empty-handed in the closing months of the 1832 presidential canvass.

Representative Polk made his views clear a few days after House passage of the internal improvements bill during debate on a bill to improve certain harbors and rivers. He had proposed to strike out the enacting clause of the bill. On June 4, he explained why:

Mr. POLK said his only object had been to ascertain the sense of the House, and discover how far they were disposed to go, in appropriations of this character, during the present session. A bill had passed the House but a few days since, containing an unusually large appropriation for works of this nature. The present bill did not present such an appeal as the other bill had done. In behalf of that it was said that the works had been commenced, and if they should not be completed, the money already expended would be thrown away. No such argument could be applied to the present bill. The proposed works, entirely new, are now first to be appropriated for. If they should not be resisted now, next year the same argument would be used in their favor which had been brought forward in support of the other bill. Gentlemen would tell the House that, by commencing the works, it had given an implied pledge that they were to be completed, and completed they must be, cost what it might. He trusted gentlemen would stop in such a course.

Later that day, Representative Polk was asked to withdraw his motion, but he refused to do so:

He observed that gentlemen seem to throw out the idea that his motion amounted to an attack upon the whole system; and that, should it prevail, the system must be abandoned. But this was not by any means the case. He had but called the House to the very large sum proposed to be appropriated. He should not be

drawn away into an argument for or against the administration, although the remarks which had been used amount almost to an invitation to that course . . . .

Mr. P. made some further remarks in opposition to the bill generally, professing himself equally opposed to both bill and amendments. He had often observed that propositions for large amounts of money always passed the House more readily than those for smaller ones. When the bill reported by the gentleman from Ohio [Mr. Whittlesey] asked of the House a little money to pay for a horse or a wagon destroyed in the war, the appropriation was often warmly contested, but let a bill come in giving a million of dollars at a blow, and all serious opposition to it was cried down.

Former President John Quincy Adams, who had been elected to the House for the 22<sup>nd</sup> Congress, responded to future President Polk:

He would make . . . one general remark on the nature of the opposition which had been urged against this bill, and every measure of the same kind that he had witnessed. The opposers confined themselves to general reflections, more or less severe, on all appropriations for these purposes. The House had now been debating this bill for an hour and a half, and yet not one single word had been said by any of those who spoke against the bill, against any one of the appropriations it contained. If gentlemen chose to discuss the question of the constitutionality of such appropriations, there would be a time for that, as Solomon declared that there was for all things. A gentleman had moved to strike out the enacting clause, and had favored the House with his opinions as to the general principle of all these appropriations. He appeared to be against the whole of them.

After commenting on specific observations during the debate, he continued:

We have this day heard what I have too often heard in this House. We have been told that if these appropriations pass, they will dissolve the Union. There was hardly a question that now arose in the House, in reference to which they were not told the same thing. When we lately passed an act of gratitude to those who had fought the battles of the revolution, we were told that if the bill passed it would dissolve the Union; and now we are told that if we spend 300,000 dollars on new subjects of internal improvement, we do it at the hazard of the Union. Gentlemen, if they please, may threaten us with a dissolution of the Union, in place and out of place, "in season and out of season," but I here give it as my opinion, before my country, and before my God, that if the House shall settle this question by declaring that they will engage in no more works of internal improvement, this Union will soon break in pieces; and I will add that it will not deserve to be preserved.

(Former President Adams had joined the House on March 4, 1831, the only former President to serve in Congress. He served until his death, after suffering a stroke in the House chamber, on February 21, 1848, passing away 2 days later.)

A few moments later, the House voted against Representative Polk's motion, 86 to 101, after which the House agreed on the amendments to the bill and ordered the bill to a third reading, 102 to 73. On June 5, the House passed the bill, 85 to 67, and sent it to the Senate for consideration.

The Senate took up the bill on July 4. After a brief discussion by the Senators of some of the bill's provisions, Senator Stephen D. Miller of South Carolina moved to amend the bill by striking out all after the enacting clause. In its place, he proposed to insert a substitute "appropriating \$600,000 (about the amount of the appropriations in the bill) for internal improvements, to be expended under the direction of the War Department, in the several States, in proportion to their population." He considered this procedure less objectionable than the original bill:

There was no rule, no principle, in the bill; it was an invasion of the treasury, without any regard to justice or equality. For the first time to-day we have learned that the various branches of the Government concur in the power or expediency of carrying on appropriations for objects of internal improvement. We have just heard that the President has signed the internal improvement bill, containing appropriations for the most limited and local purposes. I hope we shall never again be referred to the veto of the Maysville and Rockville roads as a security against this system. The Senate and House of Representatives, and the President, all concur in this power.

He offered his proposal to show his constituents "evidence of the disposition of the Government to administer its taxing and disbursing powers on equal and just principles." The general government collected taxes from tariffs "designed to protect domestic manufacturers," then expended the funds to justify new tariffs:

If this Government were an absolute despotism, a pure monarchy, would it dare to levy taxes without having some regard to equality in their disbursements? Although the planting States may pay much more than their portion of the taxes, the amendment would operate to limit these appropriations by making those who receive the appropriations pay some of the burdens. You deprive the majority of the motive to plunder the minority, when you subject the majority itself to a portion of the burden.

Although he did not pledge to vote for his proposed amendment, he preferred his version to the original bill. "It will give the people some insight into the principle upon which their money is drawn from them." Every section of the country should receive a portion of the benefits deriving from the taxes it pays. "If you assume, in the name of the Government, the authority to tax us, why not, by the same authority, refund a portion as indicated by the amendment?"

Senator Clay thought Senator Miller's idea merited "serious consideration," but regretted that it came so late in the session "as to preclude that examination and reflection which the importance of the subject deserved":

He thought, however, that the principle of distribution should depend as well on the extent and exigencies of the States as on federal numbers. His object, however, in rising, was to express his extreme surprise that the President, after putting his veto on the appropriations for work of such public utility as the Maysville and Rockville roads, should have sanctioned the [internal improvement] bill, so called, in which appropriations were made to a very large amount, and which differed in principle not one particle from the one he had rejected. If the Maysville and Rockville roads were local objects, there were hundreds of local objects in the bill just approved, infinitely more local. What had been the course of the present administration? They first held appropriations for certain objects of internal improvement to be unconstitutional, and then sanctioned appropriations for other objects depending entirely on the same principles with those held to be unconstitutional; and the result has been to open an entire new field of internal improvement. Favorite objects, Mr. C. said, had been considered constitutional, while objects in States not so much cherished had been held to be local. Mr. C. concluded by saying that he thought with the Senator from South Carolina that there ought to be some principle of distribution for internal improvement settled for the future.

He hoped Congress, in its next session, would consider some methods of distribution that “would do equal justice to all the States of the Union.”

After further debate, the Senate rejected the Miller Amendment, 8 to 33. It then approved the bill, 25 to 16.

The bill then went to President Jackson, who pocket vetoed it. When the 22<sup>nd</sup> Congress returned for a final session, he sent a message on December 6, 1832, to explain his veto. He had asked the Engineer Department to review the bill and send him a report that distinguished “between those appropriations which do and those which do not conflict with the rules by which my conduct in this respect has hitherto been governed”:

By that report it will be seen that there is a class of appropriations in the bill for the improvement of streams that are not navigable, that are not channels of commerce, and that do not pertain to the harbors or ports of entry designated by law, or have any ascertained connection with the usual establishments for the security of commerce, external or internal.

It is obvious that such appropriations involve the sanction of a principle that concedes to the General Government an unlimited power over the subject of internal improvements, and that I could not, therefore, approve a bill containing them without receding from the positions taken in my veto of the Maysville road bill, and afterwards in my annual message of December 6, 1830.

He regretted that Congress did not have “more definite and certain” rules for classifying internal improvement projects. For further bills, in the absence of such rules, “I shall continue to apply my best exertions to their application and enforcement . . . to exercise

the power with which I am invested to avoid evils and to effect the greatest attainable good for our common country . . . .”

His criteria for reviewing appropriations for the construction of lighthouses, beacons, buoys, public piers, and the removal of impediments to water transportation “have been so fully stated that I trust a repetition of them is unnecessary.” Had the bill complied with them, “I should have cheerfully signed the bill.”

### **After the Election**

For the presidential election of 1832, President Jackson dropped Vice President Calhoun from the ticket and chose his close friend and advisor, Secretary Van Buren, as his running mate on the Democratic Party ticket.

They ran against the National Republican Party’s Senator Henry Clay and his running mate, John Sergeant, a former member of the House of Representatives from Pennsylvania and legal counsel to President Jackson’s hated Bank of the United States.

Clay thought President Jackson’s reelection prospects were fading. As Professor Larson explained, Clay thought “that Jackson’s lack of support for popular federal programs, his attack on the bank, tariffs, and internal improvements, his party’s manipulation of patronage, the arbitrariness of the Maysville veto in light of his shameless support for election-year pork, his apparent subservience to the strident voices of southern and western extremists within the ruling coalition – all of this surely exposed Jackson as a demagogue, a hypocrite, and an altogether dangerous man.”

Issues related to internal improvement were not a major factor in the election. Professor Larson pointed out that “tariff reform and Jackson’s attack on the United States Bank generated far more heat and light and set the terms of the final battle between Jackson and Clay.”

In the election, the Jackson-Van Buren ticket won over 54 percent of the popular vote and 219 of the 286 electoral votes, with 144 electoral votes needed to win. As the results came in, wrote Professor Larson of Clay, “a second landslide had destroyed his hopes altogether”:

“The dark cloud which had been so long suspended over our devoted Country,” mused the gloomy campaigner, “instead of being dispelled, as we had fondly hoped it would be, had become more dense, more menacing[,] more alarming. Whether we shall ever see light, and law and liberty again, is very questionable.”

. . . Humiliated once again at the polls, Henry Clay found himself in December in the Senate [facing] the temper and venality of a military hero better loved by the people than himself. Jackson, Clay lamented, had uprooted everything gained since the adoption of the Constitution: “What single principle is fixed? The Bank? No. Internal Improvements? No. The Tariff? No. Who is to interpret the Constitution? No. We are as much afloat at sea as the day when the

Constitution went into operation.” Nothing was certain except “that the *will* of Andrw. Jackson is to govern.”

Professor Larson summarized one consequence of the election:

Jackson’s second victory opened the “nullification winter,” for Clay one of the darkest periods he ever spent in Washington. In November, as the final electoral results were being tallied, South Carolina passed its Ordinance of Nullification – outlawing the collection of federal customs – and the long-threatened struggle between Jackson and the southern free-trade radicals came to a head. On 10 December 1832 Jackson ordered the nullifiers to desist: “the United States was a government, not a league,” and nullification was nothing less than treason.

In his fourth annual message to Congress dated December 4, 1832, President Jackson discussed nullification, which he said threatened not only specific laws, but “the integrity of the Union.” He also discussed his philosophy on national/State relations:

In conformity with principles heretofore explained, and with the hope of reducing the General Government to that simple machine which the Constitution created and of withdrawing from the States all other influence than that of its universal beneficence in preserving peace, affording an uniform currency, maintaining the inviolability of contracts, diffusing intelligence, and discharging unfelt its other super-intending functions, I recommend that provision be made to dispose of all stocks now held by it in corporations, whether created by the General or State Governments, and placing the proceeds in the Treasury.

For the most part, the government held stock in corporations established to build turnpike roads.

The stocks were “of little or no value . . . [and] adverse to the purity of our institutions.” Because many observers considered the stock purchases to be unconstitutional, continuing “to persist in the policy which they indicate is considered wholly inexpedient.”

On other topics, he wrote that during his nearly 4 years in office, \$58 million had been applied to paying down the public debt:

That this has been accomplished without stinting the expenditures for all other proper objects, will be seen by referring to the liberal provision made during the same period for the support and increase of our means of maritime and military defence, for internal improvements of a national character, for the removal and preservation of the Indians, and, lastly, for the gallant veterans of the Revolution.

After discussing other subjects, he turned to internal improvements:

In former messages I have expressed my conviction that the Constitution does not warrant the application of the funds of the General Government to objects of

internal improvement which are not national in their character, and, both as a means of doing justice to all interests, and putting an end to a course of legislation calculated to destroy the purity of the Government, have urged the necessity of reducing the whole subject to some fixed and certain rule. As there never will occur a period, perhaps, more propitious than the present to the accomplishment of this object, I beg leave to press the subject again upon your attention.

Without some general and well-defined principles ascertaining those objects of internal improvement to which the means of the Nation may be constitutionally applied, it is obvious that the exercise of the power can never be satisfactory. Besides the danger to which it exposes Congress of making hasty appropriations to works of the character of which they may be frequently ignorant, it promotes a mischievous and corrupting influence upon elections, by holding out to people the fallacious hope that the success of a certain candidate will make navigable their neighboring creek or river, bring commerce to their doors, and increase the value of their property. It thus favors combinations to squander the treasure of the country upon a multitude of local objects, as fatal to just legislation as to the purity of public men.

If a system compatible with the Constitution cannot be devised, which is free from such tendencies, we should recollect that that instrument provides within itself the mode of its amendment; and that there is, therefore, no excuse for the assumption of doubtful powers by the General Government. If those which are clearly granted shall be found incompetent to the ends of its creation, it can, at any time, apply for their enlargement; and there is no probability that such an application, if founded on the public interest, will ever be refused. If the propriety of the proposed grant be not sufficiently apparent to command the assent of three fourths of the States, the best possible reason why the power should not be assumed on doubtful authority is afforded; for if more than one-fourth of the States are unwilling to make the grant, its exercise will be productive of discontents which will far overbalance any advantages that could be derived from it. All must admit that there is nothing so worthy of the constant solicitude of this Government, as the harmony and union of the people.

Being solemnly impressed with the conviction that the extension of the power to make internal improvements beyond the limit I have suggested, even if it be deemed constitutional, is subversive of the best interests of our country, I earnestly recommend to Congress to refrain from its exercise in doubtful cases, except in relation to improvements already begun, unless they shall first procure from the States such an amendment of the Constitution as will define its character and prescribe its bounds. If the States feel competent to these objects, why should this Government wish to assume the power? If they do not, then they will not hesitate to make the grant. Both Governments are the Governments of the people; improvements must be made with the money of the people, and if the money can be collected and applied by those more simple and economical political machines, the State Governments, it will unquestionably be safer and better for the people,

than to add to the splendor, the patronage, and the power of the General Government. But if the people of the several States think otherwise they will amend the Constitution, and in their decision all ought cheerfully to acquiesce.

A few days later, on December 10, 1832, he issued a proclamation on nullification. "If this doctrine had been established at an earlier day, the Union would have been dissolved in its infancy." He added, "If the doctrine of a State veto upon the laws of the Union carries with it internal evidence of its impracticable absurdity, our constitutional history will also afford abundant proof that it would have been repudiated with indignation had it been proposed to form a feature in our Government."

He called for a means to force compliance with Federal laws:

Having the fullest confidence in the justness of the legal and constitutional opinion of my duties which has been expressed, I rely with equal confidence on your undivided support in my determination to execute the laws, to preserve the Union by all constitutional means, to arrest, if possible, by moderate and firm measures the necessity of a recourse to force; and if it be the will of Heaven that the recurrence of its primeval curse on man for the shedding of a brother's blood should fall upon our land, that it be not called down by any offensive act on the part of the United States.

### **Accompanying Documents**

The report included information on the Cumberland Road, east and west of Wheeling, including a summary of General Gratiot's observations of the road during a recent inspection. He was, as he noted, displeased with the contract work:

I ascertained that, in making contracts for the repairs, the contractors were, in many instances, permitted to use the best of the stone composing the old covering of the road, when none better could be procured in the neighborhood; and it is believed that advantage has been taken of the opportunity thus offered to introduce into the new covering material of inferior quality, and which had been previously condemned. I also found that the stone, in general, was not broken to the size prescribed by the contracts, and that the side drains had not been sufficiently attended to.

Although he summarized the information he had received, he provided more detailed information in response to a Senate resolution of December 31, 1832, asking the Secretary of War for a report on "the progress made in the repair of the Cumberland road east of Wheeling, and in the construction of that road in the States of Ohio, Indiana, and Illinois." On January 16, 1833, Secretary Cass transmitted General Gratiot's report to the Senate.

In sending the report to Secretary Cass, General Gratiot wrote:

For reasons stated in that report, I would renew the recommendation therein made, to change the location of that part of the road immediately west of Cumberland, for the purpose of turning Wills' hill; and as this change can only be accomplished by legislative enactment, I have to request that you will be pleased to bring the subject to the notice of Congress.

The report did not explain that in compliance with instructions from Secretary Cass on July 13, 1832, General Gratiot had assigned Lieutenant Joseph K. F. Mansfield to a 3-month stint as superintendent of the road east of the Ohio River. The letter making the assignment contained a detailed explanation of what Lieutenant Mansfield was to do. Each State was to be considered a division, with the division in Maryland divided into two sections and Pennsylvania divided into six equal sections – consistent with the number of toll-gates to be installed. He was to “classify them in the order of their condition, placing the worst first, the next worst section, and so on, making the best the last.” He was then to “ascertain how far the appropriation, which is one hundred and fifty thousand dollars, will go toward repairing the whole road.”

Contracts were to be awarded for individual sections:

Should you deem it advisable, in letting out these sections, to retain any portion of them which may seem to require but slight repairs, and which repairs could be executed with greater economy by having overseers and laborers to act under your immediate direction, you are at liberty to do so, bearing in mind, however, that whenever the repairs of the road can be made with equal economy, it is the wish of the department that they should be made by contract. As soon as one or more of these sections are finished, you will notify the commissioners appointed to receive this road by the laws of Pennsylvania and Maryland . . . that these sections are ready to be turned over to the State, and you will accordingly turn them over.

As for the mode of repair, Lieutenant Mansfield was to employ the McAdam system. General Gratiot provided detailed instructions on pavement construction, as well as details on culverts, bridges, and sidewalks. He continued:

As the laws on the subject of this road do not seem to justify a deviation from the original location, you will be careful to confine your operations to the road as you find it located; but, as it is believed that its axis may be dropped without adding much to the expense in those places where its inclination with the horizon exceeds four degrees, you are authorized, under the exercise of a sound discretion, to make this change.

After touring the road shortly arriving on July 28, Lieutenant Mansfield reported that:

I find the road in a shocking condition, and every rod of it will require great repairs; some of it is now impassable.

In the report to Secretary Cass on January 11, 1833, General Gratiot transmitted a full report from Lieutenant Mansfield, one for the fiscal year ended September 30, 1832. During his initial inspection tour, he began to chain and take notes “over every rod of the road from Cumberland to the Virginia line, and placing marks at every eighth of a mile; which enabled him to designate the precise parts that required the most repair, and that that were heretofore repaired.” He also divided the road into sections per the number of toll-gates to be erected (two in Maryland, six in Pennsylvania).

Some sections had been “more or less repaired on the McAdams plan”:

The McAdamized road will all of it require some repair, say at least three inches additional metal, to bring it to the required condition. The remainder of the road is either very rough, or tolerable; and all of it, with a few exceptions, will have to be lifted and repaired on the McAdam plan, to present a road that can be called good and permanent. The bridges and culverts, generally, require but little repair to put them in a condition called good; but how long masonry of such a description, as is generally throughout this road, will last, time only can show.

At the War Department’s “verbal suggestion,” he had specifically examined the location of the road within 4 miles of Cumberland with a view to going turned around Wills’ mountain, instead of passing over it. Similarly, he had conducted “an examination and survey of the bridge and locality between Brownsville and Bridgeport . . . with a view to plan and estimate for the decision of the honorable Secretary of War.” The improvement and bridge of the section were “conditional, and dependent on the decision of the honorable the Secretary of War, or a specific appropriation by Congress.” Estimates, therefore, were conditional.

The worst section in Maryland was connected to the two worst sections in Pennsylvania on either side of the border between the two States. They had been repaired according to the McAdam plan, “so called, parts of which, having been repaired with soft stone, became beds of sand and worse than the original rough pavement for travel; other parts have worn well, and require, comparatively, but little repair.”

These sections were subdivided for separate contracts that were awarded at a cost of \$118,226.74:

The plan of repair adopted in these contracts was the McAdam plan; the only one that would give efficiency to the repairs. It requires the old pavement to be lifted, the bed reformed, thirty feet broad, and the metal packed on the middle of the bed to a breadth of twenty feet, and thickness of nine inches. These sections will probably cost more the rod than any part of the road hereafter; because of their bad condition, and the difficulty of procuring materials of proper quality. For some parts stone is hauled up hill, over bad roads, three and a half miles; on others, an inferior material, but on that will answer, under existing circumstances, has been resorted to.

The contract method of proceeding was not “found to the advantages of the Government” in all cases:

In the neighborhood of Frostbrugh the offers at public sale were at the rate of 20 dollars the rod with a very inferior sand stone for the metal. The sale here was declined by the Superintendent, and laborers by the day have been employed, which will reduce the price per rod to about eight dollars.

Although General Gratiot criticized the contractors on their work, and by implication the superintendent overseeing the work:

Lieut. Mansfield, the officer who had the temporary management of the affairs of this road, has done all that zeal, aided by sound judgment, could effect. The quantity of work done, and the manner in which it is executed, afford the most satisfactory evidence of great industry, and entitle him to much credit.

(In later years, Mansfield served as chief engineer in General Zachary Taylor’s army during the Mexican-American War (1846-1848). During the Civil War, Mansfield was killed during the Battle of Antietam in Maryland on September 17, 1862.)

General Gratiot also provided a report from Captain Delafield dated December 25, 1832. Contractors had commenced work in late September for work equal to about \$124,000 of the appropriation, with the balance to be used in the spring on sections not yet under contract:

The materials to be used was the best known to exist in the vicinity of the work at the time of making the contracts. Since then, better stone has been found in some positions, and the terms of the contracts altered to secure its being applied.

The geological formation of the country renders hopeless the discovery of any other stone than lime, whin, greywacke, and sand stone, at all suited to making the road. Of these, the lime is the best, and most difficult to be obtained – in nearly every instance found in the bottom of the mountain streams, with the whin stone; the surface of the road is to be formed in all cases, as the other rocks are unsuited to the purposes.

Additional contracts had been awarded in November, “by which roads will be opened to lime-stone quarries, to facilitate the operations in the spring”:

Two sections were commenced on the first or eastern division of the road, under the management of overseers, with hired labor, being that part of the road for which the proposals were deemed exorbitant.

In December, proposals had been solicited for the remaining sections, “between the first eastern contract in Maryland, and the most western one, near Uniontown, in Pennsylvania, measuring, together, about six miles.” The bids had been rejected because they came “from persons who already have as much of the road under contract as an

individual, with limited resources, can undertake, with the certainty of doing justice to both parties”:

And, in consequence of a determination to make a change in the system now in operation, by which the best material and road may be secured or made in every locality with the least cost . . . making of additional contracts yet, will not ultimately delay the completion of the work.

For the western sections, General Gratiot provided two reports from Lieutenant Henry Brewerton, a native of New York. After graduating from West Point in 1819, Brewerton worked on a variety of projects, taught engineering at the academy, and was assigned to the Cumberland Road in 1832, a post he retained until he left in 1836 to work on improving the Hudson River. He would serve 47 years in the Army before retiring as a Brigadier General in 1867.

His first report, written in the Cumberland Road Office in Columbus, Ohio, on October 13, 1832, covered the condition of the road west of Zanesville.

Between that city and the point where the Ohio canal crossed the road, “embracing nearly twenty-six miles, the necessary bridges and culverts have been built.” The bridges were in “a good state of preservation, requiring but slight repairs.” At Hebron, the road crossed the canal “over a common trestle bridge placed at right angles with the direction of the canal, and oblique to the road, making an angle of 139 degrees with it.” He thought a bridge of a more permanent character was needed. “This can be done at an expense of about \$4,500.”

For 21 miles west of Zanesville, the road was in various stages of construction, with “two strata of metal, equal in depth to six inches.” The third strata should be placed “as soon as practicable.” The work had been advertised for proposals, “but it is feared the balance of the appropriation of this year, remaining on the 30th September, will not be sufficient to admit of any expenditure upon this portion of the road.

For the 27 miles between Hebron and Columbus, “the necessary bridges and culverts have been contracted for, and, with the exception of the wooden superstructures, will probably be completed the present month, should the weather prove favorable for out door operations.”

Contracts had been awarded the previous year for clearing and grubbing the roadway between the 27<sup>th</sup> mile and Columbus. Several sections had been completed, but “will require considerable labor to be performed upon them, before the grading can be commenced.” He had advertised for proposals to grade the road between Hebron and Columbus. “A rough grade, sufficient for the passage of carriages between the two places, will be required to be formed by the 1st of January next, and the full grade completed on the 1st day of June of the coming year.”

Wets of Columbus, bridges and culverts had been construction, “and, with the exception of the parapet walls of four bridges, are built of lime stone of various qualities, the

parapets being of an inferior description of sand stone.” Grading had been completed for 14 miles west of Columbus, with a couple of sections. “Several stumps have been left in the bed of the road on some of the miles, which will require to be removed before the metal is put on.”

He concluded the summary of conditions:

In conclusion, I would remark, that the operations, as regards masonry, have been too extended to allow of that careful supervision which this description of work so peculiarly requires. The mortar that has been used is generally of an inferior quality, and not calculated to ensure that durability to the masonry which a road of this character demands. I cannot too strongly recommend the use of hydraulic cement for laying the exterior courses of the masonry, and for pointing all the work that has been, or may hereafter be, executed upon the road, and where the stone employed is not of sufficient hardness to be used as a wash.

On December 8, 1832, Lieutenant Brewerton reported on conditions in Indiana. His inspection of Indiana had been delayed by his work in Ohio, but now he had returned to report that:

The whole line of the Cumberland road through Indiana has been cleared to a width of eighty feet, and grubbed fifteen feet on each side of the centre; in many places, however, this work is not thoroughly done, and will require to be given out with the grading of those miles on which deficiencies in this respect occur.

The masonry, bridging, and grading, have been completed through the town of Indianapolis, and for twenty five miles east, and twenty-three miles west from thence, with the exception of the bridges over White river, Big and Little Sugar, Dry Brandywine, and Nameless creeks; a twenty feet span in the town of Greenfield, and one of one hundred and thirty-two feet over a creek on the fourteenth mile west of Indianapolis; with some minor work required to finish two bridges, thirteen culverts, and the grade of seven sections . . . .

He was concerned about the use of detached masses of granite, or field stones, for the masonry used on the eastern section of the road. They were broken by fire, but most retained a round form. They were, he wrote, “entirely unadapted to the purposes of building, where strength and durability are required.” Their use should be prohibited, “and where stone of a good kind cannot be procured at a reasonable rate, bricks should be substituted, of which a very good quality can be manufactured in the vicinity of the road”:

The constructions in brick masonry are generally very well executed, and the mortar used this season is of good quality, being far superior to what has been heretofore employed.

After discussing specifics, he summarized the section east of Indianapolis:

The eastern division, with the exception of Richmond and its neighborhood, is very deficient in regard to a good material for covering the road. For this purpose, recourse must be had to the lime-stone gravel found in the beds of the creeks, and to the detached masses of granite, or field stones, which should be carefully preserved for this object alone. The western division is much better supplied in this respect; the middle portion of it abounding in limestone of an excellent quality, in many places occurring in the bed of the road, and on the margins of the streams at the points of crossing.

He also discussed the other half of the road in Indiana:

To bring the western division of the road into use, will require of not less than \$100,000 the ensuing year. For several miles east and west of Walnut Fork of Eel river, the road passes over an exceedingly broken country, the grading of which will be very expensive. West of the Wabash river, the road crosses a low bottom of 348 rods, requiring a very heavy embankment; from thence it passes into a rough broken country, the cost of grading which will be considerable.

He concluded the Indiana report by commenting:

In conclusion, I may be permitted to remark, that, in order to expedite the transportation of the mails, which are yearly increasing in bulk; to render emigration into this section of the country more easy, and to facilitate the travel generally, would seem to require that this great thoroughfare should be brought into full operation as speedily as possible.

General Gratiot's final report was from Superintendent William C. Greenup, writing from Vandalia, Illinois, on October 29, 1832. Greenup's report had been delayed due to "the bad state of health of myself, clerk, and assisting engineer." His report covered mainly the bridges and culverts.

Heavy rains in the fall, winter, and spring seasons had delayed much of the work between the Indiana border and Vandalia. Work was finally able to proceed in June, "notwithstanding the high price of provisions and wages of laborers":

This favorable state of weather has been highly advantageous to the undertakers of the bridges, grading, and embankment across the Kaskaskia bottom, opposite Vandalia, and has been available by them in a very satisfactory manner; and, should a continuation of this favorable state of weather permit, it is expected that the works on that section of the line will be so far completed before the setting in of winter, as to afford a safe and certain communication across that hitherto almost impassable morass to the seat of Government, so much desired, and important to public convenience.

For the 16 bridges and nearly 100 culverts put under contract in 1831, "the greater part has been completed, and it is believed that most of the residue will be completed within the course of this fall."

For the long bridges, he had employed an innovation:

I have adopted the plan of superstructure patented to Col. Long, of the corps of United States' engineers, denominated *Jackson Bridges*. Several of that denomination have been raised, and will soon be completed. All experienced workmen, who have had an opportunity of seeing them, express their entire satisfaction of the principle, and view it as a valuable system of bridge architecture.

Colonel Stephen H. Long had received a patent in 1830 for a bridge design involving a series of wooden trusses in an "X" pattern. It was especially applicable to covered bridges.

Overall, he reported:

The work put under contract in August last, for the construction of 31 bridges and 13 miles of grading, has been prosecuted with much activity; and, it is believed, that more than half the work will be executed within the present year. It is estimated that about 1000 laborers are now engaged at the several works on the line.

Aggregate appropriations for work on the road in Illinois amounted to \$176,000.00. Through September 30, 1832, \$81,487.99 had been disbursed, leaving a balance of \$94,512.01. He expected additional disbursement in the fourth quarter of the year to amount to \$52,224.29, leaving a year-end balance of \$36,288.70:

The excess in the quantity of masonry it is believed will increase the cost, when added to the cost of the other works, to an amount equal to the last mentioned sum, if it does not exceed it; but no certain estimate of it can be made at the present time, nor can it be ascertained until the work is completed.

General Gratiot's final report involved the location problem along the road in the vicinity of Wills' mountain in Maryland. On January 3, 1833, Captain Delafield reported that:

The present route of the national road, from the post office in Cumberland, crosses Wills' creek at a ford, oftentimes, impassable, both on account of ice and the periodical floods of the Potomac, the creek, and its branches. At these periods, the travel is thrown over a slight and temporary suspension bridge to the western shore of the creek, where a bluff bank causes an abrupt and confirmed turn to the south, along its western margin, to an intersection with the road near the ford. From thence, it passes through a settlement, (that part of Cumberland west of Wills creek) ascends the Wills' mountain to a gap through which it passes, thence, down the western slope of the mountain to the valley formed by the Great Savage and Wills' mountains . . . .

To put this part of the road in proper order and repair, we have to construct the bridge at Wills' creek, McAdamize the distance near the  $4\frac{3}{4}$  stake, at which

positions good lime stone can be procured. It must, in consequence, be transported from the lowest to the highest levels in each side of the mountain.

Based on a recent survey, “it appears a much more advantageous route can be had, by following the valley of Wills’ creek to the mouth of Braddock’s run, thence, up the valley of this run, to form a junction with the present location in the valley formed by the Wills’ and Great Savage mountains”:

The advantages this proposed route possesses over the present location are so great, that

I cannot too strongly recommend the construction of a road on it, rather than construct the bridge at Cumberland, and repair the present route over the mountain.

He estimated that the bridge and repairs on the existing route would cost \$36,587. The cost of the proposed alternative route was an estimated \$45,344 or \$8,757 more than the repairs:

Adopting this route, we would avoid, in travelling west, the ascent and descent of the Wills’ mountain of 1,173 feet . . . by overcoming the ascent of 447 [feet of uniform ascent]. The surface of the country upon which the proposed route may be located, is favorable . . . . In every point of view, as regards durability, when finished, and facility of transportation, not only between the valley of the Mississippi and the seaboard, but between the extensive mines of excellent bituminous coal near Frostburg and water transportation, the new and proposed route possesses the decided preference. [*Report from the Secretary of War, 22d Congress, 2d Session, United States Senate, January 17, 1833, Doc. No. 31*]

Searight, in *The Old Pike*, reprinted communications among the engineers from around this time.

To comply with instructions from Secretary Cass on July 13, 1832, General Gratiot had assigned Lieutenant Joseph K. F. Mansfield to a 3-month stint as superintendent of the road east of the Ohio River. The letter making the assignment contained a detailed explanation of what Lieutenant Mansfield was to do. Each State was to be considered a division, with the division in Maryland divided into two sections and Pennsylvania divided into six equal sections – consistent with the number of toll-gates to be installed. He was to “classify them in the order of their condition, placing the worst first, the next worst section, and so on, making the best the last.” He was then to “ascertain how far the appropriation, which is one hundred and fifty thousand dollars, will go toward repairing the whole road.”

Contracts for individual sections were to be awarded:

Should you deem it advisable, in letting out these sections, to retain any portion of them which may seem to require but slight repairs, and which repairs could be executed with greater economy by having overseers and laborers to act under

your immediate direction, you are at liberty to do so, bearing in mind, however, that whenever the repairs of the road can be made with equal economy, it is the wish of the department that they should be made by contract. As soon as one or more of these sections are finished, you will notify the commissioners appointed to receive this road by the laws of Pennsylvania and Maryland . . . that these sections are ready to be turned over to the State, and you will accordingly turn them over.

As for the mode of repair, Lieutenant Mansfield was to employ the McAdam system. General Gratiot provided detailed instructions on pavement construction, as well as details on culverts, bridges, and sidewalks. He continued:

As the laws on the subject of this road do not seem to justify a deviation from the original location, you will be careful to confine your operations to the road as you find it located; but, as it is believed that its axis may be dropped without adding much to the expense in those places where its inclination with the horizon exceeds four degrees, you are authorized, under the exercise of a sound discretion, to make this change.

After arriving at Cumberland in late July 1832 and conducting a reconnaissance of the road, Lieutenant Mansfield wrote to General Gratiot on August 1 about what would be needed to put it in repair the “shocking condition” he observed:

The object of this communication is to request to be permitted to deviate, according to circumstances, from so much of my instructions as requires the old bed in all cases to be lifted, and the rise in the middle three inches; for there are parts of the road where the top of the old bed is full low, and where it will be more expensive, and less firm, to remove the old bed and fill in with earth, than to bring stone and Macadamize on the top of the old bed to the thickness of nine inches; and there are cases on the sides of the mountains where a greater rise than three inches, such, for instance, as some parts of it now have, which is more advantageous than a less one to confine the water to the gutters in cases of torrents, and thereby preventing a general sweep over the whole road, which would carry off the smallest stuff of a Macadamized road.

The repairs made by Mr. Giesey, about two years since, have the radical fault resulting from having lifted the old road indiscriminately, and not giving sufficient rise to the center for a mountainous country.

General Gratiot added:

Mr. L. W. Stockton of Uniontown, has been engaged on this road and is intimately acquainted with every part of it, as well as with the adjacent country; and, as he has offered his services, you would do well to call upon him and avail yourself of them in any capacity that may seem to you best.

General Gratiot was not willing to grant the request to deviate from his July 23

instructions. He explained why by referring to the report of Superintendent Wever's 1827 examination of the road, a copy of which Lieutenant Mansfield had received. Summarizing the report, General Gratiot wrote:

[The] the mode of constructing it was that of digging a trench, or of sinking the bed of the road, below the natural surface of the ground; that this trench was filled with large stones, and that these were covered with stones a size smaller, and so on. By this construction, it was intended that the weight of the carriages passing over the road should be supported by the large stones, and that the smaller stones were only intended to present an even surface for the easy passage of vehicles over it. The great objections to this construction are, that the bed being lower than the surface of the ground on each side, the ditches can hardly ever be sunk sufficiently deep to intercept the passage of water from the ground adjacent to the road to the ditch or trench in which the road is made; this water, by keeping the bed constantly wet, would cause the heavy stones of the first layer to sink into the ground, and thus break up the surface of the road, and allow the free passage of water through the covering itself.

In the winter, the frost acting upon the bed, rendered wet by the free passage of water to it in every direction, would heave the stone to such a degree that the road in a little time would be perfectly impassable; and if any evidence, in addition to that presented by the testimony of the most experienced and approved road builders, were necessary to convince the department that the present dilapidated state of the road under your charge is owing entirely to the operation of the causes above alluded to, it is believed that that evidence is found in the report made by Capt. Delafield, who inspected the repairs of this road made by Mr. Giesey.

By pursuing the course suggested in your letter, it is believed that these objections and difficulties would still obtain, and that in a little time, however faithfully the repairs might be made on the top of the large stones, the road would be in as bad order as it is at present, since the great cause of these evils would remain, viz.: that of having the bed which supports the stone, and which in fact should be the real support of the traffic on the road, lower than the neighboring ground.

Because the goal was to correct "the defects of the first construction of the road," the macadam method offered the best remedy:

It is by no means the intention of the department to take from you all discretion in the discharge of your duties; such a course would defeat the object had in view in sending an officer of engineers on the road; but it is believed to be highly important that the exercise of this discretion should be limited to an extent that will insure the adoption of the principles and rules as cannot fail to render these repairs permanent. For these principles and rules, you are referred to Mr. Macadam's work on the construction and repair of roads, a copy of which is in your possession. In removing the metal from the old road, whenever hollows present themselves in the old bed, it is recommended they be filled with earth;

indeed, the whole bed of the road should be elevated, and its form given to it, before any of the covering of stone be replaced. The earth necessary for this may be taken from the ditches, or even from the sides of the road, where it can be done without encroaching upon the privileges of persons residing on the road.

As a result of Lieutenant Mansfield's inspection, "towards the last of September, contracts were entered into for making repairs over 12,019 rods [about 37 miles]; which embrace the two worst sections in Pennsylvania, and the worst section in Maryland." The three sections were contiguous beginning at the first section west of Cumberland. The contracts were to be completed by the first of July 1833.

When Captain Delafield arrived, he was not satisfied by what he saw east of Wheeling, as he explained to General Gratiot in an initial report dated December 13, 1832:

The present condition of the road is most unpromising. Nearly every contractor has formed his bed in the valley made by the removal of the old pavement, the consequence of which is, that, with the mild season and rainy weather, the bed is not drained, nor can it be, until the side roads are cut down to the bottom of the stone strata – a measure I directed as the only means of correcting the evil. Time, and the headstrong obstinacy of some of the contractors, have prevented much of the work being so attended to. All the contracts made by Lieut. Mansfield distinctly specify that the road for 30 feet in width shall be graded in such manner to avoid this difficulty; yet in carrying the contracts into effect, the superintendents have, in no instance, instructed the contractors in the proper course. They have, in most instances too, permitted the stone to be broken on the road; the consequences of this are, much sand and dirt in the metal, and a bed graded without proper attention. This is the more remarkable, as in my report of the work executed two years since by one of the present superintendents, these errors were pointed out as serious evils, yet they are not corrected. It must be expected, therefore, that all that part of the road now under construction will be very indifferently made, and by no means such as the Macadam system calls for.

He decided to postpone any further contracts "until I am better assured that the work can be properly executed." To instruct superintendents, he would prepare a manual or primer, "with a few lithographic sections, that the sight may aid the mind in a proper understanding of the business":

To persevere in the present plan, where neither contractors, superintendents, nor laborers, understand their business, is highly inexpedient, and I shall forthwith commence maturing a system that must be productive of more good with less money, or it were better to leave the work undone, for I am satisfied that durability can not be looked for under the present system.

By this time, supporters and opponents understood that Federal control of the Cumberland or National Road would be coming to an end. The real question was what conditions would be acceptable to the States before they would accept ownership.

Captain Delafield would again write to General Gratiot on May 6, 1833, to question the detailed instructions of July 23, 1832, to Lieutenant Mansfield. Those instructions would involve “an expenditure of not less than \$250,000, when compared with what I judge to be the most judicious method of making the repairs”:

It is in relation to the propriety of breaking up the old bed of the road in all cases. I apprehend the department was not aware that the bed is a substantial, yet rough pavement, and not formed of loose, detailed masses of quarry stone thrown together, without order. It is important to consider this particular when examining the authorities on road making.

My own views are that it is decidedly preferable to retain the old pavement in all cases where its continuity is unbroken, even mending small parts that may be deranged, and Macadamizing over it. In this, I think, I am borne out by Macadam, Dean, Telford, and Farey, whose ideas on the subject are annexed, as extracted from “Macadam on Roads.”

He based his suggestions on observations:

I find pieces of this Cumberland Road, repaired as far back as 1827, by Mr. Ewing, over the old pavement, in perfect order to this day; as, also, some parts done in this way by Giesey in 1829, that are much better than any of the repairs he made at the same time; and a piece through Uniontown, by the authorities of the place, in 1830, remains in perfect order.

I have been led to reflect upon this subject from learning that the Ohio road had cut through and was impassable at certain places during the months of February and March, and seeing the state of the road under my supervision between Cumberland and Wheeling, comparing the parts repaired last season, those under Giesey, Ewing, and the town authorities, with the old pavement that has stood sixteen years without a cent of money in repair, and to this day is a very good wagon road, rough, it is true, yet never cutting through during the fall, winter, or spring, where the pavement is continuous. To throw away so firm a foundation I cannot think advisable, and beg you to reflect upon the subject and favor me with your views.

The road in Ohio has worn six years (nearly) without repairs, and was impassable this spring. The old Cumberland Road has worn sixteen years, and mile after mile has never been known to cut through at any season. Parts of it covered with Macadamized metal, and worn for five years, are in fine order, and present a very smooth surface, never having cut through. Other parts, where the old pavement has been removed and Macadamized, were impassable during the spring after three years' wear. We have to bear in mind the impossibility of keeping the ditches and drains open in the mountains during the winter. Ice forming in the drains will, of course, throw the melting snows on the surface of the road, which is destructive to a Macadamized road on clay or sand, whereas, if on the old pavement, it has strength enough to resist the travel until either dried by frost, or

sun. This is a consideration that the English road-makers had not to consider with the same weight.

General Gratiot replied on May 8, agreeing that his instructions of July 23, 1832, may be considered suspended as relates to requiring that the old bed to be taken up in all cases.

### **The 1833 Short Session**

Congress had assembled for a short session that would end on March 2, 1833. March 2 was a Saturday; Congress would not meet on Sunday, and on Monday, March 4, President Jackson would take the oath of office for his second term.

Congress took up legislation during the session to address complaints about the high 1832 tariff levels – a tariff reduction bill, a “force” bill demanded by President Jackson to address the nullifiers by forcing collection of tariffs in States that opposed the law, and a Clay distribution bill to send revenue from land sales to the States for internal improvements and other purposes. Professor Larson explained:

What Clay offered was a compromise tariff that slowly scaled back duties over the next nine years and lifted protection altogether in 1842. The American System was “in the greatest danger,” and his goal in relaxing the system was to “preserve the manufacturing interest” while at the same time “tranquilizing the country.” Coupled with the so-called force bill that Jackson requested (and Clay supported) to punish the scofflaws in South Carolina, Clay’s bill offered nullifiers a way to retreat with honor without shocking industrial capitalists by a sudden exposure to free trade. If Congress would make “a fair experiment” with tariff reduction, and pass as well his distribution bill, they would have settled, he believed, “two (if not three) of the great questions that “agitated” the country: the tariff, public lands, and internal improvements. Distribution was the key to lasting harmony: pass it and “what State will then be disposed to go out of the confederacy, and sacrifice the great advantages administered by this Government?”

On January 7, 1833, Senator Clay described how the bill would alter the present situation where most of the revenue went to the general Treasury to be used as Congress determined through its appropriations acts:

By this bill it was proposed to set apart, for the benefit of the new States, twelve and a half per cent. out of the aggregate proceeds, in addition to the five per cent, which was now allowed to them by compact, before any division took place among the States generally. It was thus proposed to assign, in the first place, seventeen and a half per cent. to the new States, and then to divide the whole of the residue among the twenty-four States. And, in order to do away any inequality among the new States, grants are specifically made by the bill to those which had not received, heretofore, as much land as the rest of the new States, from the General Government, so as to put all the new States on an equal footing.

This twelve and a half per cent. to the new States, to be at their disposal for either education or internal improvement, and the residue to be at the disposition of the States, subject to no other limitation than this, that it shall be at their option to apply the amount received either to the purposes of education, or the colonization of free people of color, or for internal improvements, or in debts which may have been contracted for internal improvements. And with respect to the duration of this scheme of distribution proposed by the bill, it is limited to five years, unless hostilities shall occur between the United States and any foreign Power; in which event the proceeds are to be applied to the carrying on such war with vigor and effect against any common enemy with whom we may be brought in contact. After the conclusion of peace, and after the discharge of the debt created by any such war, the aggregate funds to return to that peaceful destination to which it was the intention of the bill that they should now be directed, that is, to the improvement of moral and physical condition of the country, and the promotion of the public happiness and prosperity.

By giving the States authority on internal improvements, the bill would end the debate over whether initiatives were national or local in scope. However, the bill also set the new States against the old. The new States argued that because the public land was within their borders, they should receive the revenue from the sales, while the old States thought they should share in the revenue.

Some critics in Congress complained that the distribution bill's link of States to the central government was the problem with the bill. As Senator Benton put it, the bill had "money in every clause, to pay its way through, as the souls of the damned arrived on the banks of the river Styx, with money in hand to pay their passage into hell." Despite these arguments, the Senate approved the distribution bill, 24 to 20, and the House concurred, 96 to 40. Congress passed the other two bills – the force and graduated tariff bills – as well.

Professor Larson summarized the outcome:

"Yesterday was perhaps the most important Congressional day that ever occurred," Clay wrote James Barbour with relief; the force bill, the tariff, and the distribution bill all three passed that day as the session expired. His pleasure, alas, was short-lived: Jackson signed the first two but "pocket-vetoed" the distribution bill for continuing a policy he strongly disapproved.

On December 4, 1833, President Jackson sent a message to Congress explaining the veto, although the bill was dead; the time had elapsed for Congress to override the veto.

He began by saying that he had considered the matter since vetoing the bill, but his thoughts had "satisfied me that it ought not to become a law."

He grounded his argument in the history of the "waste lands" beyond the original 13 States at the time of the revolution. He provided a lengthy, scholarly history of the debates involving State claims to western lands, the Articles of Confederation, individual

State actions and reactions, and the compacts the general government entered into with the new States. This history “plainly and certainly” provided three points:

1. One of the “fundamental principles” of the original confederation of States “was that the waste lands of the West within their limits should be the common property of the United States.”
2. That States with claims to them ceded them to the general government “and the cessions were accepted on the express condition that they should be disposed of for the common benefit of the States, according to their respective proportions in the general charge and expenditure, and for no other purpose whatsoever.”
3. Under the Articles of Confederation, Congress sold these lands “and put the avails into the common Treasury,” while under the Constitution, Congress “did repeatedly pledge them for the payment of the public debt of the United States, by which pledge each State was expected to profit in proportion to the general charge to be made upon it for that object.”

With those “first principles” in mind, he could say:

The debt for which these lands were pledged by Congress may be considered as paid, and they are consequently released from that lien.

But with the debt paid, the general government was still obligated “to dispose of the lands for the common benefit.” Further, the formal cessions by Georgia, North Carolina, and Virginia specifically declared that the proceeds from sale of the lands they were giving up shall be “faithfully and bona fide disposed of for that purpose, and for no other use of purpose whatsoever.”

In practice, the proceeds were not set apart as a separate fund for paying off the public debt, but were paid into the Treasury, “where they constitute a part of the aggregate of revenue upon which the Government draws” for current expenditures, including paying off the debt accumulated since the earlier debts had been paid. “In this matter they have heretofore and do not lessen the general charge upon the people of the several States in the exact proportions stipulated in the compacts.” He provided the numbers on income and expenditures associated with the new States and territories such as Florida and Louisiana:

From the origin of the land system down to the 30th September, 1832, the amount expended for all these purposes has been about \$49,701,280, and the amount received from the sales, deducting payments on account of roads, etc., about \$38,386,624. The revenue arising from the public lands, therefore, has not been sufficient to meet the general charges on the Treasury which have grown out of them by about \$11,314,656.

Still, the income helped reduce what the States, overall, had to pay:

The bill before me begins with an entire subversion of every one of the compacts by which the United States became possessed of their Western domain, and

treats the subject as if they never had existence and as if the United States were the original and unconditional owners of all the public lands.

He outlined the bill's distribution of funds among the States, with 12½ percent of receipts going to Alabama, Illinois, Indiana, Louisiana, Mississippi, Missouri, and Ohio to be used for objects of internal improvement or education. They also would receive any share of proceeds they were entitled to under compacts or Enabling Acts:

Now, waiving all considerations of equity or policy in regard to this provision, what more need be said to demonstrate its objectionable character than that it is in direct and undisguised violation of the pledge given by Congress to the States before a single cession was made, that it abrogates the condition upon which some of the States came into the Union, and that it set at naught the terms of cessions spread upon the face of every grant under which the title to that portion of the public land is held by the Federal Government?

The bill violated the conditions upon which the general government acquired the ceded lands. Instead of the means of distributing proceeds according to the compacts, it called for distribution on the basis of Federal representative population.

The Constitution, which did not give Congress the authority to abrogate the compacts, provided that nothing in it "shall be so construed as to prejudice any claims of the United States or of any particular States."

One reason, therefore, for the veto was that the "ancient compacts are invaluable monuments of an age of virtue, patriotism, and disinterestedness."

But other principles were involved, including:

It reasserts the principle contained in the bill authorizing a subscription to the stock of the Maysville, Washington, Paris and Lexington Turnpike Road company, from which I was compelled to withhold my consent for reasons contained in my message of the 27th May, 1830, to the House of Representatives.

That principle "was that Congress possesses no constitutional power to appropriate any part of the moneys of the United States for objects of a local character within the States."

The bill proposed to appropriate revenue from land sales to new States "be applied to objects of internal improvement or education within those States," but appropriates funds to the older States for "such purposes as the legislatures of the said respective States shall deem proper." In effect, the public lands States could use the revenue for improvements "in express violation of the principle maintained in my objections to the turnpike-road bill above referred to." The older States could use the money for "any local purpose whatsoever":

It will not be denied that under the provisions of the bill a portion of the money might have been applied to making the very road to which the bill of 1830 had reference, and must of course come within the scope of the same principle. If the

money of the United States can not be applied to local purposes *through its own agents*, as little can it be permitted to be thus expended *through the agency of the State governments*.

Further, the bill sets one source of revenue aside from paying the general government's bills, "making it necessary to raise the moneys for supporting the Government and meeting the general charges from other sources." Thus, the people would have to pay extra in return for distribution of public lands revenues:

It appears to me that a more direct road to consolidation can not be devised. Money is power, and in that Government which pays all 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 the supply.

The States would become dependents of the general government, "mere stipendiaries and instruments of the central power."

President Jackson that anyone could see that "if \$3,000,000 a year, or any other sum, shall be taken out of the Treasury by this bill for distribution it must be replaced by the same sum collected from the people through some other means." He did the calculation. "The governments of the States will receive seven dollars, for which the people of the States will pay eight."

In sum, the States would reject the idea of distribution because the bill was "in violation of the fundamental laws of the Republic and its Constitution." Even putting that aside, the States "would not sell their bright prospect of increasing wealth and growing power at such a price."

Professor Larson summarized the result:

Astonished by Jackson's disregard for "the Legislative authority" and by the people's willingness to "applaud whatever he does," Clay thought the stage had been set for "a dissolution of the Union," to which there was "less aversion now than could be wished by those who love their Country."

The Tariff of 1833 (also known as the Compromise Tariff of 1833) relieved the pressure caused by the tariff bill of the previous year, thus ending the nullification crisis without military confrontation. The 1833 Act would be honored, as planned, through 1842.

The decision to turn the Cumberland Road over to the States did not end the need for further Federal appropriations to build or rebuild the road to the point where the States would accept ownership in accordance with State statutory requirements. However, in the short session, the focus was on the major bills on tariffs, land sale revenue distribution, and the force bill.

When the Cumberland Road came up during the short session, debate was limited and lacked the debate on constitutional scruples that often dominated the subject.

West of Wheeling, Ohio had led the way with approval on February 4, 1831, of its: “An act for the preservation and repair of the United States road.” On March 2, 1831, President Jackson had signed, “An Act declaring the assent of Congress to an act of the general assembly of the state of Ohio, hereinafter recited.” At the time, the road was open between the Ohio River and Zanesville. That first year, Ohio collected \$2,777 in tolls, according to highway historian Archer Butler Hulbert. The totals gradually increased as the road reached across the State and traffic grew:

1832 – \$ 9,667  
1833 – 12,259  
1834 – 12,693

The highest annual collection occurred in 1839 at \$62,496.

As noted earlier, Maryland and Pennsylvania approved similar takeover State laws in 1832. In addition, on February 7, 1832, Virginia approved “An Act concerning the Cumberland Road.” It authorized the president and directors of the Virginia Board of Public Works to take over operation of the road and erect toll-gates and toll houses, not to exceed two in number, “whenever the Government of the United States shall have surrendered so much of the Road . . . as lies within the limits of this State.” The board was to appoint a superintendent to erect the toll facilities and operate the turnpike, subject to the conditions and toll charges specified in the law. Unlike the comparable Maryland and Pennsylvania laws, the Virginia law did not add a condition that the road must be put in good repair prior to the takeover.

Federal assent to the Virginia law was approved, by President Jackson, on March 2, 1833. It assented to the State law, which it incorporated. The assent added:

That this act shall not be construed as preventing the United States from resuming whatever jurisdiction it may now have over the said road, whenever, in its discretion, it shall deem it proper so to do . . . .

During the 1833 short session, the Senate also considered a bill to continue the Cumberland Road from Vandalia, Illinois, to Jefferson City, Missouri. On January 4, Senator Benton moved to amend the bill to add, after “Missouri,” the phrase: “and thence to the western frontier of Missouri, in the direction of the military post on the Missouri river, above the mouth of the Kansas river.” He explained that this change was “rendered necessary by the state of the population, and the condition of the frontier, which required the construction of a military road similar to that of Mars’s Hill, in the State of Maine.

Senator Hendricks “expressed his apprehension that the amendment would embarrass and weigh down the bill.” After brief expressions of concern from others, the Senate, with 18 yeas, decided to lay the bill on the table.

On January 18, the Senate again considered the bill, along with the Benton Amendment. Senator Benton explained that the bill would take the road to Jefferson City, while his amendment “proposed to continue it to the Western frontier of the State of Missouri, in the direction to Fort Leavenworth, and to the intersection of the route for the caravans from Missouri to Santa Fe.” That city had become an important trading city for Americans via what became known as the Santa Fe Trail after Mexico won independence from Spain in 1821. Senator Benton said the extension, in effect, “was a military road in fact as well as in name, and was better entitled to the care of the Federal Government than the military road in Maine to the Hill of Mars, imposing as that road might seem . . . .”

Senator Ezekiel F. Chambers of Maryland thought the bill should be delayed until the Senate acted on Senator Clay’s bill on distribution of revenue from sale of public lands, which, if adopted, “would relieve gentlemen from the necessity of making nice distinctions on the subject of the nationality of this or that improvement.”

Senator Alexander Buckner of Missouri saw no reason for delaying consideration. He did not see why the land bill, which was related to a controversial tariff bill, should receive precedence:

Was it desired that the present bill should be postponed, in order that gentlemen might revenge themselves for the vote which its friends might think proper to give on the land bill? This was certainly an unjust course of proceeding.

Nevertheless, the Cumberland Road bill was, again, laid on the table.

On February 6, the Senate voted 15 to 10 to take up the bill. The first measure was the Benton Amendment, which the Senate decided in the negative, 9 to 20.

Senator Nathan Smith of Connecticut moved to replace “Jefferson City” with “some point in the State of Missouri.” This amendment, too, was rejected, without a stated vote count.

The Senate then approved the original bill, 18 to 16.

Finally, the Senate again took up the bill on February 13 for final action. The bill passed, 16 to 12. (The vote was immediately followed by the counting of electoral votes confirming that President Jackson won the 1832 presidential election.)

Because the 21<sup>st</sup> Congress would end on March 2, the House of Representatives would have a few weeks to take up the Senate bill, but it did not do so.

However, while considering the harbor bill on March 1, the House considered several amendments, the “most important” of which concerned the Cumberland Road. The amendment appropriated \$25,000 to continue surveys authorized under the General Survey Act of 1824 as well as \$34,000 “for the repairs of the Cumberland Road in Virginia.” The *Register* did not report any debate on the measure, but noted:

Various attempts were made to insert provisions in this bill for new surveys, and the commencement of new works, but they were all promptly rejected.

The Virginia provision remained in “An Act making appropriations for carrying on certain works heretofore commenced for the improvement of harbours and rivers, and, also, for continuing and repairing the Cumberland road, and certain territorial roads.” The bill, which President Jackson signed it on March 2, appropriated \$125,000 for improvements east of the Ohio River; \$130,000 to continue the road in Ohio west of Zanesville; \$100,000 for continuation of the road in Indiana; \$70,000 for Illinois; and \$34,440 for repairs in Virginia.

The legislation also provided:

That the Secretary of War be, and he is hereby, authorized, by and with the approbation of the President of the United States, to change the location of the route of the Cumberland road near Cumberland and Wills’ mountain, according to the survey and report thereon of Captain Delafield, of the corps of engineers.

Professor Raitz, in an essay in his collection of articles on the National Road, explained that the required maximum gradient of 5 percent was challenging where the road crossed a series of mountain ranges trending northeast-southwest:

About fifteen miles west and 2,000 feet above Cumberland stands Savage Mountain at the Allegheny Plateau crest. To gain that height, National Road surveyors had to make the best of any gradient advantages. Therefore, in the ridged country of western Maryland and Pennsylvania small creeks assumed an importance out of proportion to their flow volume because they had excavated low gradient valleys along the direction surveyors wished to go. One of these was Braddock Run, named for the British general Edward Braddock who led an expeditionary force against French Fort Duquesne at the Allegheny and Monongahela River confluence in 1755. Cumberland stands on the east side of The Narrows, a water gap cut through Wills Mountain by the combined flow of Wills Creek, Jennings Creek, and Braddock Run. The first National Road passed over Wills Mountain, just south of The Narrows, to reach Braddock Run, which provided a low-angle grade west toward Frostburg. Teamsters found Wills Mountain’s grade too steep . . . .

As noted earlier, Captain Delafield had surveyed a new route in late 1832 “for turning Wills mountain by the valley of Braddock’s run and Wills creek,” as he explained in a letter dated December 13, 1832, to General Gratiot:

I have examined the whole route, and can confirm the most satisfactory account you may have heard of it. The ground over which the road will pass is a uniform inclined plane, requiring very few culverts, two small bridges over Braddock’s run of about fifteen feet span each, with side hill in no other part than about 300 yards in the “Narrows” of Wills creek, where a most simple and expedient plan will be to use the level and smooth bottom of the creek for the road, by

building a wall not to exceed ten feet in height, thus throwing the stream on the opposite bank, peculiarly well formed for this construction, being a low bottom of alluvion. The idea of cutting into the mountain would be expensive, and no better than throwing the creek from its present bed.

### **About the Cumberland Road**

On March 4, 1833, President Jackson took the oath of office to begin his second term, 2 days after signing the tariff and force bills and leaving the Clay distribution bill unsigned. The *Niles Weekly Register* of March 8, 1833, described the ceremony:

At 12 o'clock, on Monday last, the president and vice president, elect, attended by the heads of departments, foreign ministers and their suits, the judges of the supreme court, the president of the senate, and senators, the speaker of the house of representatives, the members of the house of representatives, the marshal of the District and the mayor and corporate authorities of the city, and a vast concourse of citizens and strangers, entered the hall of representatives. The president took the seat of the speaker of the house with Mr. Van Buren on his left, and his private secretary, Mr. Donelson on his right. After a pause of a few minutes, the president rose and was greeted by the cheers of the large assembly present. He then proceeded in an audible and firm voice to pronounce his inaugural address, at the close of which, he was again greeted with cheers and applause. The chief justice then approached the president and administered the usual oath, at the conclusion of which he was again cheered by the multitude. The oath was also administered to Mr. Van Buren. The president and vice president then retired amid the plaudits of the assembly.

The ceremony was held indoors because of the freezing weather and snow-covered ground. In addition, President Jackson's ill health made an indoor ceremony the best option. Chief Justice Marshall administered the oath of office. For the first time, two inaugural balls, instead of one, were held in the President's honor and he attended both.

In his Inaugural Address, President Jackson said of his first term:

In the domestic policy of this Government there are two objects which especially deserve the attention of the people and their representatives, and which have been and will continue to be the subjects of my increasing solicitude. They are the preservation of the rights of the several States and the integrity of the Union.

These great objects are necessarily connected, and can only be attained by an enlightened exercise of the powers of each within its appropriate sphere in conformity with the public will constitutionally expressed. To this end it becomes the duty of all to yield a ready and patriotic submission to the laws constitutionally enacted and thereby promote and strengthen a proper confidence in those institutions of the several States and of the United States which the people themselves have ordained for their own government.

By long observation and experience in public matters, he knew “that the destruction of our State governments or the annihilation of their control over the local concerns of the people would lead directly to revolution and anarchy, and finally to despotism and military domination.” He assured that “my countrymen will ever find me ready to exercise my constitutional powers in arresting measures which may directly or indirectly encroach upon the rights of the States or tend to consolidate all political power in the General Government.”

Without the union of the 24 States, independence and liberty could never have achieved what the country had thus far accomplished:

The loss of liberty, of all good government, of peace, plenty, and happiness, must inevitably follow a dissolution of the Union. In supporting it, therefore, we support all that is dear to the freeman and the philanthropist.

Given these truths and the intent of his oath of office, he said:

I shall continue to exert all my faculties to maintain the just powers of the Constitution and to transmit unimpaired to posterity the blessings of our Federal Union. At the same time, it will be my aim to inculcate by my official acts the necessity of exercising by the General Government those powers only that are clearly delegated; to encourage simplicity and economy in the expenditures of the Government; to raise no more money from the people than may be requisite for these objects, and in a manner that will best promote the interests of all classes of the community and of all portions of the Union.

The 22nd Congress convened on December 2, 1833. President Jackson submitted his annual message on December 3. He did not address internal improvements directly, but had good news. “It gives me great pleasure to congratulate you upon the prosperous condition of the finances of the country,” which he estimated would allow the country to retire its whole debt, funded and unfunded, of \$4,760,082.08, after meeting current expenses:

From this view of the state of the finances and the public engagements yet to be fulfilled you will perceive that if Providence permits me to meet you at another session I shall have the high gratification of announcing to you that the national debt is extinguished . . . . And we shall have the proud satisfaction of bequeathing to the public servants who follow us in the administration of the Government the rare blessing of a revenue sufficiently abundant, raised without injustice or oppression to our citizens, and unencumbered with any burdens but what they themselves shall think proper to impose upon it.

This happy state of affairs came with a caution:

The flourishing state of the finances ought not, however, to encourage us to indulge in a lavish expenditure of the public treasure . . . .

I must earnestly and respectfully press upon Congress the importance of abstaining from all appropriations which are not absolutely required for the public interest and authorized by the powers clearly delegated to the United States. We are beginning a new era in our Government. The national debt, which has so long been a burden on the Treasury, will be finally discharged in the course of the ensuing year. No more money will afterwards be needed than what may be necessary to meet the ordinary expenses of the Government. Now, then, is the proper moment to fix our system of expenditure on firm and durable principles, and I can not too strongly urge the necessity of a rigid economy and an inflexible determination not to enlarge the income beyond the real necessities of the Government and not to increase the wants of the Government by unnecessary and profuse expenditures.

Activity on the Cumberland Road had continued during 1833. Although the Act of 1833 authorized a change of location around Wills Mountain, the Engineer Department soon learned that the new location would conflict with plans in the area for the Chesapeake and Ohio Canal. Officials of the canal company believed the canal had priority of location because it had been adopted on the recommendation of General Bernard and the Board of Internal Improvement.

On August 10, 1833, Lieutenant William H. C. Bartlett, Assistant to the Chief Engineer, wrote to inform Captain Delafield that Secretary Cass had just returned to Washington from a trip along the Cumberland Road east of the Ohio River:

He feels great interest in this road, and is anxious that the operations on it shall be so directed as to obtain the best possible results. His confidence in your ability induced him to select you as its superintendent, knowing that under your management his wish would be realized.

At the time, Captain Delafield was in New Castle, Delaware, overseeing work on the Delaware River. Secretary Cass wanted Captain Delafield to return to Cumberland “without loss of time, ascertain the exact location of the Chesapeake and Ohio canal along the valley of Wills creek, and so adjust that of the road as shall remove the present difficulties, and avoid any interference with the interests of the Canal Company.”

Based on consultation, on site, with the company, Captain Delafield transmitted a plan to General Gratiot on September 9, 1833, showing the new locations of the road and the canal. After consulting with Secretary Cass, General Gratiot approved the new location for the Cumberland Road on September 12, 1833. Captain Delafield proceeded to relocate the road, as Professor Raitz wrote, “through The Narrows and around the mountain to Braddock Run.”

General Gratiot toured the Cumberland Road in the summer of 1833. Writing from Uniontown, Pennsylvania, on June 11, 1833, he informed Captain Delafield:

I find upon an examination of the National Road, under your superintendence, from Cumberland to this place, that too great a portion of sand and other perishable stone has been allowed to be put on it. In almost the whole distance,

little or no regard has been paid to the keeping the side drains open, at least sufficiently so to carry the water freely from the road. The culverts are too few and small, particularly on the long slopes; and the manner of constructing the hollow-ways and catch-waters is defective. These errors of construction cause the water, in many places, to pass over the road, to its rapid destruction.

General Gratiot attributed the errors to “the contract system, and that to this cause most of the evils complained of may be traced.” He wanted the errors “remedied, as soon as practicable” by enforcement of “early completion of the several contracts, according to their conditions, after making due allowance for the stoppage arising from your order for suspending operations during last winter.” He added:

On the completion of the road, should it be found not to possess the requisite properties to secure its permanency, you will make such additions under your own agency as will place it in the condition contemplated by the government, before turning it over to the States.

The letter specified the needed corrections, such as:

As it is found impracticable to keep the travel from the center of the road, and the deep ruts that are formed, then, as a consequence, I would recommend, instead of the present system of blocking, that rakers should be constantly employed to preserve the transverse profile. If it does not come within the spirit of the contract, that this labor should be performed by the contractors, you will hire men to do it yourself. This operation, in addition to the draining system before recommended, will, it is presumed, preserve the road from further ruin, and place it in a condition to receive its last coat of limestone.

The letter concluded:

Finally, while studying due economy in your administration of the affairs of the road, you should constantly bear in mind that the wishes of the government are to have a superior road, both as regards workmanship, and the quality of the materials used in its construction. With this understanding, it is expected that you will avail yourself of all the facilities within your reach to effect, in a satisfactory manner to yourself and the public at large, the great end proposed – the construction of a road unrivaled in the country. These are the views and special instructions of the Secretary of War.

In a letter dated November 23, 1833, that accompanied President Jackson’s message to the new Congress, General Gratiot summed up the work during the year on fortifications and internal improvements, including the Cumberland Road. East of the Ohio River, “repairs of this part of the national avenue have progressed well”:

Maryland: Paving according to the McAdam plan was underway, with 10 miles completed, some graded and covered in the initial layers of stone, and the balance graded and ready for stone. In addition, the “new location to turn

Wills's mountain has been opened, and considerable progress made in the bridge to cross Wills's creek."

Pennsylvania: As in Maryland, some mileage was completed, some partially fitted but in need of additional layers of stone, and the rest ready for stone.

Virginia: None of the mileage was completed, but as in the other States, some mileage had undergone partial laying of stones, while other mileage had been graded and was awaiting a stone covering.

He also discussed the estimate for completing the road according to the McAdam plan east of the Ohio River. In 1826, the estimate was \$278,983, but that estimate was increased by \$50,000 in 1827 to \$328,983 as needed to complete the work. He attributed the increase to "the substratum or cover of reduced stone had been worn and washed away to an extent almost incredible, and proved that too great a reliance was placed upon the layer of large stone, as there were not so many of them of as good a quality as was first supposed." The work was necessary because the "utter destruction of the road was foreseen at that time unless measures were taken to repair it thoroughly, it being then in a 'most wretched' condition."

Since then, the estimate had gone up:

In July, 1832, it was determined to repair the road effectually, from end to end, and cede it to the respective States through which it passed; after which, the repairs were to be met by the tolls collected from the travelling on it.

The system adopted was that extensively used in England, and known by the name of its inventor, McAdam. The condition of the road at this period made very extensive repairs necessary. Commencing from the grade, there being neither side drains, ditches, nor culverts for draining the water, presenting no better condition for the basis of repairs on the McAdam system than what is called a "rough grade," with the larger bridges.

Work began, first, on the parts through the mountains that were in the worst condition, but the engineers ran into a problem:

The supposition of finding good stone in the bed of the road, wherewith to make "McAdamized metal," proved fallacious; not a perch was found through the whole mountain district, the bed being composed of soft sand-stone. This, when broken to four-ounce pieces, and used for a covering is, in the course of three months, reduced to sand, and washed by the heavy rains from the road into the ditches and drains, making it worse than useless to depend upon any of the varieties of sand-stone. Under these circumstances, but one course was left, and that was to procure the only suitable material the country provided – lime-stone . . . .

The material was not conveniently located for the project. It was found “only in the lowest valleys – often in the beds of creeks, covered with several feet of earth, and distant from the line of the road”:

The expense of repairing the road with a good material, and the only one of this character found in the country, is far greater than anticipated before these facts were known. Another heavy item in the expense of repair is the condition of the masonry; this having been exposed for a long time to the weather, without coping to throw off the rain and snow, is now in a dilapidated condition, requiring a considerable portion to be renewed.

Under these circumstances, the cost of putting the road in such a condition as will justify toll being exacted, is so far beyond that at first anticipated, as to make it proper to draw the attention of Congress to the estimate for the year, based upon the facts herein stated. It will be perceived that the sum asked for the service of the year is to finish all that part lying between Cumberland and the Monongahela river, and commence that part situated between this river and the Virginia line, and to finish the sixteen miles in Virginia; making the sum required to repair the whole road, on the McAdam plan, not less than \$645,000, of which the resources of that region of country will advantageously admit of \$300,000 being expended during the year.

If Congress decided “to make a partial repair of this great national line of communication between the Western waters and the Atlantic,” the estimate would be considerably less:

Leaving the masonry in its present ruined state, constructing no more culverts to throw the water under the road, abandoning the McAdam plan of repair, and merely opening the ditches and drains, and to restore the grade with earth, the cost would be: \$147,000.

General Gratiot cautioned:

This, however, effects nothing more than making a clay road, by no means suited to the immense travel passing the mountains on this route, and, when finished, soon destroyed by the rains which would wash the earth from the face of the road into the valleys.

Each option, other than reconstruction by the McAdam system, would soon be washed away. “The road repaired in this manner will not justify tolls being exacted, as, in the fall and spring of the first year, it will be next to impassable, and good only for the last two or three summers.”

Work in Ohio was proceeding “in a manner highly satisfactory.” Although cholera was prevalent in the area, operations “have been prosecuted with a zeal and ability highly creditable to the officer charged with their direction.” Much of the work was to improve bridges and culverts, although cholera had prevented work on masonry west of Columbus. In the 21 miles west of Zanesville, “the culverts which had given way in consequence of bad materials and workmanship, have been taken down and rebuilt.”

The superstructure over Little Darby, which had been damaged by a tornado the previous April, had been repaired and strengthened.

Cholera also was affecting work on the pavement:

It is confidently anticipated, however, that these twenty-one miles will be finished within the present year, when they will be turned over to the State. The grade has been completed by this time as far as Columbus, by which there is a saving of five hours in the passage of the mail between Zanesville and Columbus, which commenced running on this road in July last.

The clearing and grubbing will most likely be completed as far as Springfield, 43 miles west of Columbus, by the end of the present month.

Indiana was divided into two divisions, with Indianapolis in the middle. For the eastern division, "the report of the superintendent . . . being of a character so general as to render it impossible to get at the exact condition of the road." An inspection was underway to determine the condition of the road in the eastern division.

On the western division, the first 33 miles west of Indianapolis would soon be in "a travelling condition," with the grading, bridging, and culverts" finished except for the White River and Mill Creek bridges that would be finished by the end of the year. "The contracts for the present year on the western division are for such work as was deemed necessary to bring the road into immediate use as far as the western boundary of the State." These contracts covered the entire distance from the 34<sup>th</sup> to the 71<sup>st</sup> mile, "and the works provided for by them have progressed in a manner altogether satisfactory to the superintendent." When the contracts were completed, "carriages will be able to travel, with but trifling interruption, from Indianapolis to the eastern boundary of Illinois." However, none of the contracts in Indiana called for construction according to the McAdam pavement design plan.

A serious problem had occurred in Illinois, according to General Gratiot's 1833 report. "A belief was induced in the early part of the year that the affairs of this part of the road were conducted in a manner not likely to be productive of the results desired by the Government; and, therefore, an officer of engineers was instructed to make an inspection of the road and its concerns, and to report the result for subsequent action."

Before the inspection began, however, "a direct charge was preferred, from a source that seemed to require consideration, impeaching the moral character of the superintendent in a particular that could not well be true without being accompanied by dereliction of official duty." The superintendent was suspended pending an investigation, which showed that "a state of things existed which rendered any progress in the way of extension, during the present year, totally inconsistent with a proper regard for the public interest; and it is not perceived how any thing further can be done till the blunders (but too palpable on almost every part of the road) shall have been repaired, and a system established which will prevent their recurrence, and restore a wholesome state of things on this important national work."

## **The “Miserable Bargain” and the 1834 Act**

In 1832, an election year, the internal improvement bills and appropriations for the Cumberland Road had been minor issues compared with the great issues of the day. When the short second session of the 22nd Congress was completed on March 2, 1833, the results held the country together. The South’s concerns had been addressed; the States would not attempt to leave the Union.

The 23rd Congress would be another matter.

On March 25, 1834, Indiana’s Senator Hendricks asked the Senate to take up an appropriation bill for continuation of the Cumberland Road in Ohio, Indiana, and Illinois in the Committee of the Whole. Pennsylvania Senator William Wilkins introduced an amendment to appropriate \$300,000 for the road east of Ohio, while Senator John Tipton of Indiana offered an amendment “authorizing an officer of the corps of engineers to superintend the work and disburse the money in Indiana and Illinois.”

Senator Theodore Frelinghuysen of New Jersey asked why the Senate was again being asked to appropriate funds for the Cumberland Road, saying that “he thought it had been given up to the States.” He moved to lay the bill on the table, as a way of delaying consideration.

Senator Thomas Ewing of Ohio explained that the States had not yet accepted the road. First, it had to be repaired:

The design of the \$300,000 was to complete the repairs, that it might then be given up to the States, and they [Congress] could not get rid of the road without such an appropriation. Not being now repaired, it must remain on their hands, to be again and again repaired.

Senator Hendricks reminded his colleagues that in 1832 Congress had agreed to repair the road and give it to the States. As a result, Congress “was under an obligation to do so, from which it could not be shielded”:

Toll gates could not be erected by the Government to procure the means of keeping the road in repair, on account of constitutional difficulties, which did not exist in regard to the States, which, when it was once repaired, might thus keep it in repair.

Senator Wilkins added that the question was “whether or not they would now abandon this project altogether.” If the road were abandoned, travelers would have to go through Pittsburgh, where he lived, via the cross-State turnpike. Thus, from a State perspective, letting the road go to ruin would be advantageous. However, in supporting the bill, he was taking a national perspective. “The system now proposed would ultimately terminate in getting the nation rid of the road entirely, and it was the object of the amendment to carry out the system.”

These comments satisfied Senator Frelinghuysen as to the need for the appropriation:

There was no other inducement to make the repairs but to get rid of this miserable bargain. After millions had been expended on the road, they were now told that thousands and hundreds of thousands must yet be expended east of the Ohio, and that it was a miserable road, and he was disposed to grant the appropriation.

Senator William King of Alabama discussed the millions expended on the road:

It was constructed under the direction of most skillful persons, and they had been told that it would be a national monument, a most magnificent work. But Congress had become wearied of it, for they found no end to it. Year after year, for twenty years, appropriations had been made to the Cumberland road, and at length they had come to the conclusion that they had best get rid of this extraordinary expenditure. Year after year expenses had been incurred, and it was reported to grow worse and worse.

He questioned whether the States would accept the road when it was completed.

Senator Hendricks said that no one had said that any particular appropriation would finish the road, which had required a "much greater degree of expense and difficulty . . . than was at first contemplated." He ascribed the problem, at least in part, to the cost of construction materials. The limestone used for the road "lay at a considerable depth in the earth, was covered with a stratum of stone of a different description, and could only be produced at places which were distant from the spot where it was required to be used."

Senator Ewing did not think that Senator King's concern about the bad faith of the States regarding acceptance of the road would be the case:

When it should be presented to them by the engineer now employed, with a declaration that it had been completed in a proper manner, and they should refuse to receive, then it would be time for Congress to cease making appropriations. The road has never yet been in a fit condition to be offered to the States, in consequence of its construction having been superintended by an individual who was incompetent to the task, and who had been appointed from political motives. The road was now, however, under the direction of a skillful engineer, and was properly attended to; difficulties had arisen, but they had been manfully met and surmounted. The road in its original state had been made of improper materials; had speedily got out of repair, and eventually became impassable; none of the States could take possession of it then, without coming in contact with the General Government, and now they refused to have any thing to do with it unless it was put into a perfect state of repair. If that were done, the States would immediately take charge of it.

This was an apparent reference to Captain Giesey, whose work on some segments of the road had been criticized by Captain Delafield.

Senator Frelinghuysen said that according to documents he had been reviewing, “the estimate for the formation of this road, instead of being \$300,000, was \$645,000, and before it was finished he had no doubt the expenditure would amount to a million and a half of dollars.” He thought “a new road was intended,” but “thought Congress ought to pause upon this subject.” He renewed his motion to lay the bill on the table to hold up Senate actions.

Senator Poindexter explained that a new road was not under construction. A portion of the Cumberland Road east of Wheeling had been converted to macadam design; “the appropriation was required to finish it”:

The stone for this purpose was already there. The department had recommended that the large stones which had formerly been used for the road should be taken up; this had been done and a great expense would thus be saved. The road in question was the great mail route which connected the Western country with the seat of Government, and was at present utterly impassable, excepting at the risk of life and limb. He looked upon the matter as one of great national importance, and was of opinion that the road should be perfected and then given up to the care of the States.

Senator Wilkins discussed the cost:

The expense of completing the remainder of the route would depend upon the material made use of. If clay were employed, the expenditure would amount to \$165,000; if sand or slatestone, \$300,000; and if it were Macadamized – if the hardest and most durable materials were used, the expense would be \$646,000. To use a Western expression, “their hands were in a split log” – they had commenced Macadamizing the road – and the only way was to go on with it. It was to finish the road that this appropriation was required.

Senator Frelinghuysen renewed his motion to lay the bill on the table to postpone the discussion, and the Senate agreed.

On April 1, 1834, Senator Frelinghuysen moved to resume consideration of the bill appropriating \$300,000 for repair of the Cumberland Road.

Senator Hendricks moved to add the following words: “and erecting the necessary toll-houses and toll-gates.”

Senator Poindexter immediately objected because in his opinion, “small appropriations for the erection of toll-houses should be made when the road should be transferred to the States.” Senator Hendricks, who “had no desire to raise difficulties,” said he would withdraw his motion “if necessary.”

Senator Wilkins summarized the purpose of the bill:

Mr. WILKINS said the two great objects of Congress were to repair the road, and to get it off the hands of the General Government. The States had said they would take the road after it was repaired and toll-houses had been erected; and the Governor of Pennsylvania had gone so far as to appoint commissioners to receive it. The object of the amendment was to enable the States to take off parts of the road as it was finished. If toll-gates were not now erected, this could not be done. He hoped the Senator from Mississippi would withdraw his motion.

Senator John M. Clayton of Delaware said he would vote against the bill. Although he had always favored a system of internal improvements, now was the time when “the Senate should pause.” The principle behind the Cumberland Road was to honor the general government’s contract with the States west of the Ohio River:

They had gone on for many years in this path, and what were not the doctrines which they heard from the West? Why the State of Ohio, by its legislature, approved of that part of the President’s message which would deprive his [Mr. C.’s] and other States of the benefit of the sale of the public lands. They were to receive no aid in return for what they were doing in favor of internal improvements.

The Ohio Legislature, on January 2, 1834, had adopted a resolution opposing “with decided disapprobation” the Clay Bill passed in the previous Congress on distribution of public lands revenue. It was, according to the resolution, “unequal in its operations, and unjust in its results.” The resolution endorsed President Jackson’s belated veto message and opposed approval of the bill in the current Congress. [*Bank United States and Public Domain*, Preamble and Resolutions of the Legislature of Ohio, 23d Congress, 1<sup>st</sup> Session, Ho. of Reps, Doc. No. 44, January 13, 1834].

Senator Clayton continued:

When to the disadvantage of their situation in this respect we add the consideration that it is their labor alone which gives real value to the lands, and that the proceeds arising from their sale are distributed chiefly among States which had not originally any claim to them, and which have enjoyed the undivided emolument arising from the sale of their own lands, it can not be expected that the new States will remain longer contented with the present policy after the payment of the public debt. To avert the consequences which may be apprehended from this cause, to put an end for ever to all partial and interested legislation on the subject, and to afford to every American citizen of enterprise the opportunity of securing an independent freehold, it seems to me, therefore, best to abandon the idea of raising a future revenue out of the public lands.

As proposed, the idea would not affect the funding available to the eastern States because without debt, the general government would still have ample funds for use on projects of national importance in them, as in past years when the debt was still to be retired.

Senator Clayton also objected to turning the road over to the States:

They might make what charge they pleased at the toll-houses, and Congress would have no power to control them.

Senator Ewing suggested that if Senator Clayton simply read the bill, he would see that the States could not raise tolls to any level they wished. The bill permitted them only “to collect toll sufficient to keep the road in repair.”

Moreover, if he examined the votes of Members of Congress from the western States for activities in his State of Delaware he would see that they voted for “hundreds and thousands of dollars which had been there expended.” He added that:

There had not been large sums appropriated by Government for the exclusive benefit of the West, nor would there be in this case.

The Cumberland Road did not benefit only the western States:

The road would be equally useful to the people of the East and to the people of the West; it was a medium of communication which would be equally for the interest of all; and, for the common interest, all ought to subscribe.

Senator Frelinghuysen had decided to vote for the bill. His “principle inducement” was “that it was one of the substantial improvements made by the General Government”:

The country had now reached that stage in its history when the States were able to take the management of such improvements into their own hands. He regarded it as a national object, and whatever brought distant parts nearer together, facilitated the national interest, and ought to be persevered in.

Senator Clayton was still opposed because “the Senate was now considering a subject over which neither he nor the Senate had any control. The great principle was struck dead by the President. He (the President) was resolved that no improvement should be made beyond tide water.” He cited the Delaware breakwater project. If it were proposed to turn the project over to the State of Delaware, he would oppose it for the same reason he opposed the present bill:

The bill to throw the road into the hands of the States was a bill to tax it to the full amount of the repairs. And how much was that? It threw the road, in his opinion, into the jurisdiction of the States through which it passed. He was no enemy to public improvements – he had voted for several appropriations for that purpose. But he was called upon now to vote on a different subject – to throw the road into the hands of the States.

Senator Ewing again tried to put the bill in perspective. If the Cumberland Road remained a responsibility of the general government, appropriations for its repair would continually be needed. “The Senate must be aware that a public road could never remain in repair for six months, particularly in a mountainous country. The road must go out of use altogether, or an appropriation must be made to put it in repair . . .” Alternatively,

the road could be delivered to the States “under a compact that they repair it”:

Two years ago, eighty miles of the road were put in repair in the State of Ohio. It was taken by the State, and by the State kept in excellent repair, and was now the best road in the United States. The road on this side of the river had been suffered to go out of repair; application had been made, and money was voted, but no care had since been taken to it.

But since it was placed under the care of the engineer department, the road was as well done, and the money as well applied, as in the state of things it could be. It was not the fault of the people of the West that the money was so applied. There was no danger of the road being taxed by the States, beyond what was necessary. They could apply the money for no other purpose than for the necessary repairs. We ought to carry into execution the compact made with the States. The road was to be given up to three States, to keep it in repair; but Congress might assume, at any time, its jurisdiction over it.

Pennsylvania, which had never been enthusiastic about the Cumberland Road, had nevertheless adopted legislation to take over the road and erect toll-gates to pay for its repair. In return, Congress must restore the road to good condition. “One portion of the road between Washington and Wheeling was so much out of repair as to be entirely abandoned.” The *Register* noted, without elaboration:

The honorable Senator went into further particulars respecting the condition of the road, showing that it was good in some portions, and in others almost or quite impassable, so that without repair, past appropriations would, to a great extent, be lost.

Illinois Senator Kane said that when he heard that the bill was for \$300,000, “he was startled.” The question was “whether the amendment altered the character or principle of what the Senate had already adopted.” He cited differences in the State laws on accepting the road. In Pennsylvania, Congress was required to repair the road and erect toll-gates, but in Virginia, the State commissioners were to erect the toll-gates. “Mr. K. could see no difference in the principle of the two cases; but if gentlemen would not vote to erect toll-gates, he was willing that part should be stricken out; but he thought it sufficient, that when the gates were erected, toll should be taken under the authority of the State.”

Congress was obligated to honor “a contract to which every President had agreed, and to which there was no constitutional objection, though the acting President [sic] objected to the internal improvement system as a system.” He asked, “should they coerce a co-ordinate branch of the Government to adopt a general system, by opposition to this particular measure?”

As for Senator Clayton’s concern about giving the States responsibility for the road, the question was whether the general government or the States would repair the roads. This was not an issue, Senator Kane said, “because Congress established the principle; they

had made the contract, and for their own interest to get rid of expense; and, after this had been done, he would ask if they should object to the measure because the States would have the control?" The States, after all, had adopted legislation agreeing to accept jurisdiction subject to specified conditions about repairs.

Senator Tyler stated the attitude of Virginia:

She made no surrender of her ancient principles upon this occasion, but was as well prepared to battle against the system of internal improvement, as she had ever been. She would never accept this road with toll-gates; were she to do so, she would be recognising a jurisdiction which had no right to be exercised. A proposition had formerly been made to erect toll-gates, had received the sanction of both Houses, but had been vetoed by the President, (Mr. Monroe,) on the ground that the General Government had not authority over the soil of the States. The present case, Mr. T. said, came up in the same form as that to which he had alluded, and he should oppose it.

Senator Hendricks offered to resolve the issue by withdrawing his amendment adding the words "and erecting the necessary toll-houses and toll-gates."

Senator Poindexter pointed out that this bill was consistent with previous actions by Congress, which had determined to turn the road over to the States. The States had agreed, in turn, to take over the road's repair, subject to it being delivered to them in good repair:

A great part of the road had been already repaired, and the large stones on the remainder had been taken up. The question now was, not as to the power of making internal improvements, but as to whether or not Congress should continue its exertions in repairing the road. They were bound to continue the repairs. They had offered the road to the States, and the States had agreed to receive it, and could Congress now go back from its engagement? The road was the great line of connexion between the Western country and this place. Almost every member from New Orleans and the Southwestern States came up the Ohio and stopped at Wheeling, on his route to the seat of Government. Refuse to put the road in repair, and this line of communication would be broken up.

He rejected the idea that the States would raise taxes, saying there was no possibility of that. "The tolls were very moderate, and were to be devoted entirely to the repair of the road. They were to constitute a road fund." At this point, he "read a statement of the tolls to be taken, showing the charges for the various vehicles and animals passing along the road to be very moderate."

Senator Poindexter summarized his view that upwards of \$2 million had been spent on the road, but "it had become useless for the transportation of the mail, or for any other purpose." He supported the bill.

Senator William C. Preston of South Carolina pointed out that through 1824, the general

government had spent \$1,726,000 for the road, with the cost up 2 years later to \$2,443,000, at a cost of about \$17,000 a mile:

Experience showed at that time, that the road would be a very expensive undertaking. Another appropriation was made, and after its expenditure, the road was found to be in a worse state than it was before.

Since then, Congress had appropriated funds to put the road in condition for the States to take over its repair. "After the expenditure of these sums, the road was still worse, so as to require double the appropriation":

The undertaking had been retrograding. It was like the school boy, who, when coming late to school, the master demanding of him the reason, declared that the roads were so slippery that for every step he attempted to take forward, he slid two back. And how, said the master, did you arrive at all, under such circumstances? Why, said the boy, I turned round to face the other way, and by striving to get home again, arrived at school.

There was, in short, no guarantee that if Congress approved this latest appropriation, that next year it would not be asked for double the amount:

For what purpose? Not to make a road for free passage, but to make a present of. It appeared to him that Government had made a bargain which it had better get clear of at once. Pennsylvania now stipulated for the erection of toll-gates, or she would not accept of it. There had been money enough laid out upon the road to justify the saying of a gentleman, who averred that the cost of the road would be found to be sufficient to pave it with metal; and it seemed to him as if there had been actually as much expended as would pave the road with iron, as some of the streets of London were paved.

And who would determine that the road was in good enough condition for Pennsylvania to take over its care? "The officers of the Government; and it would be their interest not to decide until the road was in perfect order; so that if a single toll-gate wanted as much repair as would cost twenty-five cents, the road would be reported to be not in order." Perhaps the proposition would work if Pennsylvania would stipulate an estimate of the cost to be expended before it would accept the road for care, but "she would make no such stipulation." What was clear was that the \$300,000 included in this bill would not be enough and that if that amount were appropriated, Congress would have to continue appropriating funds year after year:

If the road was not worth supporting on the part of Pennsylvania, it was not worth supporting on the part of Congress. He would stipulate in the bill that the State, for an appropriation, should agree to make the road, or not have it at all . . . . He should be unwilling that so large a grant as three hundred thousand dollars should be made – he could not give his assent; and felt himself compelled to vote against the bill.

Senator George M. Bibb of Kentucky said he would vote for the appropriation and for turning the road over to the States. He was confident the States would keep it in repair without “these applications for money”:

A small toll at each gate would keep the road fit for travelling. On this subject he did not depend on conjecture; part of the road had been accepted by the State of Ohio, and had been kept in repair, under a very moderate toll, and one who was acquainted with the subject had told him the required repairs had been less and less, and the legislature would exact no more toll than the very little which would soon be required to keep it in repair.

He pointed out the value of the road “for a communication to products and merchandise between the valley of the West and the Atlantic”:

Any gentleman who would travel that road between Cumberland and the Ohio, would not count less than four or five hundred loaded wagons. It was true the road was much out of repair, but it stood wonderfully where it was made as it was originally, so that stages and heavy wagons had passed over it for twenty years, without repair. But the pounded stone had been ground to dust in some places, and had left the large rocks bare, so as to make the road intolerable. Instead of the old foundation, the Macadam’s plan was entirely adopted, so that the appropriation had not been sufficient; but now three hundred thousand dollars would go very far, if it would not be entirely sufficient, to put the road in repair.

He described the condition of the road, but the *Register* did not detail his comments.

He wanted to repair the road and turn it over to the States, which he had no doubt would accept it in good faith. The Senators “ought not to doubt the fidelity of any State in the Union; it was an unsocial idea, which he would never harbor”:

He would be very unwilling to have the intercommunication between Washington and the valley of the Mississippi broken in upon by the road going to ruin . . . . He believed that, considering the part of the country, and the thin population, more than three hundred thousand dollars could not be profitably expended in any one year, and from experience they would be enabled to make a more profitable expenditure of money.

Senator Samuel L. Southard of New Jersey had “great difficulty” about the bill. He was convinced that the \$300,000 appropriated by the bill would not be the last appropriation for repair of the Cumberland Road:

His difficulty was, whether he should go the whole length, for if Congress were to make no more appropriations than this, it would be a good bargain. He foresaw additional appropriations, and yet he had brought his mind to vote for this, and he would tell his reasons.

First, the States had agreed to accept the road if it was put in good repair, “and he was

not much surprised at the amount, immense as it had been. It was a vast work at its commencement, and liable to be speedily out of repair.”

Second, the goal was for the road to pay for its own repairs:

When he remembered the great objects Congress had in view, when they commenced this road; when he remembered what the road was – that it was the great line by which nine States approached the seat of Government – every feeling of regard for the national interests forbade that it should be given up. He, for one, would not surrender it. How then was it to be continued?

Congress had decided to avoid future appropriations by giving up the road.

Third, when the States agreed to accept it, the road “was at the time in such a state that it could not be travelled on.” The present appropriation was for that purpose, and if Congress rejected it, “the road would be neglected; no one could interfere to preserve it; and it would be eventually annihilated.”

He concluded:

The question in his mind was, whether this great undertaking should be surrendered or not. He had felt some difficulty in coming to a decision upon the subject, because the present appropriation might not be found sufficient; yet he had brought himself to vote for it. He went upon the belief that as soon as the road was ready, the States would take it and relieve the Treasury of the Union from such drafts as had hitherto been made upon it. He should ask that the question be taken by ayes and noes.

Senator Preston moved to add language to the bill: “providing the States of Pennsylvania, Maryland, and Virginia consent to receive those parts of the road which pass through their respective States when put in repair by this appropriation.”

Senator Wilkins “could give no hope that Pennsylvania could agree to a proposition of the kind”:

Most of the roads in Pennsylvania were toll roads, and brought in a revenue to the State. The State had an interest in her roads, but never looked upon this road as of any interest to her. It was therefore that she had asked Government to hang toll-gates.

From Pennsylvania’s perspective, the Cumberland Road was “a national undertaking, in which she had as little to do as the State of South Carolina, or any other State.” Pennsylvania was interested only in its own roads, which was why it required the general government to erect the toll-gates. “To adopt the amendment would be to prevent the Government from making any repairs this season, and the want of repairs now would add fifty per cent. to the expense of repairs next year. If Congress meant to do anything, now was the best time.”

Senator Henry Clay supported the bill, but hoped the proposed amendment would be rejected. As Senator Preston had observed, the general government had appropriated large sums for the road, but the problem arose “mainly from the want of any constant method of keeping the road in repair.” Tolls were the answer because “a sufficiency of money could be collected to keep the road in constant repair”, unlike the present situation. He thought the general government was in a better position than a corporate authority to build the road:

He would vote for the measure, in the hope that the gentleman would reconsider his views; and also from the conviction that Kentucky and other States, which held no public lands, ought to share in the benefits resulting from public improvements. He would not vote for the measure, but for the reservation that the General Government would retain a power over the road.

Alabama Senator King asked why Congress was planning to rebuild the road according to the McAdam plan. Such a proposition was not in the original compact based on the Enabling Acts:

The road was once an admirable experiment, but not on the Macadam plan; it would be so as originally constructed, and the present appropriation, in that case, would not have exceeded \$200,000; but if it were \$300,000, with a view to have it well repaired, considerably more would still be required – and why? Because Pennsylvania would not receive it if it were not such a road as would never get out of repair. The provision was, that the road should be made in the manner it was originally begun, but it being a road of the United States, nothing was done, and for that reason the repairs were not made when they became necessary, and not all till the road was ruined.

He felt that Pennsylvania had an obligation to accept the road on its original plan, not the McAdam plan.

He was not willing to make such heavy appropriations. “When they made an appropriation, with a perfect conviction that it would be sufficient, it uniformly turned out that it was not sufficient, but the road was worse than before.” The engineers of the United States could use large stores to “make the road permanent for several years; and if so, it could then be kept easily in repair by tolls.”

He added that the road west of Wheeling was different from the existing road to the east as far as appropriations were concerned. “These were new States, and stipulations had been made to construct roads through them by Congress; and when the public lands should be brought into market, the expense would be more than refunded.” He favored the Preston Amendment to require the States to accept the road when the funds appropriated by the bill were expended.

Senator Ewing had one last point to make. The Preston Amendment required the States to receive the road following expenditure of the funds, or the funds would not be expended. As a practical matter, could it be done:

An engineer must be sent, and the legislatures would not have time to act; and the effect would be, that the provision would be defeated; and if it was so for the present year, the consequence would be a larger appropriation next year.

The road began as a commitment to Ohio:

Was this a contract? If the road were not permitted to go down, it would be keeping the word of promise to the ear only. The Senator from South Carolina had said that it was not worth the expenses; but the road was begun twenty-seven years ago, and had been of much use to the nation.

Finally, the Senate voted on the amendment, which “lost without a division.” Next, a vote was taken on whether to engross the bill for a third reading. The vote was 20 yeas and 22 nays. “So the bill was negatived.” The bill was recommitted to the Committee on Roads and Canals.

On April 4, Senator Hendricks reported the bill to repair the road east of Wheeling and extend it through Ohio, Indiana, and Illinois, with an amendment.

On May 8, Senator Hendricks offered a motion to take up the bill for repair and extension of the Cumberland Road. The motion was approved 15 to 10. He then offered an amendment to change the appropriation in the bill from \$662,400 to \$652,130.

Senator Benjamin Swift of Vermont offered an amendment to the Hendricks amendment to add: “that, as soon as the sums appropriated by this act shall be expended, the road shall be surrendered to the States through which it passes, and that the United States shall not be subjected thereafter to any further expenses on its account.” The Senate accepted the Hendricks/Swift amendment without a division, then voted to engross the bill for a third reading, 21 to 13. The record did not report any dialogue on the provisions.

The next day, Senator Hendricks brought up the bill for preservation and repair of the road for a third reading. By amendment, the Senate changed the title of the act by inserting the word “repairs” and striking out the words, “Indiana, Ohio, and Illinois,” leaving the title, “A bill for the making and repairs of the Cumberland road.” The bill was read a third time and passed, without a recorded discussion or vote totals.

### **Action in the House**

On April 14, 1834, Secretary Cass replied to a House resolution requesting a detailed estimate of the repairs of the Cumberland Road east of the Ohio River. He transmitted General Gratiot’s accounting that same day. He noted:

The additional which have been made to the estimate by the Committee of the Senate on Roads and Canals, to meet the requirements of the laws of Maryland and Pennsylvania, will account for the apparent discrepancy between the amount of the estimate now submitted, and that which accompanied my last annual report.

The detailed accounting by Captain Delafield covered the cost of converting the road to the McAdam system in 2 years from September 30, 1833. The road was broken into sections, with the list covering all activities involved, including grubbing, stone bridges, repairing masonry, quarrying, quarters for the officer in charge and forage for his horse, and a toll house consisting of two rooms, with gate and fence to side cutting or slope. The total estimates cost for the three States was \$652,130, up from the previous estimate of \$645,000. He noted that the Senate document had misstated the previous total.

Regarding the section from Frostburg to the Maryland line, Captain Delafield added:

These last 22 miles are more expensive than any other part of the road, situated in the highest mountains, passing the Great Savage and Kuysers, with several intermediate ridges, and the limestone found only in the lowest depths of the valleys, several miles from the road. In fourteen miles of road only one quarry is known to exist at this time. The transportation of this stone, the only one fit to use for covering the road, is, therefore, very expensive. [*Cumberland Road East of the Ohio*, Letter from the Secretary of War, 23d Congress, 1<sup>st</sup> Session, Ho. of Reps, War Dept., Doc. No. 350]

On May 15, 1834, after the House went into the Committee of the Whole, Representative Isaac McKim of Maryland moved for consideration of the bill “making appropriations for continuing the Cumberland road in Ohio, Indiana, and Illinois, and repairing the same road east of the Ohio, and continuing and repairing certain territorial and military roads, for the year one thousand eight hundred and thirty-four.”

To save time, Representative Stewart suggested taking up the Senate bill on the same subject. Representative McKim agreed and waived his motion. The committee voted to consider the Senate bill was 91 to 31. It was laid aside to be reported to the full House.

The full House took up the Senate bill on June 16. Representative Polk, chairman of the Ways and Means Committee, began the discussion by saying “he felt no hostility to the passage of this bill, but could not consent to the large amount of appropriation it contained”:

It exceeded the appropriation of last year by six hundred and seventy thousand dollars; and he was assured by the chief engineer that, whatever sum might be appropriated, not more than three hundred thousand dollars could advantageously be applied by the department during the present season.

The War Department had submitted three plans for repair of the road east of the Ohio. The first was the construction of a clay road, which would cost one hundred and forty-seven thousand dollars. A second plan proposed to cover the road with stone taken from the immediate vicinity, which would cost two hundred thousand dollars. A third plan was to take up the stone foundation which had been laid for the road on the old plan, and then to grade and Macadamize the whole in the best manner; this would cost six hundred and fifty-two thousand one hundred and thirty dollars. This was for the one hundred and thirty-two miles

between Cumberland and Wheeling, and would amount to about five thousand dollars a mile.

Mr. P. deprecated the latter plan, as profligate and extravagant. He thought that it would be sufficient to cover the old foundation with a coat of stone, such as was found on the spot by the road side; and, under this persuasion, he moved to amend the bill by striking from it the appropriation of six hundred and fifty-two thousand one hundred and twenty dollars, and inserting three hundred thousand dollars.

Representative Stewart said it was too late to deliberate on the nature of the repairs. "The old foundation had been taken up, and broken stone had been laid down upon the Macadam plan; it would be useless to cover the road with sandstone, which, in a short time, would be ground to powder by the immense travel constantly passing over the road":

The money appropriated last year had been expended in November, and nothing having since been done to the road, all that was then done was, for the most part, lost by the effect of rains, frost, and travel. The States were ready to receive the road as soon as it should be put in good repair. The sum now asked would put it in complete repair; the Government would be entirely relieved, and the friends of the road would pledge themselves never to ask for another dollar.

In response to a question from Representative Warren R. Davis of South Carolina about how often that pledge had been made, Representative Stewart replied, "never, by himself, or by any one he knew of, because they had never been in a situation to give such a pledge."

Representative Davis discounted a pledge "which they could not enforce," adding that something similar had been said every time another appropriation was sought.

Representative McKennan asked Representative Polk if, in his amendment of the Senate bill changing the appropriated amount, he meant to eliminate the provision that when the appropriated funds were expended, no more funds would be appropriated and the road should be ceded to the States?

No, Representative Polk replied, he had not. "He thought two hundred thousand dollars [sic] was sufficient to put the road in such a state of repair that it should be fit to be ceded." The *Register* summarized his argument:

He referred to the large sums of money which had successively been appropriated to this work. He inveighed against the extravagance of the sum proposed in the bill, and went into estimates to show that this road had already cost the Government from eighteen to nineteen thousand dollars a mile.

Pressed to agree to the Polk amendment, Representative Stewart “said that he could not, until he knew whether the chairman [Polk] would himself vote for the bill, if reduced as proposed”:

Mr. POLK, without directly answering this question, said that, if Mr. Stewart was willing to risk the bill as it now stood, he had no objections; but if the gentleman insisted upon the whole six hundred thousand dollars, he was ready to meet him.

Representative McKennan said he would accept the lower amount, but only if the House amended the bill to eliminate the provision that no more funds would be appropriated for the road:

The enlargement of the sum in the Senate had been the work, not of the friends, but of the opponents of the road, who had proposed this large sum, as a final grant, to get rid of the subject. The restriction declared that no more money should be appropriated. Supposing, then, that the three hundred thousand dollars should not be quite sufficient to complete the repairs, was the road to be left to go to ruin?

Representative Philemon Thomas of Louisiana corrected the impression that Representative Polk had left that the Secretary of War agreed with the reduction. “The bill, as it came from the Senate, had received the approbation of that officer, having, in fact, been founded on estimates furnished by him”:

Mr. T. quoted the report of the War Department in support of this position; dwelt upon the waste of public money which had been occasioned by partial and insufficient appropriations, and insisted, at large, and with much earnestness, on the propriety of granting the whole sum proposed by the Senate. As to the condition of the treasury . . . there was good grounds to justify the belief that the receipts for the next year would exceed, by three or four millions, the estimate submitted by the Secretary of the Treasury.

Representative Joel B. Sutherland, a Pennsylvania Jacksonian, offered an amendment to the Polk Amendment to add a provision that no more than \$300,000 should be drawn from the general Treasury during the year for repair of the road.

Representative Archer supported the Sutherland Amendment, but “ridiculed the idea of giving pledges, which should bind their successors. No guaranty of that kind was of any value.”

Representative Stewart “expressed his surprise that this motion should come from the chairman of the Committee of Ways and Means, [Mr. Polk,] who, he understood, would interpose no obstacle to the passage of this bill, though from constitutional doubts he would be constrained to vote against it.” But since the chairman supported the reduction, Representative Stewart said:

[He] would not object to it, provided the gentleman would modify so as to strike out the provision in the bill which made this appropriation final, and thus make it conform to the bill reported by the Committee of Ways and Means; but if it was the object of the gentleman to reduce the sum more than one-half, and still retain the restriction which made the appropriation final, he would be obliged to resist it; and he now wished to know distinctly from the honorable chairman whether he would so modify his motion or not?

Representative Polk said he was unwilling to modify the motion, “and said that his purpose was to reduce the sum and make it final, as he thought it sufficient, and the estimate extravagant.”

This response bothered Representative Stewart:

[He] would be glad to know upon what ground the gentleman undertook thus to condemn the estimates of the War Department as extravagant. The Secretary of War, the Chief Engineer, and the officers of the engineer corps, who made this estimate, had no interest in making it extravagant; besides, it was made after two years' operations on the road, when the precise cost of labor and materials was accurately ascertained. This estimate was printed, and placed, more than two months ago, on the gentleman's table, giving, in detail, the exact quantity of work required to be done; every perch of stone; every drain, culvert, side-wall, and bridge; every thing required to complete the road from one end to the other, with the precise cost of each item. Now, let the honorable chairman take up this estimate – no doubt he had examined it – let him point out a single item that is unnecessary, or too high; a single thing that is extravagant; let him put his finger on it, and I will consent to strike it out. This he has not attempted. Why, then, shall the gentleman, without knowledge or examination, rise in his place, and, with his eyes shut, pronounce at random this minute and detailed estimate, made after two years' experience, by practical, disinterested, and scientific engineers, absurd and extravagant?

. . . It is an easy matter, sir, for gentlemen to talk here about extravagance and prodigality; it is easy to say, as has been said, that this road has cost 50,000 dollars a mile; and that the people upon it have made fortunes, by getting contracts at extravagant rates; this is mere declamation. Look at the records in the Department, and you will find that the most difficult portion of this road – made during the late war, in the midst of mountains, overcoming difficulties, considered unsurmountable, at a time when the price of labor and provision was at the highest, passing sixty miles over mountains – cost less than [sic] 10,000 dollars per mile; the next portion, from Uniontown to Washington, cost only 6,400 dollars per miles, including bridges. A cheaper road, under similar circumstances, he contended, had never been constructed; and, so far from making fortunes, the fact was notorious that there were more honest and industrious men ruined on this road, by taking contracts too low, than had made fortunes by getting them too high.

But how, it is asked, is the repair of this road now so expensive? By attending to a very brief statement of the facts, this would be readily understood. This road was originally constructed by laying down a substratum of pavement of loose stone, one foot in thickness, and super-adding six inches of fine stone, to give it a smooth surface; and thus it was left, without any system for its preservation, exposed to the uncontrolled action of the travel and the elements, for more than fifteen years, during all which time only three appropriations were made for its repair, amounting, together, to one hundred and seventy-eight thousand dollars. The road was, therefore, in a most ruinous condition; the whole of the six inches of fine stone, gone, and much of the rough pavement cut through and destroyed.

The States, recognizing its condition, passed laws providing for collection of tolls on the road if Congress appropriated sufficient funds to put the road in “a complete state of repair.” Congress assented and followed with appropriations in 1832 and 1833 in an effort to “throw the burden of repairs, from the national treasury, on those who have the use and benefit of the road.”

Secretary of War Cass and General Gratiot had inspected the road and:

. . . were satisfied, from its dilapidated and ruinous condition, that a complete and a thorough repair, such as was expressly required by the State laws, could only be effected by taking up the road from its foundations, and reconstructing it on Macadam’s plan, for which limestone (very scarce and expensive in the mountains) was the only suitable material; and it is mainly attributable to this fact that the expense of the repairs has been so great.

Under these circumstances, it was too late for the chairman to talk about adopting a different plan and “to rake up estimates made seven or eight years ago”:

Surely, the gentleman would not himself consent to put broken sandstone on the fine limestone already put down. To do so would, indeed, be a wanton waste of public money; it would not last six months; it would all be ground into sand before the next meeting of Congress, when a further appropriation would be required to place the road in a condition to receive gates; the State laws requiring, as a condition precedent, the “complete and thorough repair of the road,” preliminary to the erection of gates.

Given a certainty of funding, the War Department could put the entire road under contract, regulate operations without “injurious delays which occur here in the passage of appropriation bills, by which the work has now been suspended for nearly eight months,” with the result that much of the work done last summer was being destroyed “by the combined action of the frost, rain, and travel, and must again be repaired at additional expense.”

He said Representative Polk had implied a deficiency of revenue in the general Treasury, in contrast with the statement of the Secretary of the Treasury, who stated in his annual

report that as of December 31, 1834, the country would have a surplus of nearly \$3 million; and had recently expanded that estimate to exceed \$4 million:

And yet, in the face of this statement, the chairman of the Committee of Ways and Means is found opposing his own bills, and withholding from the Government the sums required for the public service, lest there should be a deficit in the treasury. He was at a loss to conceive why this large surplus was to be retained. What benefit was it to the people to have their money idle, when it could be put into profitable circulation? To retain it could profit no one except the stockholders of the deposite [sic] banks; but would the people be satisfied to see millions of their money in the hands of rich bankers and stockjobbers to speculate on, without paying one cent for the use of it?

. . . Much had been said about the enormous cost of this road; it was always selected as the theme for economical speeches. Why were gentlemen silent when other appropriations, much more useless and extravagant, were considered? If gentlemen would look to the facts, they would find that this road, from its commencement, twenty-eight years ago, had cost less, repairs and all, than the House in which we are now sitting; less than a single fortification now erecting a few miles below this city, still unfinished, and to which annual appropriations are granted without objection. Compare these objects in point of utility, and how do they stand? The road, even in time of war, for the transportation of troops, was more important than those forts; and in time of peace, the road is invaluable; while the forts are not only useless, but a constant burden on the treasury.

Annual estimates of appropriations for public service amounted to \$23 million, of which “there were but two objects embraced in all the interior and western States; the one was the Cumberland road, the other the Ohio and Mississippi rivers.” The total annual expenditures “in all the interior portion of the Union, did not amount, annually, to half the sum expended on a single fortification!”

Considering the millions of dollars expended for projects along the seaboard, “he submitted whether opposition from the seaboard to this appropriation could be justified or defended?”

He was, he said, astonished “that western gentlemen who travelled on this road should be opposed to it.” Representative Polk was one of those gentlemen:

The destruction of this road would be a non-intercourse between this city and the West; or, if gentlemen ventured upon it at all, it would at the hazard of their limbs and lives.

What, he wondered, was the point of appropriating funds for extension of the road from Wheeling to the Mississippi River while letting the original segment fall into ruinous condition?

The road from Cumberland to Wheeling was made in a compact with the States, namely that they would exempt the public lands from taxation. They had fulfilled their end of the compact. “But these States had no power to legislate for the preservation of this road. It was not within their jurisdiction; and it would be a violation of good faith and the spirit of the compact for this Government now to suffer this road, made for the benefit of the new States, and for an adequate consideration, to go to destruction.”

So much had been said about extravagant expenditures for internal improvements, “but he utterly denied it.” Expenditure for roads and canal over 40 years “did not amount to more than half as much as had been expended by the single State of Pennsylvania! It did not average half a million a year.” And yet Members of Congress talked about the subject in ways that would make a stranger think “that this was almost the only source of public expenditure threatening the subversion of the Government.”

In sum, the immediate question was “simply whether the House would concur with the Senate in granting the whole sum at once to complete the repairs, or whether they would appropriate a part now, and the balance hereafter.” Whatever the House did now, they would pay the full amount, whether now or later, to put the road in complete repair for turning over its upkeep to the States:

The sum now proposed by the amendment is obviously insufficient for this purpose; and, consequently, the gates cannot be legally erected. Hence, the question at the next session will be presented, whether the road shall fall back on the Treasury, to be kept free, as heretofore, or whether the compact with the States to “complete the repairs,” shall be fulfilled, the gates erected, and this Government for ever relieved from the perplexing subject? This was the true state of the question. He repeated, he felt no great solicitude as to the decision, whether the whole or a part should be now appropriated; he thought, however, the object would be sooner and better accomplished, and at less expense, by appropriating the whole sum to complete the work. If so, he would pledge himself never again to ask for another cent; and all the gentlemen immediately interested were, he believed, prepared to concur in this pledge. But if only a part of the sum required by the Department to complete the work and erect the gates was now granted, no such pledge could or would be given.

Representative George Chambers of Chambersburg, Pennsylvania, introduced an amendment that he planned to offer at an appropriate time. It would require the States to erect gates on the road before any of the appropriation was expended.

Representative Polk reminded his colleagues that the War Department had not asked for \$600,000 and had submitted several less expensive plans.

Representative Mercer replied that the two less expensive options “had been tried and rejected.” He had personally examined the road “and observation had satisfied him that neither of the other plans was of any value”:

Mr. M. here described the manner in which the road had been heretofore constructed, and the evils of the plan. He advocated the propriety of Macadamizing the whole anew with limestone, some of which must be brought as much as twenty miles, other portions fourteen miles, &c. The errors heretofore had arisen from no design to deceive or impose upon the House, but simply from want of knowledge.

Representative Francis Thomas of Garrett County, the westernmost county in Maryland, agreed, stating:

. . . the report of the Department did virtually, though not expressly, recommend the plan contemplated by the bill; for, after stating the three modes of construction, it condemned the first two, leaving the third as the only proper mode to be adopted. [Mr. T. read from the report.] He argued to show that the plan of taking up the large stones at the foundation of the old road, and Macadamizing with limestone, was the only effectual mode of repairing the road, and putting it into a fit state to be surrendered to the States.

As other House members expressed their views, Representative Davis said that anyone listening “to the language and tone of this debate, would receive from it a wrong impression”:

He asked what right the General Government had to this road? How came it theirs? Had Pennsylvania ceded one foot of her soil to the Government? Not an atom of it. Whence did Government derive its claim? The Government could not take it, even if the States had ceded it. The constitution would not admit of it. Yet it was said that we must purchase the consent of the States to receive the road from the General Government. Now, were it not that he did not desire to use language that might be deemed offense, he should say that this was sheer impudence. To talk about spending money to coax the States to take their own road! It was monstrous; it was preposterous. The cool indifference with which gentlemen brought forward such a proposition was not exceeded by the Kentucky farmer, who, when his neighbor offers him his corn for nothing, replied, “I cannot take your corn unless you consent to haul it.”

One gentleman had said that this road had received the assent of all our Presidents, beginning with Mr. Jefferson. This was true, and he believed that Mr. Jefferson had been, to the very day of his death, sorry for the assent he had given. It had even been proposed to establish gates upon the road. What power had this Government to establish turnpike gates on any road in the States? What right had it to interfere with their domestic concerns? If such a thing should be attempted, he considered it the duty of the Legislature of Pennsylvania to abate the nuisance. As he wished to test the matter at once, he would now move to strike out the enacting clause of the bill.

Representative Vance had wanted the House to vote on the Senate bill, but “since gentlemen seemed to want a discussion, they have it.” He was provoked to speak up by

comments indicating that some of his colleagues wanted to get rid of the road as soon as possible while others asked what right the general government had to cede the road to the States. For example, Representative Abijah Mann, Jr., of New York said he would vote for \$652,000 for repairing the road east of the Ohio River “if he could be certain that there would be an end to it, and that the friends of the project would not come back to Congress and ask for four millions more.” He also would go for a proposition giving the money to the States “on the condition they would take the road and keep it”:

At present he should vote first to reduce the amount to 300,000 dollars, and then he should vote to strike out the enacting clause of the bill, and so he should proceed resisting every plan in its favor, till the Government finally got rid of the encumbrance.

In response to such sentiments, Representative Vance began by emphasizing the importance of retaining the Cumberland Road because “if they should get rid of it by passing such a bill as was now proposed, they would have nothing left to quarrel about; they would lose a fine topic on which to declaim and show their patriotism, and boast of the care they were taking of the public money.” How would they prove to their constituents that “they were here on their posts watching the treasury day and night!”

The Cumberland Road “stood at the head of the system of internal improvements”:

Out of it had sprung almost all the works which had since been constructed. But for the construction of this road over the Alleghany, the design of the great Erie canal would have slumbered to this day. It was the construction of this road which had first roused the attention of the country, and had directed it to the importance of securing an avenue to the great valley of the Mississippi. Hence all the roads and the different canals which were at this day crossing the whole Union, that they might obtain a portion of the trade and travel of the great West. They had all been brought into existence by the impulse which this first parent measure had given to the public mind.

Yet it was a good thing that gentlemen should have this road as a subject upon which to make speeches. Were it not for their zeal in resisting appropriations for the Cumberland road, their constituents might, perhaps, look at the \$600,000 for a custom-house in New York, and the more than a million of dollars for the repair of navy yards, and the wear and tear of the navy. Yet, when a measure was brought forward in which every man and woman throughout the whole valley of the Mississippi had a direct concern, gentlemen from New York must rise and talk about extravagance.

He recalled the changes the road had brought to western commerce. If the gentlemen who opposed the appropriation “wished to fasten down on the people of the Western country a state of perpetual privation, and to keep them for ever hewers of wood and drawers of water, let them speak out and say so”:

Then the West would know how to understand them. If they were not to receive

a pittance from the treasury, to keep up an avenue to unite the East with the West, let it be understood; but let not gentlemen profess that the people of this country stood upon one level before the Government, and then keep eternally harping on this Cumberland road, and pouring out invective about extravagance. This road had remained from 1818 to 1826 without the expenditure of one dollar upon it for repairs, and this was the true and the main reason of all the expense which it had occasioned since. Had gates been put upon it at that time, Congress would never have heard of it again; but every man of common sense must know that any great public highway, especially one so perpetually travelled, if left for eight years without lifting a tool upon it for repairs, (and some portions of the road had been left fifteen years in that condition,) it must go to ruin.

Representative Ransom H. Gillet of New York, new to the House, was among those expressing their thoughts. He said he was not as knowledgeable about the Constitution as Representative Vance, but would vote against the sum originally reported. However, he thought “that there was good ground to vote in favor of the bill.” The contract between the general government and the new States was the grounds for support. As a Jacksonian, he could not go beyond the amount in the bill:

He had ever been opposed to the carrying on of works of internal improvement by the General Government. He thought the constitution contained no authority for it, and the same latitude of construction which had been held to authorize such works had given to the country the Bank of the United States, and the alien and sedition laws. The people had interfered at the great civil revolution, in the time of Mr. Jefferson, to put down such an interpretation. Things had then gone on quietly till the year 1824, when this new scheme was devised. But the people, in 1828, had again interfered, and condemned it in the most emphatic manner. The issue had been made more distinctly on the question of the Maysville road and the Bank of the United States; and the people had, in both cases, sustained the views of the Executive. Mr. G. should vote for the limited appropriation on the ground of contract, and not on the general principles of internal improvements.

Representative Polk said he regretted that the doctrine of internal improvements had been introduced into the debate. He asked Representative Davis to withdraw his motion to strike out the enacting clause. Representative Davis did so.

Representative Polk “again insisted on the expediency of leaving the foundation of the old road untouched, and covering it with a coating of stone, such as was found in the immediate vicinity.” For this view, he referred to a report of the War Department. When Representative McKennan asked the date of the report, Polk replied that it was made in 1827.

Representative Thomas replied that “the interests of his immediate constituents forbid he should remain silent and permit the House to decide on the pending amendment, under the erroneous impression that the remarks of the Committee of Ways and Means were well calculated to produce.” Representative Polk was referring to an old document, not the one filed at the start of the session:

It is well known that the Senate refused to make an appropriation for prosecuting these repairs until an estimate had been furnished from the Engineering department, showing the whole sum which would be required to complete them. In so doing, Mr. T. thought the Senate had acted wisely. The experience of the past ought to satisfy every member that these partial appropriations were inexpedient.

Based on the assent in the compacts with the three States, Congress had appropriated funds in 1832 and 1833, but these funds had been exhausted in November 1833, “and, from that time to the present, the officers of this Government employed to superintend these repairs, had been idle, although they had a right to expect their salaries would be continued. The road, too, had been left in such a condition that it would now cost several thousand dollars more to repair it than would have been necessary if the work had progressed without interruption.” The Senate knew these facts and acted accordingly.

He also replied to the claims of the large sums expended on the road to date:

What have we to do with the errors of the administrations which have preceded this? It is certain that Mr. Jefferson’s administration committed one error in not providing for the continued repair of the national road in some economical manner. And the administration which succeeded his, erred also in attempting to keep this road in repair by annual appropriations from the national treasury. But are we to permit these things to create a prejudice against the present measure? We now propose to make a good road, to reject the worthless material heretofore used, and then to erect toll-gates to collect a sum sufficient to relieve the treasury from this drain.

The funds expended were, indeed, enormous, but was Congress to refuse funds to the War Department because its predecessors in previous administrations “have wasted or misapplied appropriations made by Congress”:

Mr. T. said the House need not be alarmed at the suggestion of the gentleman from Tennessee, that this sum would embarrass the Treasury Department. It was now well understood that the receipts from the customs for the year 1834 would exceed considerably the estimated receipts made by the Secretary of the Treasury at the commencement of the present Congress. Besides, the whole sum asked for cannot be expended within the year. It was most probable not more than 150,000 [sic] or \$200,000 would be actually drawn from the treasury during the year 1834. So that the only difference between the bill from the Senate and the bill, if amended as proposed by the gentleman from Tennessee, would be this: if we make now an appropriation of \$300,000 we shall be called upon next year for more money; we shall waste time again in a long debate, and perhaps suffer the repairs to be again suspended. On the contrary, if we sanction the bill from the Senate, we shall place at the disposal of the War department a sum sufficient to relieve us from all further applications, and accomplish the object which the friends of the road desire.

Representative Seaborn Jones of Georgia, several speakers later, responded to Representative Vance's statement that the Cumberland Road was "the head and source of all the works of internal improvement in this country." If so, Representative Jones said, "this road had been the fruitful mother of an odious offspring." As for the contract with the States, "if the Government was bound to make them a road, it had done that: the contract, therefore, was fulfilled. The Government was not bound to keep the road in repair. And if the road could not be given away, let the Government lose it, and let them find it; if it was not worth keeping in repair by those that passed over it, it was surely wrong to call on the United States to keep it up."

He moved to lay the bill upon the table. The House decided in the negative on the motion, 68 to 133.

Representative and former President Adams moved to strike out the clause declaring that the law was "to carry into effect" the laws of the three States for accepting the road. "He considered the clause as not only useless but quite improper."

He would support the amount in the original bill, or the amount in the Polk amendment. "He considered it a mere question of time, whether the whole sum should be granted by one act or by two":

He could not, however, consent to declare that this law of Congress was passed to carry into effect the laws of the States. He did not believe such to be the proper function of the Congress of the United States. It had enough to do to carry its own laws into effect. As to its being a compact, it was one which Congress could annul at pleasure. The assent of Congress to State laws accepting the road had been expressly declared as continuing in force "during the pleasure of Congress."

He asked Representative Polk if any of the three States had, by law, assented to such condition:

The act certainly had no force to create a compact, unless the subsequent assent of the States had been given to it. Of itself, it was a mere nullity . . . . To what use was it, then, to say that this law was passed, to carry into effect the laws passed by the States?

He also objected to section 4 of the bill, which declared the no more money would be expended upon the road, and when that money was gone, that the road would be surrendered to the States:

They had no right to declare that no more money should be expended upon the road, or that, when what was now given had been expended, the road should be surrendered to the States: for Congress and the States were not yet agreed as to the condition on which it should be surrendered. The clause he moved to strike out, therefore, was not only wholly inoperative but entirely improper, and the fourth section was in violation of the faith of this Government to the States north of the Ohio.

The House rejected Representative Adams's amendment; the *Register* did not report the vote.

The House voted on the Polk amendment reducing the amount of the appropriation to \$300,000. It was defeated, 91 to 92.

Representative Sutherland moved that no more than \$300,000 could be expended in the present year. Representative Philemon Dickerson of New Jersey proposed to amend the amendment to state that no more than \$300,000 could be expended until the States agreed to take over the road after the general government had expended \$652,000.

Before the question could be put to a vote, the House adjourned.

When debate resumed on June 17, Representative Gilmer moved to reconsider the vote on the Polk amendment.

Representative Stewart said friends of the bill would support the Polk amendment if the section ending future funding were eliminated. "If the supporters of the amendment would intimate their willingness to accede to that proposition, no objection would be made to the amendment."

Representative Albert G. Hawes of Kentucky hoped no such intimation would be made:

He was opposed to the whole system. Unless an end was put to the log-rolling which prevailed in this House, in relation to internal improvements, it would be necessary to increase the tariff to keep the treasury from bankruptcy. The immense amount of appropriations which had already passed the House, were sufficient, he believed, to exhaust the treasury.

Representative John W. Brown of New York said he had changed his mind overnight. He had voted against the Polk amendment, but had intended to request reconsideration of the measure before Representative Gilman made his motion. He shared Representative Hawes's concern about whether the general Treasury "would be able to bear so large an appropriation of the public money for this single purpose, during the present year." He acknowledged that the general government had an obligation to pay for improving the road so it could be turned over to the States, "and thus rid the nation forever from these continual, and, what seemed to him, extravagant and never-ending expenditures of the public money." He would support funding for that purpose, but he understood that the government would not be able to spend more than \$300,000 during the present year. Limiting the appropriation to that amount was prudent. He would, therefore, support the Polk amendment and, if it were approved, the overall bill.

Kentucky Representative Hardin "went at length" into the country's obligation to build the road, but expressed alarm at the amount of appropriations for "various works of internal improvement contained in the bill already reported, which he estimated to be twenty millions." As for the current bill, "he thought the \$2,500,000 which had been

expended upon it, solely to enable Baltimore to compete with Philadelphia, was quite enough”:

If a road to the west was necessary, why not make a road by the White Sulphur Springs and the Kenawha, which was a hundred miles nearer? If the friends of the road were not satisfied with the \$300,000 proposed by the amendment, he hoped they would not obtain more by the vote of the House.

The *Register* account of Representative Hardin’s comments is abbreviated, leaving out some parts that would be referenced by other Representatives in response to his comments.

Maryland’s Representative Thomas had intended to limit himself to the subject, but would briefly touch on topics Representative Hardin had raised. “If he (Mr. T.) did go somewhat out of his way, he should do so, much on the same principle as the Methodist preacher, who, addressing some backsliders of his flock, explained “Oh, my beloved brethren, if you will wander to the devil, I must wander to the devil after you.”

The question was whether to reconsider the Polk Amendment the House had rejected the day before. “They were now called on to reverse their judgment, and to consent to this reduction.” On what basis, he asked. Perhaps they should ask if the reduced sum would be sufficient for the stated purpose:

And to what source should they go for information? Should they take the bold, incoherent statements of gentlemen on that floor, based on no certain grounds, made without data; or, should they go to the estimates prepared by the War Department – estimates made out by skillful and scientific men, employed for the purpose? The question was, would they complete these works, or would they sacrifice all the public money that had been already expended, by letting them go to decay.

If anyone objected to those estimates, let them speak up. “If there were any mistake in them let gentlemen point it out, and let it be rectified”:

The gentleman from Kentucky [Mr. Hardin] had said he would not believe the statements in the report, if an angel from heaven should come down and declare them true. He (Mr. T.) required no such evidence. It was sufficient for him that these statements were made out by honorable and high-minded men, and men who were competent to make them out. That report told that it was necessary to bring the requisite materials in some cases fourteen miles. In answer to this, the gentleman from Kentucky had spoken of the quantity of materials at hand on the Alleghany. It was true there was abundance of rock and other materials, but these were the very materials which the Department had expressly stated were unfit for the construction of this road . . . .

The truth was, the gentleman from Kentucky was opposed to the bill altogether. He (Mr. T.) would here caution the friends of the bill against being led astray by

the false lights of gentlemen to vote for the reconsideration of the bill. Even when so amended, these gentlemen would vote against the bill. The gentleman from Tennessee who proposed the amendment [Polk], the gentleman from Georgia who moved the reconsideration [Gilmer], and the gentleman from Kentucky [Hardin] who last addressed the House, they would all vote against the bill.

He concluded by hoping that the House should act upon the bill at once.

Representative Tristram Burges of Rhode Island regretted several aspects of the debate thus far. He regretted that Representatives from the West “so frequently reflect on the Eastern States in respect to the amount of public money expended there” for fortifications, support of the Navy, and other objects “in which the whole Union had an equal and common interest.” This complaint would not influence his vote:

As to the Cumberland road, it was as strictly a national work as the navy or the fortifications. What could be more national than a great highway crossing the whole Union, and uniting the Eastern and the Western States? One gentleman had objected to it as merely intended to bring Baltimore into competition with Philadelphia and New York for the trade of the West. Was this an objection to be urged by a western man? The more competitors there were for western products and western business, the better for the West.

As for the waste of money on the road, it “was owing to the imperfect knowledge of road making at the time this work was commenced; but whatever waste might have occurred in other Departments, the country might rest assured that in that of war, to which this road belonged, the public money would always be expended with care and prudence.”

New York Representative Cambreleng was “willing to give a large sum if the Government could be sure of getting rid of this road.” He feared that would not be the case. He “felt himself justified in warning the House to hold its hand, lest they should make the treasury bankrupt, and have gentlemen coming to the House next session with a grave story, laying the whole blame on the President and his Secretary.” He pointed out that the House had bills for the District of Columbia and the surrounding area totaling \$3 million, as well as bills for \$5 million more than the Treasury Department’s estimates for expenditures during the year. Instead of continuing to make appropriations “as matters of political and party emulation,” the country needed “a system of substantial retrenchment” in appropriations for internal improvements:

He was willing to appropriate for this Cumberland road, but insisted on the necessity of laying down some rule to restrict the expenditures of Government. He thought it would be well to establish a limit in respect to other subjects of expenditure, as had been done in respect to the navy. Let Congress name a definite sum that should be applied to fortifications, another for roads and canals, &c. This was the only mode to check extravagant applications of public money, and guard the treasury from bankruptcy.

Kentucky's Representative Chilton, who had joined the House in 1827 as a Jacksonian but now was an Anti-Jacksonian, would vote for the bill if the amount were reduced, but otherwise must vote against it:

The pledge of never asking for more, if the sum now asked were given, might impose upon new members of the House, but it had been too often repeated to have any effect upon old ones. The appropriations had been constantly increasing, and Heaven only could tell when they were to cease. The road had cost millions, and was this day a quagmire. Now it was a plain sum in the rule of three, and might be status thus: If the road, after fifteen years' appropriations, constantly increasing, was now a quagmire, what would it be, at the same rate, in fifteen years more?

He concluded:

Though this was a western measure, and he is a western man, he could not consent that all the money for the West should be expended in one spot; and, if the high-pressures system was still to be kept up, the country would have to resort to direct taxation, and that of the most pinching and grinding sort. The tariff would never supply the sums that would be needed. It could be shown that this one road had cost the nation ten per cent. on the whole amount received from the public lands. To such a scale of expenditures he would never give his consent.

Illinois Representative Duncan was surprised by the reaction of Kentucky's Representatives – the last place he expected opposition. “The sum proposed to be stricken from the bill was for repairing the road east of Ohio, in which Kentucky had as much interest as any other Western States; and he could not see what motive could induce a citizen from the West to desire the destruction of the only road connecting the great valley with the Atlantic, which they could claim as their own, and use independently.” (As noted, the Kentucky delegation, like President Jackson of Tennessee, used the road on their trips between home and Washington, with a steamship trip along the Ohio connecting with Wheeling.):

The gentleman from Kentucky [Mr. Hardin] had used many arguments with the view of bringing this road into disrepute; but, from some expressions, it appears very clear to my mind, if the Maysville branch of it had not been vetoed, the gentleman would be as firm a supporter of the road as ever.

As to complaints about the cost of the road, “it was nothing, he said, when compared with the benefits of the road.” The compact with the new States was important, but it was not the general government's only obligation:

It was a high, a vital object, to connect this almost unbounded country by roads and public highways, and especially was it the duty of Government to overcome great natural obstructions – such as separates the West from the Eastern section of this country. Such improvements would make us a united, prosperous, and happy people; and he was utterly astonished to find such opposition, and from such a

quarter, to this favorite work of the West. He asked who would not pronounce the farmer insane who would throw obstructions in his own road to market?

Representative Aaron Vanderpoel of New York had voted for the larger sum, nor did he “repent of the expenditure of public moneys upon it,” but thought it his duty to vote for reconsideration. He was not opposed to the road or the amount spent on it, “but he must think the amount now asked was too large.” His concern did not involve the constitutional authority of Congress. On the contrary, “he thought that every principle of justice and expediency demanded the construction of such a highway between the Eastern and the Western portions of the Union.” He said his own State had worked toward a similar purpose with its roads and canals, adding:

He must be permitted to say that, if the sums expended on this portion of the Cumberland road had been put into the hands of his Yankee friends, he had not a doubt that they would, for that sum, have constructed a perfect Appian way across all the mountains of New England.

He singled out Representative Vance for his comments, which never would have converted him were he opposed to the \$300,000. Vance had “declaimed so elegantly against the extravagance of the present Government [but] could vote with the utmost coolness to add \$600,000 at a clip to the public expenditure, and that for an object which had already consumed millions.”

Representative Vanderpoel was particularly upset by Representative Vance’s comments about New York. What had New York ever done to merit such criticism? When planning for the Erie Canal was underway, the State had applied to the general government for aid, but received none. Now that the work was done, the general government wanted to make the canal boats subject to custom-house taxation. “The Government had had the magnanimity to say we will afford you no aid to construct your canal; but, when you have completed it from your own resources, we will tax it for our revenue.”

And what had New York received for its contributions? It had received \$3,000 or \$4,000 “for a little road to Sackett’s harbor, to transport the guns of the army; and the erection of a custom-house to receive a large portion of the revenues of the whole country.” Representative Vance’s speech had been “illiberal and uncalled for.”

New York’s Representative Samuel Beardsley, who had taken part in the defense of Sackett’s Harbor as a lieutenant in the War of 1812, said he did not object to anything Representative Vanderpoel had said. “He hoped the debate would be brought to a speedy conclusion, and that the course of the public business would not be impeded by discussions respecting the course pursued by the delegation of any State.”

Pennsylvania’s Representative McKennan said he had been hesitant to speak on the issue because he knew his colleagues wanted to vote, but felt he had to respond to “the violent attack that had been made upon this road and its interests.” He reminded them of his role in securing \$150,000 in the previous Congress for appropriations to repair the road

consistent with the State legislation allowing Maryland and Pennsylvania “to take the road off the hands of the General Government, and in future save the treasury of the United States from the continual drain for that purpose.” To date, not one penny of that funding had been put “towards the substantial repair of the road . . . in his district – forty-four miles of the road had yet been untouched”:

He had urged the Department to apply a portion of the two former appropriations to the repair of that part of the road; but the plan of making a thorough repair, commencing at Cumberland and going west, so as to get up the toll-gates as soon as possible, was adopted, and his wishes and the wishes of his constituents were defeated. Their claims were postponed; and there is too much reason to believe that, if the efforts of the chairman of the Committee of Ways and Means [Mr. Polk] should be successful, to limit the whole expenditure to three hundred thousand dollars, that that part of the road which lies between the Monongahela river and the Virginia line will not be touched, or, at all events, will not be repaired in such a manner as to justify the commissioners appointed under the law of Pennsylvania, to receive it from the hands of the Government.

The War Department could not change its plan, which had seen the road from Cumberland to Brownsville “taken up, and they must proceed to complete the repair according to the plan they have adopted.” He summarized the status of the work based on information from Captain Delafield:

In Maryland ten miles have been finished; nine miles have nine inches of metal; six miles six inches; ten miles are graded, and most of the materials are on the ground to complete it; making, in the whole, thirty-five miles. In Pennsylvania twenty-two miles are finished; thirty-one and a quarter miles have nine inches of metal; two miles have six inches; eleven and a quarter miles, four and a half inches; the whole of the balance graded, and most of the materials are on the road, to complete it to the Monongahela river. In Virginia, nine miles have been taken up and partly repaired, much masonry and walling have been done, and materials collected.

The \$300,000 recommended by the Polk amendment would allow completion only of the work commenced. The estimate is based on Captain Delafield’s assessment. “Surely, vastly more reliance is to be placed upon his opinions and upon his estimates, than upon the wild conjectures and crude notions of either of the gentlemen from Kentucky, [Mr. Hardin and Mr. Chilton,] who had, to his astonishment, felt it their duty to join the enemies of improvement in declaring war upon this road”:

He could not refrain from expressing his surprise at the course they had taken, inasmuch as the State of Kentucky was as much if not more interested in keeping up the line of connexion between the Atlantic cities and the Ohio river than any of the Western States. They had undertaken to pronounce every thing connected with this repair as extravagant and monstrous; and they did so without having the means of forming a correct judgment as to the expense of materials, and the

difficulty of procuring those of a proper quality throughout the mountainous region.

The War Department's estimate was the only safe data for discussing the cost:

It is minute and particular; divides the road into sections; shows the quantity and kind of materials necessary to complete the repair; the price of quarrying, hauling, breaking, and laying them on the road; the sums necessary for graduating; the amount and price of masonry, &c. It will not do to condemn it by sweeping denunciations of extravagance.

From this estimate, it seems that it will require \$55,000 to complete the section from Cumberland to Frostburg; \$152,000 to complete that part lying between Frostburg and the Maryland line; \$47,000 from the Maryland line to the western base of Laurel hill; \$58,000 from Laurel hill to the Monogahela river, including the bridge over Dunlap's creek; and \$70,000 to finish that part of the road lying between the Virginia line and the Ohio river.

If anyone saw an error in that estimate, he should point it out:

With these facts staring them in the face, he would ask the House how they would undertake to limit the appropriation to the sum proposed, which would fall short of completing the parts referred to, and would leave forty miles of the road through his district untouched?

Unless Congress appropriated sufficient funds to put the entire road in good repair from Cumberland to Wheeling, "it will not be taken under the care of the States; toll-gates will not be erected, and it must be kept up by the funds of the Government." He implored the friends of internal improvement, of this road, and of relieving the treasury from future payments, "to resist the attempt which is now made to reconsider the vote of yesterday."

He acknowledged that the War Department would use only about \$300,000 during the current season. He even was willing to support an amendment offered by Representative Dickerson to require the Treasury Department to hold \$350,000 of the full amount in the Senate bill until the States agree to accept that sum in full which may be required to complete the repairs:

He did not consider it necessary, inasmuch as it was the interest as well as the duty of the commissioners who have been appointed by those States to accept the road and proceed to the erection of toll-gates so soon as the road is placed in good travelling condition. But, to place the matter beyond all doubt or question, the friends of the measure were perfectly willing to accept of the amendment before referred to.

He concluded by urging his colleagues to retain the full Senate amount, \$652,000.

Representative Hardin, the Anti-Jacksonian from Kentucky, argued that under the Constitution, the general government had no right to construct any road in a State except for military purposes or the conveyance of mail. The west, in his view, did not need the road:

If a wall could be built between the Eastern and Western States, as high as the Andes, then the products of the West would all go to New Orleans, where the God of Nature intended that they should go. The great evil, at present, was that, while their exports went to the South, their imports came from the East. He inveighed against the extravagant cost of the road and compared it with that of the Guyandotte road through Staunton, the whole of which had cost but \$200,000. . . .

(In 1816, the Virginia General Assembly created a Board of Public Works, headed by a “principal engineer,” the first such agency in the country. Representative Hardin appears to be referring to the Kanawha Turnpike, one of the board’s projects. It began at Covington, Virginia, and terminated at the mouth of the Big Sandy River near Guyandotte, now in West Virginia, a distance of about 200 miles. The turnpike was built in a series of extensions between 1820 and 1832. Other turnpikes linked Covington to Staunton. A history of Virginia roads states:

The Kanawha Turnpike could not be judged as a great success. It was not kept up to the standards of a first class road, it did not really bind east and west by strong commercial ties. It did not provide a route for westward migration, and perhaps more than anything else it demonstrated that the Allegheny Mountains were ever more of a barrier than had been anticipated. Despite its faults, it did serve as the first and only link between the James and Kanawha River until the Chesapeake and Ohio Railroad was built after the [Civil] war. [Newlon, Howard, Jr., and Pawlett, Nathaniel Mason, *Backsights*, Virginia Department of Highways and Transportation, 1985]

(During the named trails era of the early 20<sup>th</sup> century, the route was included in the transcontinental Midland Trail (Washington, D.C., to Los Angeles); it became part of U.S. 60 when the U.S. numbered highway system was approved in 1926.)

Representative James Love, another Kentucky Anti-Jacksonian, made “some further explanations,” before observing “that he would allow to the advocates of strict construction twenty years to go upon their principles, after which he was well persuaded they would return to the way of their fathers.”

Maryland Representative Thomas replied to Representative Cambreleng’s statements, “and insisted he was not authorized to characterize the bill under consideration as one which proposed extraordinary appropriations, or as a measure to be classed with the bills on the table for the benefit of the District of Columbia.” The bill proposed an appropriation of \$652,000 for repair of the road east of the Ohio River and \$450,000 for continuation of the road in Ohio, Indiana, and Illinois”:

Both these sums are founded on estimates from the War Department. The gentleman from New York is, then, not correct when he places the bill we are examining in the same class with those by which Congress proposes to relieve this oppressed District. He has committed another mistake, by saying that no part of the sum of \$1,102,000 contained in this bill is included in the estimates of the Secretary of the Treasury of expenditures for the year 1834. Mr. T. said he had the estimates of the Secretary of War in his hands.

The Secretary included \$450,000 in the year's estimate for extension of the road west of Zanesville through Illinois. "The inaccuracy of the gentleman, therefore, in this particular, is obvious; and his effort, by this means, to embarrass the friends of this bill, must be abortive."

As for the estimates of other expenditures, the Treasury had \$7,983,790 available as of January 1, 1834, and expected receipts of \$18,500,000. The Secretary added \$2.5 million in receipts, giving the Treasury a total of \$28,983,790 for expenditures during the full year. A sizable balance was left after reducing that amount by payments of the public debt; civil, foreign intercourse, and miscellaneous; military establishment, including internal improvements; Naval establishment and marine corps; and pensions for surviving veterans of the Revolutionary War:

And we have \$6,842,720 to meet such appropriations as Congress may think proper to make, for what the gentleman terms "extraordinary purposes." Of that sum, the friends of this bill ask only for \$300,000, to be expended in the year 1834; and, in justification of this request, they exhibit, he repeated, not the crude calculations of the members on this floor, but the estimates and calculations of the Department of War.

Representative Polk observed that if, as Representative Stewart stated, only \$200,000 was needed during the present year, "it was unreasonable and improper to call for an appropriation of \$600,000 at this time." He went through the many other appropriations already passed covering millions of dollars from the general Treasury:

Why, then, lock up these \$600,000 when \$200,000 was all that could be expended this season? Gentlemen must not debate this bill as if it involved the issue of internal improvements or no internal improvements. It was merely a question as to the sum and time. He hoped the reconsideration would prevail.

Following a few additional comments, Representative Dutee J. Pearce of Rhode Island, "after adverting to the great length of the debate, demanded the previous question, which was seconded without a count." The House proceeded to vote on whether to reconsider the negative vote of the previous day. The vote was 101 to 96. "So the House agreed to reconsider."

The House then voted, again, on the Polk amendment reducing the appropriation to \$300,000. This time, the House agreed to the amendment. With the amount in the bill

settled, the amendments introduced by Representatives Sutherland and Dickerson “fell, having nothing to which they would apply.”

Representative McKennan moved to strike out the words “for the entire completion” and the fourth section of the bill.

Representative Adams called for a division on striking out the words “for the entire completion.” The House voted 93 to 115, negating the amendment.

As for striking out the fourth section, Representative James H. Gholson of Virginia offered an amendment:

That, from and after the expenditure of the money herein appropriated, all jurisdiction and authority whatever, heretofore claimed for the Federal Government over or in relation to the said Cumberland road, be, and the same are hereby, for ever surrendered and abandoned.

Representative Vance pointed out that the fourth section had been included in the Senate bill in the expectation that it would appropriate over \$600,000. The House had just voted to appropriate half that amount. “All he knew was, that \$300,000 would never complete the road, and he felt very certain that the States would not, in that case, agree to take it off the hands of the Government.”

Representative Gholson defended his amendment by pointing out it differed from the Senate bill in several key ways:

The section [in the Senate bill] did not repeal the act of Congress of 1832, which act had declared that Congress might reassume its jurisdiction over the road, if the States should not, in its judgment, act wisely in their management of it. His amendment did repeal this act. He was for doing nothing by indirection. His meaning was, and he openly declared it, that Congress should abandon and for ever surrender this road. If the States were to take it, let them take it with that understanding, and not, on any condition, that their acts were subject to the supervision of Congress. Mr. G. would not now enter into the argument on that subject. He forebore, in consequence of the lateness of the hour, from doing any more than merely offering the amendment.

Following comments on the amendment by several Representatives, Representative Ewing observed that “the subject had now arrived at its crisis”:

Mr. E. presented to Congress a serious question which might arise, and which it was necessary to have clearly understood, lest the faith of the Government should be forfeited, and injury committed. Gentlemen had talked of constructing a road for \$4,000 a mile. All he insisted on was, that the road should be placed in perfect repair. If gentlemen could do this for \$4,000 a mile, he had no objection.

He did not believe the general government could simply relinquish the road without reaching a new pact with the western States:

If the Government would make a new bargain, and give up its right to hold the public lands untaxed, good and well; it was just what he desired. The States would then have their own soil, without any part of it as a boon from Congress. They were not beggars by habit, and fewer beggars were to be found at the West than were to be found in this District . . . .

He offered an amendment providing that Illinois, Indiana, Ohio, and Missouri would not be prohibited from taxing the public lands after relinquishment of the road occurred. The amendment recognized the compact between the States and the general government, “and denying its right to surrender the road, unless completed to the satisfaction of all the States concerned”:

A contract and bargain had been made and sealed with the Western States for the right of highway, and they had given up the taxes to obtain it. If our side of the bargain was to be relinquished, the other must also. For such a measure, he would go heart and hand. If the gentleman from Virginia would vote for Mr. E’s resolution, he would vote for his amendment.

Representative Gholson said that either amendment, his or Representative Ewing’s, would be satisfactory.

Instead of acting on either amendment, the House voted, 127 to 72, to engross the bill for a third reading. “The bill was then read a third time and passed.”

On June 19, the Senate concurred in the bill as amended by the House. President Jackson signed the bill on June 24, 1834.

Section 1 of “An Act for the continuation and repair of the Cumberland road” appropriated \$200,000 “for the purpose of continuing the Cumberland road in the state of Ohio”; \$150,000 “for continuing the Cumberland road in the state of Indiana”; and \$100,000 “for continuing said road in the state of Illinois.” The funds were to come from the general Treasury “and replaced out of the fund reserved for laying out and making roads under the direction of Congress, by the several acts passed for the admission of the states of Ohio, Indiana, and Illinois into the Union, on an equal footing with the original states.”

Section 2 provided that the Department of War would select “an officer of the corps of engineers” who “shall be charged with the disbursements of the funds” for construction of the road in Indiana and Illinois. He “shall have, under the direction of the engineer department, a general control over the operations of the said road, and over all persons employed thereon.”

Section 3 appropriated \$300,000 for “the entire completion of repairs of the Cumberland road, east of the Ohio river, and other needful improvements on said road, to carry into

effect” the acts of Maryland, Pennsylvania, and Virginia. The funds were to come from the general Treasury, to be expended at the direction of the Secretary of War, with “the money to be drawn out of the treasury in such sums, and at such times as may be required for the performance of the work.”

The final provision, Section 4, was intended to bring an end to congressional appropriations for the road east of Wheeling:

*And be it further enacted,* That as soon as the sum by this act appropriated, or so much thereof as is necessary, shall be expended in the repair of said road, agreeably to the provisions of this act, the same shall be surrendered to the states, respectively, through which said road passes: and the United States shall not thereafter be subject to any expense for repairing said road.

## Part 7: Finishing the Road

### Moving Forward

Congress, as it happened, had not completed appropriating funds for the Cumberland Road – east or west of the Ohio River. Although several Representatives had expressed concern that appropriations for internal improvement would drain the general Treasury, they need not have worried.

One of President Jackson's goals was to eliminate the national debt. When he took the Oath of Office on March 4, 1829, the public debt was \$48,565,000. It had gradually diminished, such that the country was on the verge of achieving the goal when he submitted his annual message on December 1, 1834. After covering foreign affairs, he stated:

According to the estimates of the Treasury Department . . . it appears that, after satisfying all those appropriations, and after discharging the last item of our public debt, which will be done on the 1<sup>st</sup> of January next, there will remain unexpended in the Treasury an effective balance of about four hundred and forty thousand dollars. That such should be the aspect of our finances, is highly flattering to the industry and enterprise of our population, and auspicious of the wealth and prosperity which await the future cultivation of their growing resources. It is not deemed prudent, however, to recommend any change for the present in our impost rates, the effect of the gradual reduction now in progress in many of them not being sufficiently tested to guide us in determining the precise amount of revenue which they will produce.

Free from public debt, at peace with all the world, and with no complicated interests to consult in our intercourse with foreign Powers, the present may be hailed as the epoch in our history the most favorable for the settlement of those principles in our domestic policy, which shall be best calculated to give stability to our republic, and secure the blessings of freedom to our citizens. Among these principles, from our past experience, it cannot be doubted that simplicity in the character of the Federal Government, and a rigid economy in its administration, should be regarded as fundamental and sacred.

In the administration of public affairs, he wrote, no question was “more important or more difficult to be satisfactorily dealt with, than that which relates to the rightful authority and proper action of the Federal Government upon the subject of internal improvements.” The past course of legislation on the subject had only added to “inherent embarrassments.” As important as the subject was, he could not refrain from providing an “account of its disturbing effect upon the harmony of our Union.”

The country was free “from violations of the constitution by which encroachments are made upon the personal rights of the citizen.” However, the country was not free from “the dangers of unconstitutional acts which, instead of menacing the vengeance of

offended authority, proffer local advantages, and bring in their train the patronage of the Government”:

To suppose that because our Government has been instituted for the benefit of the people, it must therefore have the power to do whatever may seem to conduce to the public good, is an error, into which even honest minds are apt to fall. In yielding themselves to this fallacy, they overlook the great considerations in which the Federal Constitution was founded.

The framers understood that what was good for one State might be bad for another. As a result, “the States would not consent to make a grant to the Federal Government of the general and usual powers of Government, but of such only as were specifically enumerated, and the probable effects of which they could, as they thought, safely anticipate.” Over the years since then, three questions had arisen to an alarming extent:

- (1) The power to make internal improvements in a State “with the right of territorial jurisdiction, sufficient at least for their preservation and use”;
- (2) The right to appropriate funds for works carried out by a State or a company under State charter; and
- (3) The propriety of appropriations for a class of internal improvements, such as “light-houses, buoys, public piers, and for the removal of sand bars, sawyers, and other temporary and partial impediments in our navigable rivers and harbors.”

The first item was of the greatest importance, “inasmuch as, in addition to the dangers of unequal and improvident expenditures of public moneys, common to all, there is superadded to that the conflicting jurisdictions of the respective Governments.” He considered such conflicts, in the absence of a constitutional amendment spelling out the relationship, the “most injurious.” They would inevitably lead to jealousy by the States:

Collisions and consequent irritations would spring up; that harmony which should ever exist between the General Government and each member of the confederacy, would be frequently interrupted; a spirit of contention would be engendered, and the dangers of disunion greatly multiplied.

Despite these “grave objections, this dangerous doctrine was at one time apparently proceeding to its final establishment with fearful rapidity.” Even in the previous Congress after he became President, the desire “to embark the Federal Government in works of internal improvement, prevailed.” Even as Congress passed the Maysville and Lexington Turnpike Company bill, “there had been reported, by the Committees on Internal Improvements, bills containing appropriations for such objects, inclusive of those for the Cumberland road, and for harbors and light-houses, to the amount of about one hundred and six millions of dollars.” This total included provisions for the Treasury to acquire stock in “companies of a great extent, and the residue was principally for direct construction of roads by this Government.” Other similar projects were then under consideration that would have cost more than \$100 million.

At the time, he saw the Maysville Road bill “as the entering wedge of a system which . . . might soon become strong enough to rive the bands of the Union asunder.” Given the “obviously local nature” of the turnpike, he considered it “an imperative duty to withhold from it the Executive approval.” He took the opportunity of his veto message to explain to Congress that the Constitution “did not confer upon it the power to authorize the construction of ordinary roads and canals within the limits of a State, and to say, respectfully, that no bill admitting such a power could receive official sanction.”

He thought his veto would lead to “the speedy settlement of the public mind upon the whole subject”:

Nearly four years have elapsed, and several sessions of Congress have intervened, and no attempt, within my recollection, has been made to induce Congress to exercise this power. The applications for the construction of roads and canals, which were formerly multiplied upon your files, are no longer presented; and we have good reason to infer that the current of public sentiment has become so decided against the pretention as effectually to discourage its reassertion. So thinking, I derive the greatest satisfaction from the conviction that thus much at least has been secured upon this important and embarrassing subject.

He believed a constitutional amendment was needed, as he had said in previous messages and in the Maysville Road veto. An amendment to clarify roles was so essential to the “highest interests of our country, that I could not consider myself as discharging my duty to my constituents in giving the Executive sanction to any bill containing such an appropriation.” If people believed that the general Treasury should be used for such purposes, they would support an amendment of the Constitution “prescribing a rule by which the national character of the works is to be tested, and by which the greatest practicable equality of benefits may be secured to each member of the confederacy.”

He distinguished appropriations for roads and canals from appropriations for harbors and related activities along the East Coast. The first Congress after ratification of the Constitution had made appropriations for harbors and related facilities in the ninth act approved by Congress and signed by President Washington on August 7, 1789:

. . . it was provided, by law, that all expenses which should accrue from and after the 15th day of August, 1789, in the necessary support, and maintenance, and repairs of all light-houses, beacons, buoys, and public piers, erected, placed, or sunk, before the passage of the act, within any bay, inlet, harbor, or port of the United States, for rendering the navigation thereof easy and safe, should be defrayed out of the Treasury of the United States; and, further, that it should be the duty of the Secretary of the Treasury to provide, by contracts, with the approbation of the President, for rebuilding, when necessary, and keeping in good repair the light-houses, beacons, buoys, and public piers, in the several States, and for furnishing them with supplies.

Expenditures were contingent on the facilities being “ceded to and vested in the United States, by the state or states respectively in which the same may be together with the

lands and tenements there unto belonging, and together with the jurisdiction of the same.”

He did not object on constitutional grounds to appropriations for this type of internal improvement. However, as the country expanded to the west, appropriations for these purposes had been increasing:

Although I have expressed to Congress my apprehension that these expenditures have sometimes been extravagant, and disproportionate to the advantages to be derived from them, I have not felt it to be my duty to refuse my assent to bills containing them, and have contented myself to follow, in this respect, in the footsteps of my predecessors. Sensible, however, from experience and observation, of the great abuses to which the unrestricted exercise of this authority of Congress was exposed, I have prescribed a limitation for the government of my own conduct, by which expenditures of this character are confined to places below the ports of entry or delivery established by law. I am very sensible that this restriction is not as satisfactory as could be desired, and that much embarrassment may be caused to the Executive Department in its execution, by appropriations for remote, and not well understood, objects.

He regretted that under these terms, he had been forced to reject, by pocket veto, a bill to improve navigation on the Wabash River, but he had no choice because signing it might have thrown “the subject again open to abuses which no good citizen, entertaining my opinions, could desire.”

In the final paragraph of the message, he said:

I am not hostile to internal improvements, and wish to see them extended to every part of the country. But I am fully persuaded, if they are not commenced in a proper manner, confined to proper objects, and conducted under an authority generally conceded to be rightful, that a successful prosecution of them cannot be reasonably expected. The attempt will meet with resistance, where it might otherwise receive support, and, instead of strengthening the bonds of our confederacy, it will only multiply and aggravate the causes of disunion.

In the documents accompanying the message, General Gratiot reported on November 1, 1834, that in Indiana and Illinois, “Little or nothing has been done on the national road in these States, in the way of extension, since the date of my last annual report.” General Gratiot explained that, “For reasons then stated [in the 1833 report] with regard to the road in Illinois, and in consequence of the increasing difficulties on that in Indiana, it became a matter of great importance to limit the expenditures in these States to the fulfilment of existing contracts, in the hope that some legislative action might be had that would produce a better state of things.” The Act of June 24, 1834, appropriated funds “after a great portion of the best part of the working season had passed.”

A new engineer, “possessing much experience,” had been put in charge. “He has been engaged since his arrival on the road, in ascertaining the state of its affairs, and in

organizing an efficient force for the active prosecution of operations.” He had been sick during the summer, delaying his report on his findings.

At the time of General Gratiot’s 1834 report, he had not received Captain Delafield’s report on the road east of the Ohio River. “This is to be attributed to the causes referred to under the heads of Fort Delaware and harbors in the Delaware river, all appertaining to the superintendence of the same officer.”

On December 8, Secretary Cass sent a letter to Speaker of the House John Bell, a Whig from Tennessee, forwarding the delayed report from Captain Delafield on repair of the Cumberland Road east of the Ohio River. The report covered the period through September 30, 1834. In 1833, work on the road, in accordance with converting the road to the McAdam plan, had continued through December, “when, the available means being absorbed, a cessation was put to the work, and all the stock and tools collected at points on the road favorable for renewing the work in the spring”:

The winter and spring proved rainy and wet, and operated unfavorably on all the road that had been newly graded, and such parts as had but three inches of metal, and not consolidated. The system of placing barriers on the road, to change the travel from the centre, and thus cause it to pack over the whole surface, having been prohibited early in the season of 1833, tended to the most unfavorable results on that part of the road where the very best material had been used, between Laurel hill and Brownsville, and in the State of Virginia. The stratum of stone put on these two divisions was more or less mixed with the bed, and injured.

Captain Delafield had hoped to resume work in the spring “to apply labor in time to preserve the graded surfaces, and parts covered with one stratum of metal”:

Being disappointed in this particular, it became indispensable to dispose of all the stock, and every article of property that would command cash or materials, and apply the limited means thus raised to the raking and drainage of the road. The parts most needing attention were in this way prevented from going to ruin, with the injury of having the metal more or less mixed with foreign matter.

The decision by Congress to appropriate only \$300,000 in June 1834, “made a change in the plan of operations necessary,” noting that the funds were intended “to finish the repairs of the road from Cumberland to Wheeling, a distance of 132 miles, of which 54 had not been commenced.” He divided the road into 7 divisions and 121 sections, with the work needed in each section ascertained. Captain Delafield then advertised the work for bids. From the best contractors of 1832, he then selected superintendents for enforcing the provisions of the several contracts:

To conform with the provisions of the law, it became necessary to confine the expenditure of this sum to the most indispensable parts of the system; adopt a less expensive and less permanent repair; abandon the plan of finishing the mountain divisions with limestone throughout, and to a width of 20 feet; putting the metal

on the more expensive parts of these divisions on a width of from 12 to 15 feet instead of 20; abandon further repairs to the masonry of the parapets of the bridges, depositing stone that had been prepared for this purpose on the side roads, and leaving the side walls on Wheeling hill in their unfinished state; limiting the stratum of metal to be put on this season to three and a half perches (on the average) per rod, on the whole line of the road, transporting the stone that had previously been collected for an additional thickness of metal to parts that had not been supplied; substituting wooden bridges for stone over Wills's creek and Braddock's run; and abandoning altogether the construction of any bridge over Dunlap's creek.

Preparatory work was completed by the beginning of August, with work on most sections commencing in the middle of that month. At the time of the report, "the repair of the whole line of the road was in active progress." Resources for road building, such as quarries not previously explored, "have been more fully developed this year than heretofore."

The report included a detailed account of rods of work, weight of material, and thickness of metal. For example, Captain Delafield reported that "1,742 rods in length had been covered with 4 inches in thickness of metal; 299 rods in length had been covered with 6 inches in thickness of metal; 315 rods had been covered with 4 inches in thickness of metal," and so on. He also reported:

The grade had been reduced by cutting or filling on 28 different places, and 59,512 cubic yards of earth, and 3,403 of rock, had been excavated.

The amount expended during these 12 months was \$156,506.12, leaving an available sum of \$230,045.69 to complete the work now in the course of construction, and to be applied as exhibited in the "statement" of the year.

The resources of the country for the purposes of road making have been more fully developed this year than heretofore: quarries of good limestone have been discovered; the crops of the farmer were above mediocrity; laborers were more numerous than usual, owing to the completion of parts of the Chesapeake and Ohio canal and Baltimore and Ohio railroad; and prices lower.

The country has furnished persons of experience and skill in the art of road making, upon whom, in a great measure, the excellence and perfection of the operation depend. As superintendents for enforcing and exacting the provisions of the several contracts, individuals have been selected, in most instances, from among the best contractors of 1832.

The contracts or agreements entered into within the year are, as before stated, one with an individual for each section throughout the whole line of the road. When more favorable offers could not be had, a second, and, in one instance, a third section was allotted to the same individual on its being certain that he owned teams, and could, in all probability, succeed in accomplishing the work. As a

general rule, but one section was allotted to any one person, unless for the reason above stated. As to the character and resources of the contractors, care was taken to select the lowest bidder possessing or having control of teams, some knowledge of the business, or owning property, to give security that the laborers would be paid. Some experienced men came from the canal and railroad heretofore alluded to, and succeeded in getting sections to suit their interest.

All but three contracts were “progressing at this date, with favorable appearances of accomplishing the work in the desired time.” As for the three abandoned contracts, a “want of method, order, and system, appeared more the cause of failure . . . than can be ascribed to any other cause.” The three contracts had “been given to persons who agree to finish them at a lower rate, and for a less sum than would have been due the original contractor.”

He also reported on how the contractors were paid:

The funds for repairing this road have, on my requisition, been deposited in the Union Bank of Maryland, at Baltimore. The payments have been made by checks on this bank, in most instances, to the order of the individuals to whom it was due – a mode that conduces to the safety and facility of its disbursement, at the same time giving entire satisfaction to not only the contractor, but the merchants, storekeepers, and others living in the adjacent counties, by whom these checks are sought after in exchange for money to pay the laborers; which checks are also freely paid at the banks in Cumberland, Brownsville, and Wheeling, in specie or notes, as demanded, and at the par value.

(The Second Bank of the United States, chartered in 1817, had encouraged the use of checks as a medium of exchange for interregional payments.)

Captain Delafield summarized:

With the means now available, the work on the road will in all probability be brought to a close (the bridges on the new location excepted) by the date fixed in the contracts, 31st December, when parts will be covered with a thickness of metal varying from 3 to 9 inches. The entire distance between Brownsville and the Virginia line commenced this year, having but 3 inches of stone; the first, fourth, and seventh divisions varying in thickness from 3 to 6 inches, and the second and third divisions from 6 to 9 inches.

As noted earlier, the road was being relocated near Cumberland. The bridges for this new section could not be completed during the current construction season, “as the timber for their construction must be procured from the forest, which, to secure of seasoned and good quality, cannot be cut before the end of the fall and during the winter. This part of the road will in all probability be thrown open to the public, by traversing the fords, some time in November.”

The statement he referred to was a detailed “Annual Statement . . . exhibited its condition, with the expenditures on account thereof, to the 30th September, 1834.” It included an “Application of the available funds,” totaling \$230,045.69. [*Repairs of Cumberland Road East of the Ohio*, Letter from the Secretary of War Transmitting a report in relation to the Cumberland road each of the Ohio, 23d congress, 2d Session, Ho. or Reprs., War Dept., Doc. No. 15]

On January 3, 1835, in response to a House resolution, Secretary Cass transmitted correspondence to Speaker Bell on the Cumberland Road east of Ohio. The correspondence included letters related to relocation of the Cumberland Road in the vicinity of Cumberland. One of the letters was a report, dated July 28, 1834, from General Gratiot. He recalled that the Engineer Department had secured congressional approval for the relocation that would avoid “an abrupt rise of several hundred feet”:

This change of location involved the construction of a bridge over the mill-race in the town of Cumberland, and another over Wills creek, as well as other bridges of minor importance, with several culverts. The Legislature of the State of Maryland passed an act giving assent to the change in question, with the proviso, however, “that the part of the road embraced in this change should be *made of the best material, upon the Macadam plan, and that a good, substantial stone bridge should be made over the mill-race in the town of Cumberland, and over Wills’ creek at the place of crossing; and that substantial stone bridges and culverts should be made wherever the same may respectively be necessary along the line of said road.*” [Italics in original.]

The Act of Maryland had been passed in December 1832, chapter 55.

In preparing estimates submitted to Congress for completion of repairs of the entire road, the Engineer Department had “contemplated the erection of the bridges on the new location, in conformity to the requirements of the law of Maryland.” However, Congress had appropriated only half the funds requested and, as General Gratiot put it, “The act appropriating the remainder requires that the whole of the repairs should be completed for this diminished sum.” The purpose of his report to Secretary Cass was “to ascertain the extent to which the department may be allowed to carry this change on the new part of the road embraced by the law of Maryland”:

If the bridges alluded to be built of stone, the expense will be much greater than the sum allotted to that section would bear; whereas, if the abutments be built of stone, and superstructure of wood, the same ends would be attained as would result from bridges built entirely of stone, but the letter of the Maryland law would be departed from. Good wooden superstructures, well covered and painted, would last, with a little care, at least forty years, and perhaps longer. To abandon this new location, and return to the old road, would be to sacrifice a large amount of money already expended on the former, which is now in a state of forwardness, and would soon be finished. Besides, a bridge must, in any event, be constructed over Wills’ creek, and every consideration of convenient

and easy travelling conspires to render its location on the new line of the road desirable.

Captain Delafield was “engaged in giving out the work to contract” under the terms of the appropriation. As a result, it was “very desirable that an early decision may be had of this question.”

Secretary Cass’s transmittal included extensive correspondence on the issue, including a letter to him dated December 12, 1834, from John Hoye, one of Maryland’s commissioners appointed to take control of the road. He referred to the State law agreeing to the change in location:

The plan of the bridges has been changed by the superintendent to wooden bridges, in direct violation of the engagements with this State. The President had no right to change the location of the road, unless the law of this State authorizing the change was fully complied with.

The metal on the new location is not more than three and half inches, and every wagon that passes over it, when the road is wet, cuts entirely through the stone, and turns up the clay. I am advised that there is a part of the road, fourteen miles west of Cumberland, which has had been three and a half inches of metal put on it over the original pavement. I am gratified to have it in my power to state that, from observation, and the best information I have been able to collect, the last appropriation for the road has been most judiciously expended. I believe that it is the first that has been laid out.

I must say that we cannot report in favor of this State receiving the road until the permanent stone bridges are erected, and the road in that state of repair contemplated by the law. [*Cumberland Road East of Ohio*, Letter from the Secretary of War, transmitting a report of the Chief Engineer in relation to the Cumberland road east of the Ohio, 23d Congress, 2d Session, Ho. Of Reps., War Dept., Doc. No. 56]

On January 5, 1835, Captain Delafield transmitted a letter to General Gratiot “from the commissioners of the State of Maryland, declining to receive all that part of the road in the State of Maryland that has been repaired under the existing acts of Congress.” The commissioners were responding to Captain Delafield’s December 7 letter on the subject. The two commissioners wrote from Cumberland that “unless the road was put into that perfect state of repair contemplated by law, and the conditions on which a part of the location of the road was changed was fully and literally complied with, we must report against the State receiving it.” They specifically cited the 12-mile section from Bruce Burnt tavern to Heckrott’s that “requires an additional stratum of metal of not less than six to eight inches in thickness to be put on it.” They concluded:

We shall report fully to the Legislature of the State in a few days, and we will recommend an appeal to Congress on the subject. The fact is, unless the road is

put into a perfect state of repair, the low rate of tolls authorized to be collected will not keep the road in repair.

Secretary Cass forwarded the letter to Speaker Bell on January 10. [*Repairs of Cumberland Road*, Letter from the Secretary of War, Ho. of Reps War Dept., 23d Congress, 2d Session, Doc. No. 78]

The Maryland commissioners joined with their counterparts in Pennsylvania to submit memorials to Congress on State acceptance of the Cumberland Road. The Pennsylvania commissioners explained that “they have every disposition to relieve the Government from the burden of the road, so soon as they can feel themselves justified, under the law, in doing so; but they beg leave respectfully to represent, that the road has not yet been put in that condition that would enable them to accept of it.” They particularly noted that some parts of the road in Pennsylvania had no more than 6 inches of stone, while west of the Monongahela River, only 3 inches of stone had been placed, “and it is apparent that this will be totally insufficient to preserve it under the heavy travel upon that road.” The bridges, they added, “remain untouched.”

Under the circumstances, they could not recommend that the State accept the road, “and we would most earnestly but respectfully urge upon Congress the propriety of making such an appropriation as will complete the repairs in a substantial manner, as required by the act of our own Legislature.”

They did not want to go so far as to estimate the amount needed, “but, to satisfy your honorable bodies that we are disposed to go as far as the faithful discharge of our duty will permit, we hereby pledge ourselves, so soon as Congress shall make an appropriation of so much money as may be estimated by the department as necessary for that purpose, to accept of the road, and, have tollgates erected without delay.”

They begged leave “to submit to the wisdom of your honorable bodies” to determine “*whether it will be better to make the necessary appropriation to justify us in accepting the road, and relieving the Government from all future charge, or to keep it in its present state, subject to annual appropriations for its preservation, as heretofore.*” [Italics in original.]

The Maryland commissioners repeated their concerns about the thickness of pavement and the condition of the new bridges on the relocated road near Cumberland. They pointed out that “the bridge of Wills’s creek and the bridges over Braddock’s run were to be permanent stone structures, by the act of Assembly of Maryland authorizing the President to change the location of the road.” Moreover, the relocated section of road, about 6 miles long, “has had but three and a half inches of metal upon it.” They made the same pledge and offered the same advice to Congress as their Pennsylvania counterparts. [Commissioners of Pennsylvania and Maryland – Tollgates, Cumberland Road, Memorials of the Commissioners Appointed by the Governors of Pennsylvania and Maryland, Ho. of Reps., 23d Congress, 2d Session, Doc. No. 92]

In 1835, according to Theodore Sky, Congress engaged in one of the last great debates about the Cumberland Road. One of the central questions was how to convince the States east of the Ohio River to take over the road, thus eliminating the need for future appropriations to complete repairs. With the potential for railroad or canal projects to satisfy the portage function of the road and serve land-based interstate transportation needs, Congress was basically trying to rid the general government of an out-of-date transportation facility and mode. Much of the focus would shift to opening wagon roads in the western territories to aid settlement.

West of the Ohio River, the importance of the Cumberland Road also had changed, as Hulbert explained:

The National Road was not to Indiana and Illinois what it was to Ohio, for somewhat similar reasons that it was less to Ohio than to Pennsylvania, for the further west it was built the older the century grew, and the newer the means of transportation which were coming rapidly to the front . . . . When the road reached Wheeling, Ohio river travel was very much improved, and a large proportion of traffic went down the river by packet. When the road entered Indiana, new dreams of internal improvements were underway beside which a turnpike was almost a relic. In 1835-36, Indiana passed an internal improvement bill, authorizing three great canals and a railroad.

As illustrated by President-elect Andrew Jackson's journey to Washington, travel by steamship was the preferred means of east-west travel, where available, for travelers and settlers alike.

On February 11, 1835, on a motion by Senator Hendricks, the Senate took up a bill for continuation and repair of the Cumberland Road in Ohio, Indiana, and Missouri. Senator Hendricks reminded his colleagues that in 1834, the Senate had approved an appropriation of \$652,000, "and it was then stated that, if the whole amount was appropriated, there would be no further application to Congress." However, the Senate had agreed to the \$300,000 appropriated by the House. Therefore, the present bill called for an appropriation of \$340,000. The present bill, he explained, was simply the balance of the 1834 amount the Senate had approved, after which no more funds would be requested. "The passage of the bill, in this form, would be sufficient to put the road in that state of repair which would render it unnecessary for any further appropriation by Congress.

Senator Buchanan recalled the history of road legislation, going back to approval of the bill to erect toll-gates that President Monroe had vetoed:

He (Mr. B.) had then carefully examined the message of Mr. Monroe on returning this bill, and had been convinced that we had no power to pass any such act. From that moment he had steadily and uniformly, in every shape and form, opposed the erection of toll-gates upon this road, under the authority of the general Government. If Congress do possess the power to enter the territory of a State, to interfere in their domestic concerns, to erect toll-gates upon their roads,

to establish a system of police over them, and inflict penalties for its violations, and of consequence to create tribunals before which these offences may be tried, then every barrier between federal and State authority is at once prostrated. Indeed, this principle would lead to perfect consolidation, so far as an entire jurisdiction over the post roads of the country, for the purpose of levying tolls to keep them in repair, could extend.

As a result, some in Congress who favored preservation of the road, nevertheless voted against all appropriations for its repair “on the principle of thus compelling its friends to consent that tolls for this purpose should be levied under the authority of the States through which it passes.” Others favored continued Federal appropriations for the road “without the collection of tolls either under State or national authority”:

And a third class of politicians were determined to push the doctrine of internal improvements to the dangerous extent of establishing the principle that Congress not only possessed the power to appropriate money for the construction of roads and canals, but that they were also bound to assume a jurisdiction over them, by erecting gates upon them, and demanding toll from the passengers.

He emphasized that he was no an enemy of the Cumberland Road, nor concerned that it might undermine the cross-State Pennsylvania turnpike. He viewed the road as “so beneficial to the citizens of the country generally” that he had voted for appropriations to repair the road “until I discovered that, if this course were continued, the peculiar friends of the road never would consent to the erection of toll-gates under State authority.”

Given these conflicting views, the needed appropriations could not be obtained and the road “got into a ruinous state, and became so dilapidated that its entire destruction was threatened.” Under the circumstances, friends of the road agreed that the States would take it over and install toll-gates to pay for repairs. The States agreed to those terms but with the condition that it first should be placed in a good state of repair.

By Act of July 3, 1832, Congress agreed to these conditions and appropriated \$150,000 toward repair. “Here, then, was a contract expressly and solemnly made, first, that the road should be put in good and complete repair by Congress, and then that it should be surrendered to the States for the purpose of its preservation.”

The engineers decided that the entire road should rebuilt according to macadam principles. “There were to be three strata of stone placed upon it, each of three inches in depth.” By Act of March 2, 1833, Congress appropriated \$125,000 for this work. Then the engineers estimate prompted the Senate to approve \$652,000, but the final amount in the bill was only \$300,000, with which to fund the “entire completion of the repairs of the Cumberland road east of the Ohio”:

What have been the consequences? Just such as might have been foreseen by every reflecting man. The Engineer department had adopted a fixed plan for repairing the road. This plan they had steadily pursued for two years. It was known or ought to have been known by Congress. They were progressing

gradually to complete the road, when, all of a sudden, without any previous notice, Congress changed the plan, by granting less than half the money necessary for its execution. What was then to be done? It became necessary for the engineer to abandon his system; and spread the appropriation over the whole road. He has acted thus; and the result has been, that about sixty-three miles of the road, nearly half its whole length, has but one stratum of three inches of stone, instead of three. Is there any gentleman upon this floor who does not know not only that this is insufficient for a permanent road, but that as soon as the spring opens it will be cut to pieces by the heavy wagons and carriages? The metal, as it is technically called, will then be all in the mud. If the money now asked be not granted, the fatality which has always attended this road will continue to exist, and the last appropriation of \$300,000 will be rendered nearly useless.

The States, as he said any Senator must know, would not accept the road under those circumstances. The engineers now estimate that putting the road in good repair would cost \$346,186 according to the adopted plan. "This sum you will be obligated to grant, or you must keep the road in repair by annual appropriations – a course of policy which I presume no Senator intends to adopt as a permanent system." There is no other alternative; toll-gates erected by the general government were out of the question.

Some might argue that the \$300,000 appropriated in 1834 was for the entire completion of repairs. "If the simple declaration of Congress that \$300,000 was sufficient could have rendered it so, then there might be justice in the reasons; otherwise it is a mere fallacy." Would the Senators prefer that the road go to ruin rather than acknowledge that \$300,000 was not enough, he asked:

How can Congress acquit themselves from their obligations to Maryland, Pennsylvania, and Virginia, by such an argument? They have a right to declare that this was not the bargain; that you agreed to repair the road; and, cost what it may, this object must be accomplished, or they will not accept its surrender.

Pennsylvania, Senator Buchanan said, had agreed to accept the road, and erect toll-gates upon it, when Congress appropriated the sum needed for repair according to the engineering department:

Pass it, and I will undertake to say for Pennsylvania that this perplexing question, which has so often and for so many years agitated Congress, will be for ever at rest. You will never more hear of this road, unless it be that it has been protected and preserved with the fostering care which that State exercises over all interests in which the welfare of her own citizens or those of the United States is concerned.

South Carolina Senator Preston called the bill "an old acquaintance." Since deciding to transfer the road to the States, Congress had made three appropriations to complete the road, and now a fourth was asked, "Congress not yet being one jot the nearer, than at any former period, of getting rid of the road." When the Senate agreed to the House amendment to reduce the 1834 appropriation from \$652,000 to \$300,000, the Senate at

least supposed that the plan could be completed for that amount. “Yet, notwithstanding, here was another demand for an equal sum to that which was granted last year.” He recalled the idea that the general government could erect toll-gates. “Your real Simon Pures of the republican democratic old school believed that Congress had no such power.”

Therefore, Congress must give the road to the States. “For himself, he avowed he should feel most happy if they could give this road away, and so get rid of it.” Unfortunately, that was not the case, and they were about to make yet another appropriation “in order to shake it off their hands.”

Congress had appropriated “the enormous sum of \$700,000 within a few years past, for the purpose of buying its riddance of the burden, and, after all, an additional sum was now demanded at their hands.”

What guarantee was there that the States would take the road if the additional funds were appropriated? One complaint that had been heard was that wooden bridges had been built instead of the preferred stone bridges that would cost far more. If the engineers had asked for a larger sum, he would have proposed to give them \$350,000, and have said, ‘here, take this money and the road off our hands.’”

Congress was “left entirely in the dark” in knowing what terms would allow the States to take over the road. “Millions had been expended on that road, and it was not to the interest of these States that they should go on and appropriate money, year after year, as had heretofore been done.”

He asked Senator Ewing “to say, on his responsibility as a Senator, that that should be [the] last time he would advocate any appropriation on account of the Cumberland road.”

In response, Senator Ewing recalled the history of the road, including the 1802 Ohio Enabling Act with its commitment of funds for roads to and through the new State, leading to construction of the Cumberland Road. Having built the road, Congress had to appropriate funds to maintain it:

The gentleman from South Carolina said that there had been much money expended upon it. Well, and so there had been. It was not to be supposed that a road over the mountains could be kept up without expense. Was it expected that the people of the country through which it passed should maintain it? If it was a thickly peopled country, thriving in commercial pursuits, and cultivating a rich soil, it might be so. It contained merely a gore [sic] of the States of Pennsylvania and Maryland. But neither of the States should be required to maintain this road themselves. It should be kept up in another manner. The States were willing to take the road when it was in a state of repair, and it was right that the United States should put it in that perfect state of repair. The States would not be willing to take it, after it had been dilapidated and destroyed by the travel of the citizens from every quarter. It must be a road. It had been said that

the States might cavil about different parts of the road, and might not be in favor of the road running to other States.

A great part of this road had been given to and accepted by the State of Ohio, and so far from laying heavy tolls, she had expended annually a considerable amount to keep down the tolls. The road was a favorite with the people of that State. Last year, according to an account of the auditor of the State, there had been an expenditure of \$20,000 on the road. It could not be doubted, then, that the State of Ohio would keep the road in repair, if she accepted the surrender of it.

The engineers said they needed \$650,000 to complete repairs, but Congress had appropriated less than half that amount in 1834:

The question now stood precisely in the same light. If the money were appropriated and expended on the road, every assurance had been given that the road would be taken by the States, and that Congress would be called on no further. Such assurances had been given in every form, and he should think it his duty to rise, day after day, and assert the rights of the State of Ohio, until the road should be made perfect, and the State should have accepted its surrender.

Senator Buchanan speculated that Senator Preston must not have read the documents with his usual care. The fact was that on 60 miles of the road, only the first of three planned strata of "metal" had been applied. "Now, it did not require much sagacity to perceive that, upon the opening of the spring, when heavy wagons and other vehicles passed over the road, they must get into the mud; and the stones and other ingredients of which it was composed must become so mixed up together as to render it almost impassable." It would take less than 6 months. Should Pennsylvania, which relied on the engineer department's estimate, be required to take over a road that was not in repair?

If Congress had appropriated the full amount requested in 1834, "the Senate would never more have heard of the road":

And, so far as he could give the gentleman a pledge, in his place on that floor, he would promise that the sum which the engineers had demanded as necessary to put the road in repair, if granted, should be the last he would ever ask for, being determined never to vote again for another dollar on that account.

That road would be accepted immediately on the passage of this act, because it provided for the sum estimated by the department, and the [State] commissioners deemed it sufficient, and were willing to act on that belief . . . .

Well, then, they must repair the road now, or let it go to ruin, which he supposed no one contemplated, or they must be prepared to grant more money at the next session.

Senator Preston said, "it appeared as if all the rules of private life were to be reversed in the affairs of Government." If a gentleman gave someone a horse, he would not be

obligated to take care of that horse and provide a saddle and bridle for him.” As he understood the contract with the States, the general government was obligated to make the road, not to keep it up. “This was not our road. It was the road of Pennsylvania. It was not that we enjoyed any benefit from the road, but Pennsylvania.” The road must be repaired, he said, “and whether the mode proposed was advantageous or disadvantageous, the great advantages derived from it by the States should induce them to undertake it”:

The eternal recurrence of claims on the general Government seemed to him to show that gentlemen having once tasted of the sweets of Treasury patronage could not be driven from the feast; and that they had determined to come, year after year, until they had exhausted the patience of the general Government. As to the road west of Ohio, it should not go on with his acquiescence.

Senator Daniel Webster of Massachusetts rose to speak. He was considered the greatest orator of the age and would go on to be Secretary of State under several Presidents. He began by summarizing the history of the road. “They all knew that, originally, the ground assumed as rendering it proper for Congress to construct this road was, that the new States should be benefited by it, the Government of the United States being possessed of such vast public domain.” The goal was to open access to the new States “in order that the public lands might be brought into market.”

Maryland, Pennsylvania, and Virginia had no particular interest in the road. “The object was more general – it was a national object.” It had been prosecuted for many years, “and he agreed that, either through misfortune or mismanagement, or some other cause, it had been a most extraordinarily expensive undertaking.”

The present bill had two purposes. First, the goal was to continue construction of the road west of the Ohio River. Second, the main purpose of bill appropriated \$350,000 for completing repair of the road to the east of the river “to place the road in such a condition as that the public authorities of those States interested in it would accept the same as belonging to themselves, and come under the contract to keep it in repair.” He agreed with the policy Congress had adopted “to put the road in the most complete repair, and then transfer it to the respective States in which it lies.” The general government and the States had agreed on how to accomplish this goal.

Senator Webster said, “that road was no gift to those States in particular; they derived no more benefit that if he (Mr. W.) travelled west, and his friend from Pennsylvania (Mr. Buchanan) travelled east.” Nevertheless, they had agreed to charge toll and to use the revenue to keep the road in repair:

Every one must see how very inconvenient it was for Congress to possess such a road. He understood that there had been the most wasteful extravagance, in consequence of having suffered the road to be, from year to year, out of repair. If, however, it had been in the possession of the local authorities of the respective States, they would have been enabled, at a small expense, to have kept the road in repair.

In 1834, no one thought the appropriated \$300,000 would allow the engineers to complete their plan for the road east of the Ohio River:

No one contended that the sum was sufficient to carry into effect the plan of completion proposed by the officers of the Government. This bill, then, as he understood it, was to appropriate that portion of the original sum, which had been stricken from the bill of last session, to the completion of this road. He trusted that this would be granted; it was the part of prudence to accede to the demand, and thereby get rid of the road, by putting it in such a condition that it would be accepted by the States.

Senator Henry Clay, also a noted orator, had returned to the Senate in November 1831. He said he meant to vote for the appropriation, “and he should do so with pleasure, because, under all the circumstances of the case, he felt himself called upon by a sense of imperative necessity to yield his assent to the appropriation.” Unless the road were repaired, the road “would be abandoned, and all the expenditures which had heretofore been made upon it would have been entirely thrown away.”

He pointed out that the original compact was based on land sales revenue set aside for the road. “It has been, however, long since exhausted. There was no obligation, then, on the part of the Government, to keep the road in repair.” Nevertheless, “considerations of policy would prompt it to adopt that course, in order that an opportunity should be presented to the States to take it into their own hands.”

He disagreed with Senator Buchanan about the general government’s authority to erect toll-gates and collect revenue to pay for repairs. Having built the road, the general government “had a right to adopt that course which it deemed necessary for the preservation of a road which was made under its own authority. And, as a legitimate consequence, from the power of making a road was derived the power of making an improvement on it.” When the toll-gate legislation was approved, many Members of Congress obviously agreed with him that the general government had that authority. “And in that Senate, if he was not mistaken, there were but nine dissentients from the existence of it.” He had not changed his opinion despite President Monroe’s veto.

Moreover, he had often stated his belief in the broad authority of the general government to make internal improvements. In his opinion, that authority existed in the Constitution. “This belief he had always entertained, and it remained unshaken.”

As for the Cumberland Road, he did not agree with the views of Senators Buchanan and Webster “in regard to the disposition that was to be made of this road.” He did not agree with the idea that this great national road in which all people had an interest should be turned over to “the care of a few States, which were acknowledged to have no particular interest in it – States having so little interest in that great work that they would not repair it when offered to their hands.” In his view, “the principle was fundamentally wrong.”

Under circumstances over which he had no control, Senator Clay would vote for the bill:

He had seen, in reference to internal improvements, and other measures of a national character, not individuals merely, but whole masses – entire communities – prostrating their own settled opinions, to which they had conformed for half a century – wheel to the right or the left – march this way or that, according as they saw high authority for it. And he saw that there was no way of preserving this great object – which afforded such vast facilities to the Western States – no other mode of preserving it, but by a reluctant acquiescence in a course of policy which all, at least, had not contributed to produce, but which was formed to operate on the country, and from which there lay no appeal.

Mr. C., in conclusion, again reiterated that he should vote for the appropriation in this bill, although very reluctantly, and with the protest, that the road in question, being the common property of the whole nation, and under the guardianship of the general Government, ought not to be treacherously parted from by it, and put into the hands of the local Governments who felt no interest in the matter.

Senator Silas Wright, Jr., the former Representative from New York who was serving his first term in the Senate, rose to suggest an amendment making State acceptance of the road a condition on the payment of the appropriation:

It was the object of all to get rid of the road, and to discharge the general Government from all further responsibility concerning it by the present appropriation. He thought this was the object last year, and it was avowed to be so now. Was there at present any certainty that the road would be accepted by the States? Might not the same reply as before be made, that the road was not in repair? Was it, therefore, unreasonable to ask the friends of the bill, who say that the States will now be satisfied, to agree to such an amendment as he had suggested?

Senator Isaac Hill of New Hampshire said he would not vote for the bill, which “put the general Government at the mercy of the States.” To illustrate his point, he added, “If the States were to require of Congress to pave the road with gold, precisely the same reasons might be brought forward in support of the requisition as are adduced now.”

Senator Buchanan felt he had to respond to Senator Clay. “Whilst the gentleman from South Carolina [Mr. Preston] thought he went too far in favor of internal improvement, the gentleman from Kentucky [Mr. Clay] blamed him for not going far enough.” Given the two extremes, “he should adopt for the rule of his conduct the maxim ‘*in medio tutissimus ibis*’ [“in the middle, you will go most safe.”] The true course, in his opinion, was midway between them.”

The present debate was not the proper occasion, but if it were, he could “prove most conclusively” the difference between appropriating money for the construction of roads and exercising jurisdiction over them after they were completed:

The one was the mere application of the funds of the Government to accomplish a particular object, whilst the other invaded the jurisdiction of the States, and

entered upon their soil, for the purpose of erecting toll-gates upon these roads, levying toll from passengers . . . . He considered the assumption of jurisdiction over the soil a much higher power than the mere appropriation of money . . . .

An incidental power cannot transcend its principal; the stream cannot rise higher than its fountain; and, even admitting the power of Congress to make internal improvements, he utterly denied the power of erecting toll-gates upon them, and thus exercising jurisdiction over them.

In response to Senator Clay, Senator Buchanan said “that if whole masses – whole communities – had changed their opinions in regard to particular subjects, for himself he could say he was not among the number of those who had thus changed.” He could show that “sufficient reasons existed” for the change of view, but this was not the proper time for such an argument. He had nothing but respect for Senator Clay, but “could not sit and listen in silent acquiescence to the observations which had been made by that gentleman in the course of his remarks.”

In response, Senator Clay complimented Senator Buchanan “on the ingenuity which he had displayed in stating the question under discussion, and on the complacency with which he regarded his own infallibility, in taking a position between the two extremes”:

Mr. C. then proceeded to show that the Senator from Pennsylvania had strained a point for the purpose of bringing up a constitutional discussion, and had charged on the friends of the bill a desire to interfere with the jurisdiction of the States, when no such thing was ever dreamed of. The Senator admitted the power to create a national road, but contended, the moment the road was made, there was no power in the Government to preserve it in a state of efficiency for the purposes for which it was created. This reasoning Mr. C. denounced as preposterous.

In referring to the change in views on internal improvements, Senator Clay had stated it as “a great historical fact,” nothing more. He regretted that Senator Buchanan, who said he could have given reasons for the change, had not given “the philosophical-political explanation of the changes, and expose the remarkable causes of this singular political phenomenon.”

Senator Wright emphasized that he would vote against the bill unless two sections were removed “because he hoped that the bill would be so amended as to render it certain that the road should hereafter be kept up at the expense of the States.”

Senator King of Alabama said he would vote for the bill and against striking out the section. It was too late to discuss whether Congress had the authority to build or repair the road, but he could not agree with Senator Ewing “that Congress were absolutely bound by every early obligation to go beyond the expense of putting the road in a state of repair.” His views on whether the general government could erect toll-gates on the road had never changed; he had always been opposed:

The expenditure on the road in question had been most enormous, and there was

very little hope that it would be less, or that the Government would get rid of it at all, unless some provision were inserted in the bill, making the prior surrender of the road to the States the condition of the payment of the money.

In examining the report of the commissioners about the road, he had not seen “any pledge whatever that the respective States who were parties to the road would take it off the hands of the Government if an appropriation should now be made.” Therefore, he had prepared an amendment that would have the desired effect. He appreciated Senator Buchanan’s assurance that Pennsylvania would accept the road, but if the States did not, his amendment would ensure that “the Senate would be hereafter estopped from making any further appropriation.” Otherwise, he, personally, would not vote for another.

His amendment “was, in effect, a provision that the acceptance of the road by the several States should be received previous to the payment of the amount of appropriation out of the treasury.”

The Senate then rejected Senator Preston’s motion to strike out the second and third sections of the bill, 14 to 32. Senators Buchanan, Clay, and Webster voted nay.

The Senate voted 32 to 9 to engross the bill for a third reading. The next day, February 12, the Senate passed the bill without recorded debate or a reported vote.

On March 3, the last day of the session, the House received the Senate bill.

Without recorded debate, the House approved the bill, 94 to 80.

President Jackson signed the bill that same day.

The first section appropriated \$200,000 to continue the road in Ohio and \$100,000 for the road in Indiana, with the funds from the general Treasury to be repaid from land sales revenue.

Section 2 appropriated \$346,286.58 “for the entire completion of repairs of the Cumberland road, east of the Ohio river, and other needful improvements on said road.” The funds were to be paid out of the general Treasury to be expended by the Secretary of War.

The final section of the bill stated:

*And be it further enacted*, That before any portion of the sum by the section of this act appropriated, shall be expended in the repair of said road, east of the Ohio river, agreeably to the provisions of this act, the same shall be surrendered to and accepted by the states, respectively, through which said road passed; and the United States shall not thereafter be surject to any expense in relation to said road.

The Act of March 3, 1835, provided the final funds (with one minor exception) for the Cumberland-to-Wheeling section of the Cumberland Road. After each section was

completed, the States took it over and erected toll-gates and housing for the toll collectors.

The same day, President Jackson signed bills appropriating \$1,182.87 to Isaiah Frost to pay for work done on the Cumberland Road; \$862.87 in salary to Valentine Giesey, the superintendent who had died that year; and \$631.65 for payment of arrearages due contractors on the road.

### **Location Dispute in Western Ohio**

Although Congress had finished with the Cumberland Road east of the Ohio River, the section west of the river remained active.

Congress had dictated that the road proceed in as straight a line as possible, with a diversion only to carry the road through the State capitals. However, just as the section east of the Ohio River had its location disputes, the western section had several debates. One result of the decision to build the Cumberland Road on a straight line across Ohio, Indiana, and Illinois, instead of routing it through main cities, was that some communities were left off the route. Professor Gregory S. Rose, in Professor Raitz's compilation, summarized one such dispute:

A minor controversy erupted in Ohio over the bypassing of Newark and Granville by the Road's Zanesville-to-Columbus leg. Between St. Clairsville and Zanesville, the path of the old Zane's Trace was largely followed, but the surveyors cut directly westward of Zanesville to Columbus rather than bending northward to continue along Zane's Trace as it intersected Newark and Granville. Although citizens of those towns gave spirited efforts to relocate the Road for their benefit, they were unsuccessful. The reasons cited for their failure, that "Ohio had not, like Pennsylvania, demanded that the road should pass through certain towns," and that the Road was to follow a straight line through the state capitals, would frustrated future combatants in far larger controversies.

In western Ohio near the Indiana border, the established cities of Dayton and its neighbor to the west, Eaton, also were bypassed by the straight line of the Cumberland Road from Springfield, Ohio, to Richmond, Indiana. Leaders of the two cities saw the early location dispute that resulted in the inclusion of Unionville and Washington, Pennsylvania, along the Cumberland Road as a model for their dispute. The result was what author George R. Stewart, in his book on U.S. 40, called a "war-to-the-knife" fight.

In 1830, the Ohio General Assembly adopted a resolution urging a shift of the alignment to include the two cities because doing so would facilitate transportation of the mail and promote the "public interest." Representative Vinton, for the Committee on Internal Improvements, prepared a report on location of the Cumberland Road released on May 24, 1830:

The committee have ascertained that the national road, on the line run by Mr. Knight, the Commissioner of the United States, between Springfield, Clarke

[sic] County, Ohio, and Richmond, Indiana, does not strike a single town or village, and that a part of the country on that line is flat and wet, and thinly inhabited. By deviating from this line, so as to pass through Dayton and Eaton, an expense in the construction of the road, estimated by Mr. Knight at \$7,945, will be saved. But this saving the committee consider as comparatively unimportant, and among the least of the advantages to be gained by a change in the route. The materials for constructing a firm and durable road are more accessible and more abundant on the route through Dayton and Eaton; the country is fertile, populous, and rapidly improving; the population of Montgomery County may be estimated at 25,000 inhabitants; that of Preble, at least at 15,000.

Mr. Knight, in his report, states, that it has been truly said, “that, by adopting the Dayton route, Mad River and Stillwater, two large branches of the Miami, would, in that case, be avoided; and that once crossing the Miami River at Dayton, would, in that case, be substituted for the crossing of the same river higher up, and also for the crossings of Mad River, Buck Creek, and the Southwest branch, commonly called the Stillwater.”

After describing the commercial activities of the two cities, Representative Vinton’s report continued:

The increased distance, by passing from Springfield, through Dayton and Eaton, to Richmond, Indiana, is estimated by Mr. Knight at  $3\frac{3}{4}$  miles. The committee are aware of the full force of this objection to the deviation from a direct line, but they believe it ought to yield to the many and strong considerations of public utility, which recommend the preference of the route through Dayton and Eaton.

The report then turned to the transportation of the public mail, “a primary object in the construction of the national road”:

It is obvious that this object will not be promoted by locating the road within a few miles of county seats of so much importance as the towns of Dayton and Eaton. The late Postmaster General, who was personally acquainted with the country, stated, to a former committee, his opinion, that the public interest would be promoted by this deviation from the direct line.

This was a reference to Postmaster General John McLean, whose home was in Ridgeville, Warren County, Ohio, south of Dayton. He served as Postmaster General from June 26, 1823, to March 4, 1829, before becoming an Associate Justice of the Supreme Court.

The report continued:

The committee believe that the facilities which will be given to an already great and rapidly increasing commercial, agricultural, and manufacturing interest, and to the transportation of the public mail, by this change in the route, will be an ample compensation for the increase of distance. In a road of this description, the convenience and accommodation of the inhabitants of the country through which

it is made, and the increased facilities of communication between important points, are considerations of great weight, and may well justify a deviation from a direct line.

The representations of the petitioners of the advantages to be derived from the change in the route, are entitled to great respect; and as to most of them, are necessarily free from the imputation or suspicion of personal interest. Your committee, therefore, recommend that the towns of Dayton and Eaton be made points in the national road, between Springfield, Clarke County, Ohio, and Richmond, Indiana; and report a bill accordingly. [*Cumberland Road, To Accompany Bill No. 483, May 24, 1830, Ho. of Reps., 21st Congress, 1st Session, Doc. No. 410*]

According to a Library of Congress compilation, House Bill No. 483 was “Read twice, and committed to the Committee of the Whole House on the state of the Union.” The House did not approve the bill.

However, in 1835, Congress passed a bill on the subject that President Jackson signed on March 3, 1835. It read:

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be, and he is hereby, authorized and directed to cause the line of the national road, heretofore run between Springfield, in Clarke County, in the state of Ohio, and Richmond, in the state of Indiana, to be examined and reviewed by some competent engineer; and, on such review, the line of the national road to be run in such manner, and in such direction, as will best promote the public convenience and interest; and the location so made, if approved by the President of the United States, shall be established as the line between the said points.*

Engineers conducted the survey on running the Cumberland Road through Dayton and Eaton, but President Jackson approved the original, direct route.

Young, in his constitutional history of the road, narrated the next step:

The Dayton and Eaton people, not willing to accept this decision as final, carried the fight to Congress and made the first direct attempt in the history of the road to have the national Congress set aside a decision of the President. The matter came before a committee of the House. [U.S. Representative] Joseph Crane appeared for the state of Ohio. He called attention to the act of 1835 which required that the line should run between Springfield and Richmond in such a way as would “best promote the public interest and convenience.” The direct line had been favored because it was about four miles shorter than the route through Dayton and Eaton. In his opinion there were counterbalancing advantages in favor of the Dayton-Eaton, or southern, route:

The transportation of the daily mail would be cheaper, as there was a daily mail stage from Columbus through Springfield to Dayton, thence on through other

towns to Cincinnati; the western part of Ohio and the eastern part of Indiana received and would continue to receive their great eastern mail through Dayton. The upper route west of Springfield did not pass a single village or post-office, and half the way passed over a flat, wet, thinly inhabited country. The lower route would pass through the Mad River valley; here were many mills and manufacturing establishments; it would pass through two towns – Dayton and Eaton; Dayton was a town of five thousand inhabitants, and was important for its internal improvements; the Mad River & Erie Railroad would soon reach it from Portland and Tiffin, Ohio, and be extended to Cincinnati, where it would connect with a railroad which was being built from Charleston, S.C., to that point.

The southern route would accommodate the agricultural, commercial, and manufacturing population west of Springfield better than the direct route. He acknowledged that overruling the decision of the President would establish a precedent, but thought the public interest and commerce would justify such action.

A letter was produced from the Post-Office Department. This stated that there was no necessity for a mail route by the direct line. The great western mail and the mail for the western part of Kentucky, Tennessee, Alabama, and a part of Mississippi passed through Dayton.

The committee also heard from D. F. Heaton, a special representative from the two cities. He discussed the “compact” between the general government and Ohio, concluding that the road belonged to Ohio:

He thought her interests should be consulted in its location. “So thought Jefferson, whom some supposed to have been the greatest and best man that ever lived . . . . But now,” continued Heaton “at this late day, after the head of the patriot, the sage, the philosopher, is laid low and cold in the grave are his doctrines and principles to be rejected and trampled under foot? No.”

President Jefferson, Heaton pointed out, had resolved the location dispute in Pennsylvania to route the road through Uniontown because the “public interest” required it:

The road originated in compact; had been constructed, in whole or in part, from a fund reserved for the purpose, for which Ohio had given an equivalent; therefore the state legislature and the inhabitants of the populous parts of the state should be heard on a question of location. He mentioned that the legislature of Pennsylvania was heard on the location of the road through Uniontown and Washington, notwithstanding the fact that Pennsylvania was only a party to the “compact” in common with the other states of the Union; she contributed nothing to the road; and the points she designated took the road a greater distance out of a direct line than the points Ohio proposed. He concluded by saying that Ohio had done much in the construction of the road, not only in her own territory, but also

in that of Maryland, Pennsylvania, and Virginia. Her prayer to be heard on the question of location within her borders should be granted.

Citizens living along the direct route petitioned Congress to stick with the planned route:

One memorial, numerously signed, by inhabitants of Clark county cited that Congress had refused to make a deviation in favor of Newark, Ohio, "even when the citizens of that place had some show of reason on their side." This, they said, clearly indicated that the road was projected and carried into execution for the benefit of the nation, and not for the accommodation of a few towns. They felt that a departure from this policy would not be more likely to take place than a violation of the most solemn treaty. They would regard a change in the location of the road in the light of a public calamity.

In a footnote to this statement, Young commented, "Jealousy between Springfield and Dayton was largely responsible for this fight in Congress on location."

He continued:

The committee reported to the house that, in its opinion, it was expedient to change the location of the Cumberland Road from the direct route to pass through the towns of Dayton and Eaton, but Congress sustained the President, and the direct line remained the established route in Ohio, in spite of the efforts of Dayton, Eaton, and the Ohio legislature.

Professor Rose put it this way:

The strength of argument and the involvement of the state legislature made the efforts of Dayton and Eaton's supporters to change the Road's path reminiscent of those of western Pennsylvanians but with one major difference: they failed.

Dayton was not to be denied. In March 1836, the State legislature passed an act "to authorize a loan of credit by the State of Ohio to railroad companies, and to authorize subscriptions by the State to the capital stock of turnpike, canal and slack water navigation companies." Dayton initiated five turnpikes before the act was repealed in 1840, including one linking the city and Eaton to Springfield. The city had begun planning the turnpike in 1833, but it did not advance until the 1836 law authorized State aid. A history of Dayton described the turnpike:

The subscription books of the Dayton & Springfield Company were opened January 19, 1838, and the contract made on the 12th of May. This turnpike, to induce travel through Dayton, was built in the same style as the National road, especially at its junction with the latter, and with similar bridges, stone culverts, toll gates, and mile stones. Comfortable brick taverns were erected a few miles apart along the pike. It was a great disappointment to the people of Dayton that the National road did not pass through here. Strenuous efforts were made to induce congress to locate the road through Dayton, and having failed, equally strenuous efforts were made to have the route changed. A meeting of council was

held, at which the following resolution was passed: "Resolved, That the mayor of this town forward to Joseph H. Crane, Esq., our representative in congress, whatever statistical information can be obtained with regard to the advantages possessed by this place, and other facts which it may be thought necessary to submit to the consideration of congress; to induce them to order a change in the route of the National road, so that it may pass from Springfield through Dayton and Eaton to Richmond, Indiana." But this effort to secure the road also failed.

The turnpike opened in 1840. [Crew, Harvey W., *History of Dayton, Ohio, With Portraits and Biographical Sketches of Some of Its Pioneer and Prominent Citizens*, United Brethren Publishing, House Publishers, 1889]

Frank Brusca, on his U.S. 40 Web site at <http://www.route40.net/page.asp?n=1>, provided this summary on the dispute:

### **The Dayton Cutoff**

When the National Road was extended west from Wheeling, the mandate was to build a road directly from one state capitol to the next. In doing so, many existing communities found themselves not necessarily on the path of the National Road. Some cities such as Dayton, Ohio, were really upset at the political and highway engineering slight. It was clearly a case of not being in the right place. Prior to the road's arrival in western Ohio, Dayton's political leaders fought hard to introduce a slight bend in the road that it would pass through Dayton. East of Columbus the city of Newark had been missed and Dayton was bound and determined to not let that happen to them.

Alas, all of their efforts were in vain when President Andrew Jackson overruled the recommendations of the Ohio Legislature and ordered that the road be built straight and without detour. The net result was that like Newark, Dayton was bypassed by about 10 miles. Undeterred, the city's leaders came up with an ingenious solution, albeit somewhat unethical.

The city quickly built their own road from Springfield to Dayton, thence to Eaton and up to Richmond, Indiana, where it rejoined the National Road. While the Dayton Cutoff was a more logical route to follow (adding just four miles), the city of Dayton realized it had a marketing problem. Dayton's spin doctors went to work and the deception began.

First, Dayton erected milestones along its road that were nearly exact copies of the milestones found along the National Road. Second, at the fork in the road, the cutoff's proponents had a sign erected telling emigrants that the fork to the left was the National Road, when in fact it wasn't.

All of this deceit really wasn't necessary as word got out that the Dayton route was the better choice. In the end, the Dayton Cutoff enjoyed great success since it was the superior road. The Dayton Cutoff offered a better road surface, two large communities (the northern option only had tiny villages), and merchants with

whom emigrants and travelers could do business. The Dayton Cut-Off was also the route used for the National Old Trails Highway [in the 1910s and 1920s].

The trend to take the loop south to Dayton continued many years later. Up until the 1960's when I-70 was built to the north, commercial traffic (trucks, buses, etc.) would follow the path of the old cutoff.

As Stewart observed in 1953, "The Dayton-Eaton turnpike still exists as parts of Ohio 4 and U.S. 35 . . . ."

### **Alton Versus St. Louis**

The other major dispute settled the terminus of the Cumberland Road by inaction. The road finally reached Vandalia, but plans to extend it to Jefferson City, Missouri, foundered, in part, because of a location debate. As noted earlier, the Act of May 15, 1820, had specified that the road should cross the Mississippi River between the mouth of the Illinois River and St. Louis. Professor Rose summarized the routing debate:

In vehemence and content of argument, the debates about the Dayton-to-Eaton and the Vandalia-to-Mississippi-River route proposals were similar. They differed, however, in three significant ways: the latter debate was not about shifting an already determined portion of the Road, it did not affect a centrally located section of the Road, and it remained unresolved for so long that it became entangled in the larger constitutional and sectional questions that halted the Road's federal sponsorship.

The engineers who scouted the location west of Vandalia determined that a northern route via Alton, Illinois, was feasible and less expensive to build than a southern route via St. Louis. However, they favored the southern routing through St. Louis, which promised "from its peculiar situation to become one of the most important cities of the West." Their conclusion did not resolve the location issue:

The commissioners' report touched off a lengthy and heated debate between the backers of the two different crossing points: those supporting Alton, Illinois, located south of the junction of the Illinois and Mississippi Rivers but just north of the junction of the Missouri and Mississippi Rivers, and those supporting St. Louis. The Illinois legislature argued that not only was Alton superior but St. Louis really did not qualify – the 1820 law called for a crossing *between* St. Louis and the Illinois River, not *at* St. Louis – while the Missouri legislature supported the commissioners' recommendation and warned that the Alton crossing would necessitate establishing an overland mail route to connect Alton and St. Louis which would follow the difficult-to-traverse Mississippi River floodplain. Resurrecting the argument used by Pennsylvania and Ohio – that the act of 1806 required the federal government to obtain state consent for any proposed route – the Illinois legislature in 1834 gave its consent "to extend the National Road through . . . the state so as to cross the Mississippi river at the town of Alton . . . and at no other point."

At this stalemate – for a decade – sat the question of route location. Meanwhile, the entire National Road project hung in the balance, buffeted by winds from the constitutional, sectional, and financial debates swirling about in Congress. Finally, in 1844 the Senate Committee on Roads and Canals proposed accepting the Vandalia-to-Alton route since, in the committee’s view, approval by Illinois was needed and the state had consented to this route. Congress failed to act on the recommendation in 1844, in 1845 when the proposal was floated again, or in 1847 when a revised recommendation simply to settle on the Vandalia-to-Alton path without appropriating any survey or construction funds was forwarded. Since by that time the federal government was basically out of the road construction business, “the question was never decided by Congress, and the road was not located west of Vandalia, Ill.,” where its westward lengthening stopped in front of the Old Statehouse, falling short of the Mississippi River and calling into question the appropriateness of the term “Nation” in its name. [The quote is from Young’s constitutional history.]

The western portion of the road would be turned over to Indiana in 1848 and to Illinois in 1856. *America’s Highways 1776-1976* summarized how Federal interest ended:

The National Road never reached the Mississippi, but petered out in the Illinois prairies. Its ultimate demise could have been forecast in 1831 when Congress agreed to turn the eastern sections over to the States for operation and maintenance. The end was due not so much to the constitutional and sectional objections that had plagued the road from the beginning, as to the growing feeling in the country and in Congress that roads and canals were already obsolete for long-distance transportation. The day of the railroad was at hand.

### **Wiping Out the Debt**

By the time of President Jackson’s seventh annual message on December 8, 1835, the general government had a balance of \$19 million in the general Treasury. He informed Congress that based on anticipated income and expenditures during 1836, Congress would have \$1 million “to be applied to any new objects which Congress may designate or to the more rapid execution of the works already in progress.” Even if Congress made new appropriations consistent with estimates to be submitted by the government departments, amounting to \$24 million, the balance would be “not less than six millions” at the end of the year:

This sum can, in my judgment, be now usefully applied to proposed improvements in our navy yards, and to new national works, which are not enumerated in the present estimates, or to the more rapid completion of those already begun. Either would be constitutional and useful, and would render unnecessary any attempt, in our present peculiar condition, to divide the surplus revenue, or to reduce it any faster than will be effected by existing laws.

One evidence of the “increasing prosperity of the country” was “the sales of the public lands, which amount, in the present year, to the unexpected sum of \$11,000,000”:

This circumstance attests the rapidity with which agriculture, the first and most important occupation of man, advances, and contributes to the wealth and power of our extended territory.

This remarkable occurrence of a surplus would require some changes, such as:

The extinction of the public debt having taken place, there is no longer any use for the offices of Commissioners of Loans and of the Sinking Fund. I recommend, therefore, that they be abolished, and that proper measures be taken for the transfer to the Treasury Department, of any funds, books, and papers, connected with the operations of those offices . . . .

At the same time, he considered “our best policy” was to encourage speedy settlement of the public lands.

He informed Congress of “the probability of some decrease in the revenue during the next seven years and a very considerable reduction in 1842.” Therefore, he recommended against a reduction in tariffs, the primary source of revenue.

In this message, President Jackson did not mention internal improvements, or his prior ideas for distributing the surplus to the States to advance such projects. However, Members of Congress saw the surplus, in the absence of debt, as an opportunity, and he had little inclination to deny them, as Specht described:

With the national debt completely paid, appropriations for internal improvements escalated even more. On July 2, 1836, Jackson approved another unspecified amount of land for a grant to a railroad, the New Orleans and Nashville Railroad Company. He signed a \$600,000 appropriation for the continuation of the Cumberland Road in Ohio, Indiana, and Illinois. The same day he also approved a massive post road bill establishing new post roads in all the states. On July 2 and July 4, 1836, Jackson signed two separate river and harbor bills which allocated almost \$1,500,000 million for projects in most states. More money was spent for internal improvement projects in 1836, an election year, than in any previous congressional session.

President Jackson had achieved his goal of paying off the national debt for the first time in the country’s history, so that any unused funds each year would be a true surplus. He was less successful in restraining Congress, which continued to send him bills for river and harbor improvements, as well as the Cumberland Road, that would put the undesignated funds to use.

As Congress considered appropriations for the Cumberland Road during the year, debates were often lengthy in both Houses, but differed from debate in recent years. Instead of lofty debate on constitutionality, the debates focused on practical issues, such as how much funding was needed, and questions about location and modal choice.

At the time, the United States was engaged in a diplomatic battle with France over the Treaty of 1831 that seemed likely to result in war. The treaty was intended to resolve claims of reparations for American vessels and goods seized or destroyed during the Napoleonic Wars that pitted France against multiple European nations. The fact that Great Britain's forces were diverted during 1803 to 1815 to the war in Europe worked to the advantage of the United States during the War of 1812. Despite having agreed to the 1831 treaty with the United States, France refused to pay the reparations, which were to be made in installments. That refusal led to diplomatic negotiations that seemed to have reached an impasse early in 1836.

The multi-year dispute took up considerable space in President Jackson's annual messages to Congress, including his message on December 8, 1835, and a special message to Congress on January 15, 1836, with which he transmitted diplomatic correspondence to the two Houses, while declaring:

The return of our charge d'affaires is attended with public notices of naval preparations on the part of France destined for our seas . . . . If this array of military force be really designed to affect the action of the Government and people of the United States on the questions now pending between the two nations, then indeed would it be dishonorable to pause a moment on the alternative which such a state of things would present to us. Come what may, the explanation which France demands can never be accorded, and no armament, however powerful and imposing, at a distance or on our coast, will, I trust, deter us from discharging the high duties which we owe to our constituents, our national character, and to the world.

As a result, during the early sessions of 1836, Congress reacted to the possibility of war with France. Much time was spent on a Fortifications Bill, which had failed with adjournment of the first session of the 24<sup>th</sup> Congress, and other national defense issues. It also affected consideration of appropriation acts for use of the surplus for internal improvements such as extension of the Cumberland Road west of the Ohio River. The funds might be needed for war.

The President's message was accompanied by the usual department reports, including a report from the Department of War's Engineer Department dated November 15, 1835. General Gratiot transmitted two reports on the Cumberland Road. He had not yet received a report on progress in Indiana and Illinois.

Captain Delafield reported on September 30, 1835, regarding the original segment east of the Ohio River. He wrote that "operations were progressing rapidly under an appropriation of three hundred thousand dollars to finish the road from Cumberland to Wheeling, on such a reduced scale and modified plan as the limited sum, not half the estimated amount, would effect":

Contracts had been made in August of 1834, under that appropriation, for finishing the grade of the new route near Cumberland, constructing the masonry and wooden superstructure of the bridges over Will's creek and Braddock's run,

grading 48 miles of road in Washington county, Pennsylvania, and Ohio county, Virginia, and for putting on a stratum of metal the whole length of the road. These contracts were principally carried into effect by the close of the year 1834, and finished, excepting the bridges, in the spring of this year, (1835,) when the whole road, from Cumberland to Wheeling, was graded and covered with MacAdam metal, varying in thickness from three to nine inches.

He noted that the appropriation of \$346,186, to complete repairs had come “with a proviso that no part of this sum should be expended until the road was surrendered to, and accepted by, the States through which it passed”:

On the 18th of April, information was received that the road had been accepted by the States, and commissioners appointed to erect toll-gates and houses and collect toll. Further progress was at once put a stop to in the construction of the bridges near Cumberland, the timber for which had all been procured and partly worked.

By the 1st of May, contracts were concluded for putting on a stratum of metal in Pennsylvania and Maryland, and in August for putting on another stratum, being the last required to bring the whole road to a uniform thickness and strength of nine inches of good limestone metal. The work in the State of Virginia passed from under my superintendence into the hands of the commissioner of that State, who has since carried into effect the arrangement and system I had adopted, and made contracts, so soon as being appointed, for putting on a stratum of metal through that part of the road.

By the 30th of September the contracts for the first stratum of metal had been principally completed, and considerable progress made in the execution of the second and last stratum.

Progress was well underway on the bridges near Cumberland, “on the original plan of stone arches, being remodified to suit the changes introduced by the change of last year to wooden superstructures.” The large bridge over Will’s Creek had been “put under contract late in the season,” with “the whole structure is to be finished by next July.” In addition, the Dunlap’s Creek bridge in Brownsville, leading to Bridgeport, had been put under contract “late in the season, on account of the difficulty of obtaining the right of way, and ground for the wing-walls, in Bridgeport; local interest coming in collision with the public good, arrested the progress of this work to so late a period that the foundation of the southern abutment only has been secured.” Nevertheless, Captain Delafield predicted that the work would be “finished next season, and promises to be a good specimen of the art of masonry, being composed of blocks of stone of not less than fifteen cubic feet, and so well joined throughout the whole mass as to admit of a cask of cement in laying twenty perches.” (The Dunlap’s Creek bridge will be discussed later.)

Captain Delafield concluded:

There remain to be executed, at the present time, to complete the work, the contracts for the last coat of metal now in rapid progress, making up the side roads, and opening thoroughly the way ways, that is, now under contract, to be finished by the 30th November, and the masonry of the bridges, as before stated.

General Gratiot also attached a report dated October 12, 1835, from Lieutenant Brewerton on the road in Ohio, where work was divided into divisions. With the first division from the river to Zanesville having been completed and accepted by the State, he began with the second division between Zanesville and Columbus, site of the Cumberland Road Offices:

The third and last stratum of metal was placed upon eleven miles of the road, viz: between the 22d and 32d miles, inclusive, during the winter and the early part of the spring of this year, and this portion of the road was received by the Governor of the State in the month of May.

From there to Columbus, a distance of 21 miles, “nearly the whole of the metallic covering has been prepared for the three strata.” As of September 30, “seventeen miles of this portion were covered with six inches of prepared gravel and quarry limestone, leaving but four miles without any metallic cover.” This whole division would have been completed, “so far as regards the two first strata of metal, early in the last month, had not the unusually wet weather experience this year retarded this branch of our operations from the very commencement of the working season.” That was not the only problem:

Much greater difficulties have been encountered than was at first anticipated in procuring a sufficient quantity of gravel for the covering, having nearly exhausted the whole district of country between the Licking canal feeder and this city, of that material, in obtaining the required amount of stone for the completion of this section.

Despite these problems, he believed “the division will be finished, and placed under the control of the State, in the course of the next month.”

On the third division, between Columbus and Springfield, material had been prepared for the first and second strata of metal from Columbus to Jefferson, a distance of 14 miles. About 4 miles had been covered to a depth of 6 inches of stone:

Every exertion will be made to get as great an extent of this division of the road covered the present season, as the state of the weather and our limited means will permit.

On the 12 miles between Jefferson and Springfield, graduating had been completed, with 6 more miles to completed during October, and another mile in November. That made a total of 19 miles, leaving 10 miles to finish:

It is to be regretted that the want of funds will compel us to defer the completion of this part of the work for another year, as part of the district yet untraveled involves very considerable excavation and embankment, the latter of which, it is all important should be made this winter, in order that the necessary subsidence may take place previous to this portion of the road receiving the cover of metal proposed to be placed upon it the next season.

The fourth district covered Springfield to the Indiana State line. In all, 12 miles had been cleared and grubbed, leaving 42 miles not yet worked on:

Congress, at its last session, having directed that a review of the line of the road between Springfield, Ohio, and Richmond, in Indiana, should be made, our operations on this division were necessarily suspended, until the final result of this reconnaissance should be made known, in compliance with the instructions of the department to me on that subject, under date of the 16th of March last.

Lieutenant Brewerton also listed causes that worked against progress in Ohio. The high price of grain deterred people owning teams from offering them for the work “without the expectation of a considerable advance upon our usual rates of hauling.” This work had to be paused “until after the season of harvest.” Another problem “which has tended to swell the costs of this particular labor, as well as that of every other, is the succession of wet weather, by which the roads, during the great part of the summer months, were kept in as wretched a condition as they are usually left upon their breaking up after the winter.” The cost of hauling masonry and stone covering to the road had been greatly increased “for both having to be hauled considerable distances, particularly for the former work; the transportation of stone from one structure being twenty-five miles.”

Sickness had been unusually prevalent “along the line of the road, induced, no doubt, by the humidity of the atmosphere, and the sudden changes of temperature”:

From all these causes combined, the progress of the road this season has not been as great as was anticipated, although the amount of work done, as is shown by the exposition of the state of our operations, exceeds, very considerably, that of any former year.

He concluded that, “I would respectfully urge the necessity of an early appropriation as of vital importance to the progress as well as the interest of the road.” [*Message from the President of the United States to the Two Houses of Congress, 24th Congress, 1st Session, Doc. No. 1*]

Although Captain Cornelius A. Ogden’s report on work in Indiana and Illinois had not arrived in time to accompany President Jackson’s message, he submitted it from his Terre Haute office on November 18, 1835. President Jackson forwarded the report to Congress on December 22, 1835.

Work in Indiana had “progress as rapidly, and resulted as favorably, as could have been anticipated.” After he became superintendent in the State in July 1834, all contracts in

place at the time “were pushed on to completion, unless the contract was forfeited or relinquished”:

The works on the eastern division were original better made, and at that time were under a better state of preservation, than those on the western division of the road. Yet there are but very few of the bridges or culverts on any part of the road that will not have to be rebuilt. The best works are the White Water and Simons creek bridges. None of the grading was so completely finished as to admit of putting on the stone covering. The fifty miles adjacent to Indianapolis, which had been reported as finished, will yet require considerable work in graduating the ditches to drain, and in elevating the road bed to the requisite height. With some temporary bridges, which were made to facilitate the transportation of stone, the road is now so far advanced that it is the selected route for Western emigration. Until the late rains and bad weather broke up the travelling, it was a continuous stream from Richmond, Indiana, to the Wabash river.

Paying for the work posed some problems:

The points at which the funds ought to be deposited are Louisville and Cincinnati. Indeed, if it were not for the advantages thus given in exchange, it would be almost impossible to effect the disbursements, for otherwise the Indiana banks would not readily take special disposites subject to small drafts. The payments at placed which are not convenient to Indianapolis, Terre Haute, or Richmond, are better for the laborers to be made directly on Cincinnati or Louisville banks.

He added:

The laborers work without ardent spirits, which they are not allowed to bring to the works; they are citizens of the country, and seem anxious for the success of the operations. At the end of the year there will be no balance remaining of the appropriations which have been made the construction of the road in this State.

He had become superintendent in Illinois as well in August 1834, “and found the work in a very dilapidated state”:

The masonry was falling down, and the stone crumbling to pieces; the superstructure of the bridges, which were generally intended to be on the Jackson plan, so rapidly giving way as to render trestling immediately necessary. Unfortunately, before all the supports had been placed under the Little Wabash bridge, the western abutment slid on its foundation, which was a shelving rock, and the superstructure tumbled into the river. This bridge was defective in its bracing, though it would have stood if the abutments had been well made; all the iron and useful materials have been saved. Indeed, what was done on the road, so far from advancing [sic] its actual construction in all cases, would often make the work more troublesome and expensive. The removal of the rubbish, and clearing out new foundations for the bridges and culverts, would generally cost more than the value of any serviceable material that could be saved. When there

is filling over culverts, it will have to be removed. None of the grading could be said to be in a finished state, as every piece will yet require a good deal of work before it will be fit to receive the covering of stone.

While developing corrections and plans for moving forward, Captain Ogden wrote that “disbursements have presented the greatest difficulties”:

The amount of the disbursements is large; the laborers are paid directly by the Government; the payments, being in very small sums, are therefore numerous. My assistance had been too limited; the officers on duty with me have had too much to do, particularly my assistants in Indiana. The responsibility mistakes and errors in such heavy disbursement is so onerous and great that I feel justified in requesting you to recommend an allowance to cover it. Arrangement have been made with several of the local banks, so that the funds will be safe until drawn by the laborers. On the eastern part of the road, payments are made on the Terre Haute bank, and the middle on a Louisville bank, and on the western part made on a St. Louis bank, though hereafter they will be made on the Vandalia bank. These payments are made in checks for the exact amount due; the laborers get them cashed without any loss or discount, and with no further difficult than there would be in cashing a bank note of a similar size in a country thinly populated. The checks are sought for by the merchants in making remittances; and although they do not exactly circulate as money, their value is fixed and established, and no one objects to receiving them.

Grading had been delayed by rains in the spring and early summer, with sickness among the laborers causing operations to linger until the summer. “The last six weeks past has been the only favorable time for operations; laborers, however, were too scarce to accomplish much.” Progress on the bridges also had been limited. “Masons and stonecutters are scarce, very few to be had on any terms.” [*Message from the President of the United States, With report on the condition of the Cumberland road in Illinois and Indiana, 24th Congress, 1st Session, Doc. No. 19*]

On January 2, 1835, General Gratiot forwarded a report to Senator Hendricks of the Committee on Roads and Canals in response to his request for an estimate of the amount of funds that could judiciously expended on the Cumberland Road in Ohio, Indiana, and Illinois during 1835. The report stated that work could support \$320,000 in Ohio, \$300,000, in Indiana, and \$191,000 in Illinois:

In addition to these sums, I would respectfully suggest the propriety of an appropriation being made to commence the erection of the bridge across the Wabash, the plan for which, and estimates, were submitted to the Senate on the 9th ultimo; \$50,000 to be applied in the collection of materials and preparations, would be sufficient for the present. [Documents relating to Expenditures on the Cumberland road, 24th Congress, 1st Session. Doc. No. 207]

General Gratiot was referring to a letter that Secretary Cass had provided to the Senate on December 9, 1835, in response to a resolution seeking an estimate of the cost of a

bridge over the Wabash River, as well as information on the practicability of constructing the bridge. Captain Ogden's report, dated November 4, 1835, explained that the river, "like other Western waters, is subject to great changes in the velocity of its current and size of its bed":

The greater part of the year the stream is small and clear, the current gentle, the deepest point where the road crosses not being more than nine feet.

When the rainy season sets in, the river rises with great rapidity, and soon becomes a turbid and rapid stream, floating down immense trees and other drift, which would carry away any constructions for the supports of a bridge, unless they were so placed as to give a free and unobstructed water-way. During the high floods the river overflows what is called the first bottom, sometimes extending over several miles . . . . The current through the bottom, notwithstanding it is so heavily timbered and filled with logs and brush, is quite perceptible, and almost as great as that of the river at low water, averaging on the surface nearly a mile an hour . . . .

It must be perceived that the difficulties of constructing a bridge over the Wabash are of more than ordinary magnitude; yet, by a careful arrangement of the different parts of the construction, they may be completely obviated, and the plan submitted, it is thought, will effect it, and fully comply with the conditions of the resolution.

The Senate resolution appeared to concern "the passage of the main channel," but the connection to the road through the bottom "must be made upon some supposition relative to the method which will be followed in making the road; the one here proposed is, that there will be at least ten bridges, of one hundred feet span each, between the main bridge and western bluff":

I proposed to have a wooden bridge, supported by stone piers and abutments . . . but the importance and nationality of the work would seem to indicate that a more durable material than wood should be used. I am induced, however, to recommend it, from the very essential consideration of the few piers it will require, presenting but little or no obstruction in the current of the river, and of its cost being comparatively little with respect to that of any other material. From the facility with which the chimneys of steamboats can be let down, it was supposed, if the elevation was sufficient to admit of their free passage with them down, that the bridge would be high enough to comply with the intention of the resolution. The plan is for the bridge to be twenty-two feet above the highest water, which is six feet higher than the high water of common seasons.

He estimated that the cost of the bridge, "when finished, including every expenditure attending to its construction," was \$248,775.03:

If the bridge is to be constructed, and an appropriation passed for that purpose, I would respectfully recommend that fifty thousand dollars be appropriated for

the collection of materials, and purchase of tools and machinery during the ensuing year. [*Report from the Secretary of War, In obedience to a resolution of the Senate of the 16th January, 1835, 24th Congress, 1st Session, Doc. No. 10*]

On Monday, February 8, President Jackson informed Congress that Great Britain had “offered its mediation for the adjustment of the dispute between the United States and France.” He had accepted the offer, and wanted Congress to refrain from “even the mildest measures of a compulsory character, until it is ascertained whether France has declined or accepted the mediation.” He wanted Congress to suspend proceedings stemming from his January 15 message:

The peace of a nation does not depend exclusively upon its own will, nor upon the beneficent policy of neighboring Powers; and that nation which is found totally unprepared for the exigencies and dangers of war, although it come without having given warning of its approach, is criminally negligent of its honor and its duty.

I cannot too strongly repeat the recommendations already made, to place the seaboard in a proper state for defence, and promptly to provide the means for amply protecting our commerce.

### **West of the Ohio River**

The pending Cumberland Road bill in the Senate proposed to appropriate \$320,000 on the road in Ohio; \$350,000 in Indiana, including funds to acquire materials for a bridge over the Wabash River; and \$190,000 in Illinois. On Friday, February 5, 1836, Indiana Senator Hendricks moved to amend the amount for the road in Ohio to \$350,000. According to the *Register*, Senator Clay made “some remarks” that were not described.

(During this period, the *Register* was being phased out in favor of *The Congressional Globe* as the formal record of congressional action. The summary that follows is from the two sources, but from 1837 on, the summaries are from the *Globe*.)

On February 8, soon after the clerk of the Senate read the message from President Jackson about Great Britain offering to mediate the dispute with France to the body, the Senate took up the unfinished business of Friday, “being the bill for the continuation of the Cumberland road through Indiana and Illinois.” Senator John C. Calhoun, who had joined the Senate in December 1832 following his service as Vice President, moved to table the bill, “to remain there,” according to the *Register*, “until the question as to a war should be determined.” The Senator agreed to postpone his motion to lay the bill on the table to allow Indiana Senator Tipton “to make some remarks” the following day. The Senate then proceeded to resolutions from Senator Benton on national defense.

The Senate, as it happened, returned to the bill on February 26, when it was the first order of business. To begin, Senator Hendricks withdrew his motion, to clear the way for Senator Tipton’s remarks. However, before Senator Tipton could speak, Senator Clay offered a motion to amend the bill by striking out \$320,000 and inserting \$200,000

for Ohio, as well as \$100,000 for Indiana instead of the proposed \$350,000. He was a longtime supporter of internal improvements in general and the Cumberland Road specifically. He made clear that his sentiments about the road “were the same as ever,” but added “he felt some difficulty” about the question before the Senate. The problem was that “here were gentlemen asking an appropriation for an object which was to benefit the people of their own States, when the whole system of internal improvements had been suspended by an administration brought into power by their co-operation, and sustained by their support.”

The system he referred to was his distribution bill for apportioning revenue from public land sales among all the States based on representation in the House of Representatives. The States could use the revenue for internal improvements and other purposes without the threat of a presidential veto. Distribution would reduce the revenue of the general government, which could result in another of Senator Clay’s purposes – increased tariffs. In 1833, the distribution bill passed Congress, but as noted elsewhere, President Jackson pocket vetoed the bill. The Senator reintroduced his bill each year, and it was again under consideration in 1836. (On May 4, 1836, the Senate approved the bill, but the House tabled and killed it.)

If he were to act in a spirit of resentment, he might “withhold his support until all the States received equal benefits, but was willing to support the Cumberland Road until it reached the Mississippi River. However, he specifically objected to the expenditure of \$100,000 for a bridge over the Wabash River:

There was no bridge over the Ohio or the Muskingum, though, in extent of utility, a bridge over either would be far preferable to the one proposed.

He hoped the gentlemen from Indiana (Senators Hendricks and Tipton) “would let them circumscribe the appropriation, until bridges were built over the Wabash [sic] and Ohio rivers”:

The country embraced in this part of the road was poor and thinly settled, and he thought did not require so much expenditure now.

Despite Senator Clay’s longstanding support, even advocacy, for the Cumberland Road, he cited another factor, in addition to veto of the distribution bill, for his change of position. He was motivated by a resentment stemming from his political enemy in the Executive Mansion:

The two States of Kentucky and Tennessee had received less benefit from the expenditure of the public moneys than any of the others; yet, when it was proposed to extend the Cumberland road to Nashville, Maysville, and Lexington, that important measure was rejected, vetoed, by this administration, supported as it is by Senators who now ask exclusively for themselves those benefits which they have denied to us.

Senator Tipton then took the floor, noting that he would not have troubled the Senate with remarks if not for the opposition to the bill “from a quarter quite new and unexpected to him; one which, he had no doubt, would equally surprise his constituents, and for which they were entirely unprepared”:

The Senator from Kentucky, [Mr. Clay,] who had moved to reduce the appropriation to the amount applied on the road last year, is surely not seriously opposed to the continuation of this great work, after having supported it with such signal ability for thirty years. I cannot believe that he desires its abandonment, but that he moves to reduce the sum proposed in the bill, that the road may be a longer time in the progress of its construction. He wants to be six years in doing what I propose to do in three.

Something has been said about the number of hands that we can economically employ on the work, and doubts have been expressed whether a sufficient number can be obtained to complete it within the period proposed. We are now engaged in the construction of but two public works within the State of Indiana, viz: the Wabash and Erie canal and the Cumberland road. Contractors have come from public works already completed in New York, Pennsylvania, and Ohio, and have generally brought with them laborers and tools sufficient to go on vigorously with these works. They will remain until they are finished, if the money necessary to continue them is appropriated; but if you cut down and limit the appropriation, you postpone the completion of the road; and you double the expense.

The State had appropriated \$10 million for internal improvements and organized a Board of Public Works to construct two canals, two railroads, and one macadamized turnpike road. The board was to meet soon to determine a plan of operations for the year:

If you make a liberal appropriation for the national road, it is probable that the State will not commence any of her works this year, as it may be possible that the two works already in progress will employ all the laborers that can be obtained; but if you reduce the appropriation as proposed by the motion of the honorable Senator, there will not be funds sufficient to employ all the hands now on the spot.

He added that no one had offered a good reason for reducing the amount in the bill, especially since the surplus would support this bill as well as the Fortifications Bill, Senator Clay’s Land Bill, and other pending measures, “and still have a large surplus in the treasury at the beginning of the year 1837.”

Senator Tipton mentioned that when the bill was introduced, Senator Calhoun moved to lay it on the table. “I understood him to say that his object was to prevent heavy drafts being made upon the treasury, until he was informed whether we were to have peace or war.” Senator Calhoun had withdrawn his motion at Senator Tipton’s request “to give the friends of the bill an opportunity to explain and defend it.” Apparently referring to Great Britain’s offer to mediate the dispute, he continued:

I am happy now, sir, (said Mr. T.,) to have it in my power to say that the favorable change in our foreign relations justifies me in assuring the Senator that there is no reason to apprehend war in any quarter, unless it be those skirmishes which take place now and then with the Indians on our frontier.

Senator Tipton acknowledged that Senator Calhoun was long known “as a friend of internal improvements”; and his motive in introducing the motion to lay the bill on the table was a strong sense of duty:

I confess, sir, that I was surprised to see a newspaper friendly to the Senator, in noticing his motion to lay the bill on the table, attempt to give it a party coloring, remarking that his motion caused a fluttering amongst the friends of the administration. I would regret to see the passage of this bill made a party question. Indeed, I do not see how it can be; it never has, to my knowledge, been considered heretofore as partaking of that character.

Over the years, some had favored funding for the road and some had opposed it, but never for party reasons.

If anyone doubted the national importance of the Cumberland Road, he might refer to a report that Senator Calhoun had prepared during his time as Secretary of War, “where it is most satisfactorily shown that the continuation of the road in question to St. Louis was a work of national importance. This has never been questioned.”

Senator Tipton summarized the road’s history, dating to the Act of March 29, 1806, signed by President Jefferson – and the compact with the States it represented, embodied in the Enabling Acts. Even without those compacts, the Federal interest would be the same:

Were there no compact between us, the United States being the great landholder in the new States, would find it both their interest and their duty to contribute largely toward the construction of a road leading to their own lands.

One way or another, the road would be completed as development of the public lands continued to result in new towns.

He described the status of the road in Indiana:

In 1829, Congress made an appropriation to remove the timber from the road through the State of Indiana, and to grade the banks preparatory to making it a turnpike road. The timber has been removed, and nearly one half of the road is graded. Half the bridges are constructed, and stone prepared to cover a small portion of the graded road. Putting on the stone is the most expensive part of road-making. This is the reason why a heavy appropriation is now asked for. If the graded portion of the road be not covered with stone, the travel on it, which is immense, will destroy it, and the work will have to be done over again next year.

Senator Clay, Senator Tipton recalled, had referred to the two States as thinly settled, with long distances between houses in some places. Senator Tipton replied:

I will not undertake to say how the facts are as regards the road in Illinois; the Senators from that State will doubtless inform us; but I assure the Senator from Kentucky that every acre of public land along the road in Indiana has been purchased from the United States. The country is densely populated; the farms, although not quite as extensive as they are in Kentucky, are much more numerous, and villages are springing up at short intervals all along the road.

He understood Senator Clay's concerns about the veto of the Maysville Turnpike bill, and the view that the States south of the Cumberland Road were not receiving even-handed justice as to funding:

Sir, if that gentlemen will look at the journals, I think he will find that several friends of this national road voted for the bill to which he alludes, (the Maysville and Lexington road bill;) if it did not become a law, it was no fault of theirs.

He responded to another of Senator Clay's objections:

We have been told, said Mr. T., during the discussion of this bill, that the great system of internal improvement by the general Government has been suspended. Why, sir, this is no fault of the friends of the national road; it is owing, as I believe, to a change in public opinion. Public sentiment in regard to internal improvement by the general Government is not now what it was in 1825 [sic, 1824]. In that year an appropriation was made to prosecute surveys with a view to the construction of roads and canals in different quarters of the Union. The United States engineers went to work; civil engineers were employed to assist them, and surveys were extensively made for the purpose of ascertaining the practicability of a number of roads and canals. In 1828 a great political conflict terminated, that brought a new party into power in this country. The veto of the President on the Maysville and Lexington road bill, and his message returning it to the House in 1830, set the people to reflecting upon the subject of internal improvement on their own resources, by the States, or by incorporated companies. Before that time, but three States (New York the first one, stimulated and led on by her [Governor] Clinton) had embarked extensively in improvement; Pennsylvania and Ohio had followed the example; in no other quarter was any thing of note going on. What, I would ask, is the fact in 1836? Why, sir, many States are making large appropriations for constructing roads, railroads, and canals. The people look this way no longer for aid, unless it be to the improving of our rivers; and this is withheld from some rivers, the Wabash for instance, to my utter astonishment, and to the serious injury of a large portion of the West.

Senator Tipton also rebutted the objections to funding for a bridge across the Wabash River. Senator Clay had pointed out that the Cumberland Road was not bridged at the Ohio and Muskingum Rivers. "Now, sir," Senator Tipton replied, "I do not remember that proposition for a bridge across the Ohio at Wheeling was ever submitted to

Congress.” If it had been, he would have supported it. However, a bridge across the Muskingum at Zanesville had been constructed before the road reached that location. “The Scioto and White rivers have bridges constructed over them at the expense of the United States.”

(In 1814, the Muskingum and Licking Bridge Company had built a wooden trestle Y-shaped toll bridge “across the Muskingum from Main Street to Licking Island, then north and south across the mouth of the Licking” in Zanesville. The toll bridge was rebuilt in 1819, but was deemed unsafe by the 1830s to carry the heavy traffic on the Cumberland Road and other roads. Ebenezer Buckingham and Company bought a controlling interest in the bridge company and designed a wooden covered Y-bridge. A history of the city explained:

When the bridge was under construction a flood threatened the supports under the eastern span. Ebenezer Buckingham hurried the completion of the work. Then he gave orders for the removal of the wedges which held the supports so that the flood water could carry them away without taking the bridge. When the wedges were removed, the span fell into the river and Buckingham and Jacob Boyd were killed by falling timbers . . . .

In 1832 the other stockholders completed the third Y bridge, which stood until 1900.

(This third toll Y-bridge was in place at the time of the Senate debate. In 1868, the county bought the bridge and ended toll collection. The current Y-bridge was completed in 1984, continuing the tradition of “The Y-Bridge City.” [Schneider, Norris F., *Y-Bridge City: The Story of Zanesville and Muskingum County, Ohio*, The World Publishing Company, 1950)

The Wabash River bridge had been the subject of legislation 3 years earlier. The Senate had included funds in a House-approved appropriation act, but the House had refused to concur in the amendment. “It was near the close of the session, and fearing that the bill would be lost between the two Houses in the hurry and bustle always unavoidable on the last day, the Senate receded from its amendment, that the bill, which contained an appropriation for continuing the road, might become a law.”

Because of concerns that construction of the bridge would obstruct navigation on the river, a Senate resolution asked the Secretary of War to study the issue. The completed report contained “satisfactory evidence that the bridge will be constructed on a plan which will not obstruct the navigation of the river”:

One item of appropriation in the bill on your table is to provide materials, and to construct the work in accordance with the plan submitted. The erection of this bridge is less important to Indiana than it is to the States west of her. The point where the national road crosses the Wabash is within nine miles of the eastern boundary of Illinois.

Without a bridge, “the United States mail cannot pass that river when the ice is floating, but will be arrested in its progress to the States and Territories west, and that all travel and communication between them and the east will be liable to constant interruptions for a portion of the winter.”

Senator Clay also had objected to the amounts in the bill, suggesting that the States involved were satisfied with much smaller amounts in days gone by. Senator Tipton responded:

It is true, sir, that when the treasury was drained to the last dollar, with the war debt unpaid, and a limited commerce, we were satisfied with a comparatively small appropriation. But it should be remembered that, at the time referred to by the honorable gentleman, our population was far less than it is now.

He regretted having to part with Senator Clay in view of the support the Kentuckian had given to the road in the past. He could scarcely believe that Senator Clay “will abandon his old favorite, the Cumberland road”:

The Senator had always been distinguished for marching boldly up to his object; and he was not prepared to find him advocating the propriety or the expediency of tardy operations. We now, said Mr. T., possess ample means, and, in my judgment, we should prosecute the work vigorously to Missouri, before we pause.

If friends of the road had lost Senator Clay, they would proceed without him. “I am an advocate for the energetic prosecution of this work.” He hoped to see Indiana’s segment finished in 2 or 3 years. “We consider that we are entitled to heavy drafts on your treasury whilst our country enjoys unexampled prosperity, and our constituents contribute so largely to fill your coffers” via public land sales.

Senator Tipton said that he knew some people opposed the appropriation for the Cumberland Road because they considered it “a gratuity to the people of the new States.” They were mistaken. “The sums appropriated for the construction of this road, would be replaced in your Treasury from sales of the public lands within the new States.” He was not referring to the two-percent fund for roads to the States, but to the sale of land the general government owned in the new States:

Money expended to improve the navigation of rivers, or to construct roads in that portion of the country where the United States were the owners of the soil, he trusted would not be set down in account against the people who purchase and improve the public lands, when such works are executed, for he could demonstrate to the satisfaction of any one who would set down with him to make the calculation, that grants of lands and money to these objects have been beneficial to the Treasury of the United States.

He illustrated by describing a Federal land grant to aid Indiana in construction of a canal to connect the Wabash River with Lake Erie. The State secured a loan for construction:

The State's land sold at from one dollar and a half to three dollars and a half, and some of it at fifty dollars, and as high as seventy dollars per acre. The United States lands that have been offered within several miles of the canal have been sold, and even lands of an inferior quality, that would have remained the property of the Government for a generation to come, were sold; and more money had been brought into the United States Treasury in a shorter period of time than if the General Government had offered the whole of these lands without the commencement of a canal by the States.

The construction of the canal and Cumberland road in that State, with the industry and enterprise of the people, had enhanced the value of every acre of public land a hundred per cent. Ten millions of dollars have been realized to the Government from the sales of public lands within the State of Indiana.

The general government still owned about 11 million acres in Indiana, "and a large proportion of these were fresh lands, never in market." Recent sales by the land office in Fort Wayne and Laporte "demonstrated, beyond contradiction, that fresh lands would here often sell at from two to twenty dollars per acre."

Moreover, Indiana "was about to embark in a general system of internal improvement," a State appropriation of \$10 million for roads, railroads, and canals, all of which would spur additional sales of public lands to the benefit of the general government:

We are anxious, said Mr. T., to complete the Cumberland road through our State, within three years, and for this purpose, ask a large appropriation to continue the road, and for bridges. The next year, one half the balance would be asked, and the remainder would be wanted in 1838. We consider, said Mr. T., that we are entitled to heavy draft on your Treasury, while the country enjoys unexampled prosperity, and our constituents contribute so largely to fill your coffers.

Senator Tipton addressed the idea that because the two-percent fund was exhausted, the compact no longer existed. He explained that based on "the quantity of public land sold and to be sold in the States and Territories, from the eastern boundary of the State of Ohio to the Rocky Mountains, he will find that the two per cent. is over seven millions of dollars, and we have not yet had half that sum applied to this road."

Senator Tipton concluded his remarks with a reference to Senator Clay's comment about a thin population in the new States north of the Ohio River:

By the census of 1830, it appeared that there was a small fraction in favor of the southwestern States; but it would hardly be contended at this time that there was not a greater population in four States northwest of the Ohio river, than in five southwest States, including Kentucky and Tennessee, to the new States bordering on the Gulf of Mexico. Should the southwestern States desire to apply their road fund to construct a branch of the Cumberland road through Kentucky and Tennessee, to the new States bordering on the Gulf of Mexico, he should raise no objection; but if they declined applying their road fund in that way, it cannot be

pleaded in bar of our right to apply our fund to the national road leading to, and through the northwestern States; this being the legitimate object for which the fund was provided by the agreement between the General Government and the new States.

Senator Clay said he did not think much of the argument for the road based on the two-percent fund guaranteed by the compact:

It was well known that the whole amount of it had been a thousand times exhausted. The only justification for the appropriation, was to be found in the right of the General Government to make these roads. There might be something in the argument of its enhancing the value of these lands . . . .

It could not be expected, that they should yearly expect to see these roads continued in these new States, while no appropriations were made to internal improvements in the old States; that they would not have some feeling on the subject. While lavishing money on one side of the river, they could not expect indifference on the other side.

He discussed his proposal, again under consideration in 1836, to split all the revenue from the sale of public lands equally among the States, “but an attempt was being made to defeat it, which if successful, he should much regret.”

He had not decided to vote against improvement of the Cumberland Road, but he would vote for a moderate sum for that purpose. After all, it was not “a commercial road, except in the immediate neighborhood.” The rivers, he said, “were the great seats of commerce.”

He noted that bridges had not been erected over the Muskingum or Ohio Rivers for Cumberland Road traffic:

Had a southwestern branch of it been made by the Government through Tennessee, Alabama, &c. to the gulf, it would have accommodated the trading and traveling population ten to one over the present route; the prevention of which, he imputed to the policy of the present administration; and on account of which, he indulged in some tart remarks upon the course of the administration, which, he said, were painful to make, but were wrung from him by this policy, which made them feel on one side of the river as though they were outlawed and aliens to the liberality of the Government, while it was lavish of its munificence on the other side. The gentlemen should ask in moderation, so as not to endanger the general proposition to distribute the surplus fund among all the States. You cannot, he said, get the labor to consume this large appropriation, without disturbing agricultural pursuits.

He understood that Senators were zealous on behalf of their constituents, but they should consider the hauling of stone and other materials for use on the road:

Stone, of all other materials, was the most imperishable and ought not to be put on the road immediately. The ground ought to have time to settle, before they were placed on it. The road from the Wabash to the Mississippi would cost from ten to fifteen thousand dollars per mile. The stone, in some instances, would have to be hauled ten or twelve miles to the bed of the road.

He closed his remarks with a summation:

Things in this world did not always go on as they wished, and they must bear with it as well as they could. He did hope the gentlemen from Indiana (Mr. Hendricks and Mr. Tipton) would moderate the amount asked for.

Senator John M. Robinson of Illinois, a member of the Committee on Roads and Canals that had drafted the bill, wanted to set the record straight:

The system, so far as respects the mode of performing the work, had been wholly changed about a year since; previously, the work was done by letting it out by the job to the lowest responsible bidders; now, hands and artisans are employed by the day, by the superintendent, an officer of the engineer corps.

This new method allowed for the use of "large expenditures advantageously." The amounts in the bill were based on the Engineer Department's estimates. The committee had two sets of estimates: "one showing the smallest amount which ought to be appropriated for any thing like a successful prosecution of the work; the other, the maximum amount that could be advantageously expended." Because all agreed that the road was a national work, the only question was "shall the work progress as speedily as circumstances fairly authorize, or shall it be at a slower rate; and, if the latter, how slow?"

The officers involved in the road work would be employed either way:

To his mind, and so he thought it must strike every one, there could be no hesitancy as to the proper course. If an individual was compelled to keep in his employ a certain number of overseers until a given piece of work was completed, and, by hiring as many hands as his overseers could advantageously find employment for, the work could be finished in one year, would he not be a very bad economist, having, too, the means at hand, to hire laborers so sparingly as to keep the overseers ten years doing what could have been done in one?

The government should follow the same course as an individual would follow in a similar situation:

The minimum estimates have been taken, not the maximum; and unless these amounts be appropriated, the work, instead of going on prosperously, will languish, and in many instances, in its unfinished state, suffer much injury.

He agreed that the river would be the road of commerce via steamboats, but that was not

always the case. “East they will find a market for a very large portion of their surplus stock”:

Already that trade had commenced; and upon this road much of it would be driven. As to travelling upon it, he had only to say it would be used as all other roads generally are by the people of the country, in passing from one neighborhood to another, from one county to another, and from one State to another. It was certainly true, as has been stated, that any one wishing to come here or east of the mountains from where this road will cross the Mississippi, would most probably make the trip by water, if steamboats were running; which, by-the-by, was not by any means always the case.

He hoped that motions to reduce the amount to be appropriated for the work would not succeed:

If it was, that ninety miles of the road in Illinois which is in a very handsome state of progress would be left without a single dollar for the prosecution of the work, because, for that part, there was no appropriation whatever last year; and the reason was this: there was an excess of previous appropriations upon hand, supposed to be enough, and was enough, for the year 1835. This excess was owing to the derangement of labor by the Indian war of 1832, the cholera, and other sickness the two succeeding years. It was wholly impossible to employ the necessary number of hands.

The previous funding was now exhausted. Senator Clay’s motion, “if adopted, would leave your officers in a very awkward situation.” It would result in stopping work on 90 miles in Illinois, an outcome “which certainly could not be designed by any one, much less the mover of the amendment, [Mr. Clay,] who tells us he is friendly to the road and its completion – a completion more slowly, to be sure, than I think is advisable and in keeping with good policy.”

As for the cost per mile or the statement that stone would have to be hauled 10 miles, he did not have an estimate for the cost of completing the road in Illinois, nor was he aware that one had been made:

This, however, I will venture to assert, that it can be made as cheap as any ninety miles of the same kind of road in any part of the known world. The country is level, and abundant in material of every kind necessary for its construction. Stone, it is true, has, at some places, to be hauled considerable distances, and in one instance as far as thirteen miles. The bottom at Vandalia, it is admitted, will be costly, for there the road has to be raised several feet for the distance of about two miles, and this is the only place of extraordinary cost. Many bridges will have to be constructed, but not more, if so many, as are found in every country; and none of them are of a very costly character, for the streams are narrow.

Ohio Senator Ewing said he did not deny “that the two per cent. fund due to Ohio, or which would ever become due to her for the sale of lands in her territory, was long since

exhausted, long, indeed, before the road which had its origin from that fund had reached the Ohio river at Wheeling; and gentlemen were wrong in saying that those who advocated the extension of this road held out to Congress the vain pretence that the money to be expended on that road would be reimbursed out of that fund.” The road was not, however, “a boon granted” to Ohio as the Senators from Kentucky seemed to think:

The road from Wheeling to Cumberland is as much the road of Kentucky, Tennessee, and all the country upon the Mississippi and its waters, as it is of Ohio, Indiana, and Illinois. From whatever quarter of the great West we come, we meet at Wheeling, and this is our common highway. And from whatever portion of the Atlantic seaboard the traveler or the emigrant sets out for the West, this is his most direct and convenient route. It is, therefore, a road for the benefit of the nation, constructed in part out of the public funds, and in part out of a fund created by compact with Ohio on her admission into the Union. It does not lie, one inch of it, in the territory of Ohio. She has no more interest in it than one half the Union besides, and it is very unjust to her to charge as a donation or gratuity to her the excess expended upon that road beyond the amount which has applied by virtue of her compact.

Far from being a gift or gratuity, “a kind of outfit given by the common parent to them, the younger members of the national family,” the States paid for it “and it was a dear purchase.” This point is misunderstood. The road was not built because the new States agreed not to tax the United States land, “which they had, in fact, no right to tax”:

It was in consideration that they would not tax lands for five years after they become the property of individuals; thus depriving the State of a source of revenue which, according to the rates of taxation for State, county, and road purposes, would have very much exceeded that five per cent., and holding out inducements to individuals to buy the land of the United States, partly because of this exemption from taxation.

The State of Ohio had “many and deep” obligations to the general government, “but I cannot consent that this should hold the rank which gentlemen are disposed to give it among the number” when they wish “to impress her representatives here with a due sense of her special obligations to the general Government.”

He also wanted to respond to Senator Clay’s view that the Kentucky Senator had been most liberal in granting past funds, “but which he seems to think have gone further than justice to the old States would warrant.” Everyone agreed that the new States were due some consideration in view of the vast amounts of public land the general government was selling within their borders, aided by the access made possible by the road:

If the United States should contribute something, the next question is, how much? This the Senator from Kentucky has settled according to his own judgment, in the land bill introduced by himself, and which he has heretofore pressed, and I trust will again press, with his wonted zeal and ability. In that he gives to the new States ten per cent. of the proceeds of all the lands sold within their limits.

Aided by the road, land sales in the new States were continuing:

The sum asked for an appropriation to this road is trifling, compared with the amount which is in the treasury, and which is flowing in from those two bounteous sources – the public lands and the customs.

The general Treasury had almost \$28 million in it, with receipts from customs supplying more than “any appropriations which we can judiciously make”:

This bill, therefore, or any other appropriation bills, which are not the very wildness of extravagance, does not, and cannot, militate successfully against the land bill – that measure of justice to all the States which the Senator from Kentucky still so fondly cherishes, and in which I assure him that he shall have all the aid which it is possible for me to give him. Indeed, anxious as I am for the passage of this bill, I deem it of small importance to my own State, when compared with that; but, as neither can affect the other injuriously, I still hope for the aid of all who are friendly to the general object, in the passage of both.

South Carolina Senator Preston asked if it was true that the Illinois legislature had passed resolutions “declaring that the road should not pass through their State, unless it was carried to a point designated by them.”

Senator Robinson explained that the dispute related to whether the road would cross the Mississippi River at St. Louis, as Missouri wished, or 20 miles to the north at Alton as Illinois preferred. “The Legislature of Illinois had also passed a resolution that the road should not pass through their State, if it took the other route.”

Senator Lewis F. Linn of Missouri agreed that the dispute was between St. Louis, Missouri, and Alton, Illinois, and that the Illinois legislature had indicated it would refuse to allow the road if it did not cross the river at Alton – “in a word, to nullify an act of Congress, unless that act conformed to her wishes”:

But on examining the bill, no appropriation was found in it to make the road from Vandalia to Mississippi. If such a provision had been in the bill, he would have felt himself bound, in justice to his constituents, to have opposed its passage, unless all pretension to dictation in the matter had been abandoned.

He was well aware that powerful attempts were making [sic] to puff Alton into consequence, at the expense of St. Louis, and that she was represented as very great and growing – in a word, the “Tadmor” of the west for commercial advantage of situation.

(Tadmor was an alternate name for the ancient city of Palmyra in Syria, famous for its trade along the Silk Road.)

Senator Linn, in anticipation of this question coming up, had walked to the Post Office Department to inquire about postal revenue from the two cities. The St. Louis post office

generated \$9,000, while the post office in Alton offered \$200 or \$300. “The truth was, St. Louis was, and must ever be, the great emporium of the Upper Mississippi. She had advantage of position, of capital, population, enterprise, and trade, and bid defiance to all rivals.” The road must terminate in St. Louis near the arsenal at Jefferson Barracks.

Senator Clay, noting that he “wished he could get a little aid in this work of economy he had undertaken,” said he had asked for an estimate of the cost of the road from the Wabash River at Terre Haute to the Mississippi River:

He was informed that the stone had to be hauled from a distance of twenty-five miles, and that the graduation had cost \$7,000 a mile. The Maysville road, extending some forty or fifty miles, did not cost above \$6,000.

He also commented on Senator Robinson’s observation that this road was convenient for driving stock:

He touches me (said Mr. C.) when he makes this statement, and compels me to say that a Macadamized road is the worst possible road for stock. What has happened to myself? I had to transport my bull Orizimbo from Lexington to Maysville. I could not risk the destruction of his feet by putting him on a stone road, and I had to bring him in a wagon.

Driving stock over the prairie was better, he said, than over a stone road.

He referred to Senator Ewing as the best auditor in the world because he, “from the slightest data imaginable, can make out a balance in favor of his own State.”

He could not consent to the amounts in the bill because “they could not be disbursed economically and advantageously.” He wanted to see an estimate to determine if it was based on efficient operation. “If there was more labor employed than was necessary, he would lessen it, and employ only a due proportion of officers. It was not necessary to keep extra labor employed”:

The object of his motion was to restrain Indiana and Ohio within the limits of last year’s expenditure, and to confine that in Illinois to graduation alone. The road in that State was not yet located. There were the rival claims of Alton and St. Louis to be settled before any location would be made.

From Columbus to the Mississippi River, that road was on an elongated plane. “The cost would not be in the graduation of the road, but in the transportation of the stone for its construction, as it would have to be brought from a considerable distance.” He would vote for “a moderate sum” to grade the road from the Wabash River to the Mississippi River but concluded:

If gentlemen were not satisfied to have the same appropriation as last year, he hoped the bill would be laid on the table, until an estimate of the cost could be obtained.

Senator Robinson said he “would be very happy to get the gentleman’s vote for grading the road, as it was not contemplated to put the metal on it this year.” That was the purpose of the appropriation in the present bill. Other work, such as bridging, was underway:

As to the distance that the stone must be carried, he thought the gentleman from Kentucky was mistaken . . . . He had heard of stone being carried as far as thirteen miles, but this was to only one part of the road.

There was no serious contest yet, with the State of Missouri as to the termination of the road whatever; there might be after the surveys shall have been made.

Senator Hendricks remarked that having to respond to objections about the Cumberland Road “had become irksome and unpleasant to him,” but once again he had that duty. He began with the bridge over the Wabash River as contemplated by the bill:

The Senator from Kentucky supposes that it has never been the intention of the Government to construct bridges over rivers of this magnitude, and mentions the fact that the Monongahela river at Brownsville, Pennsylvania, and the Ohio river at Wheeling, had not been bridged, although the necessity for bridging these streams was much greater than that of bridging the Wabash. But a simple fact seemed to have escaped his recollection, which would no doubt explain to him the reason why those rivers, and especially the Monongahela, had not been bridged, and convince him of the fact that it had always been the intention of the Government to bridge all other streams between Cumberland and the Mississippi. The propriety of bridging the Ohio river at Wheeling has, on account of its navigation, always been questioned. In relation to the Monongahela and Ohio rivers, no law ever existed authorizing them to be bridged. In all other cases on the road, bridging has been authorized by law.

When the law was passed to extend the road into Ohio, it specified that construction would start on the west bank of the Ohio River. Similarly, early laws funded the road to Monongahela at Brownsville, with later legislation specifying that construction should begin on the west bank. As had been stated earlier, the reason the engineers had not built a bridge across the Muskingum River at Zanesville was simple. “Here the Government found a bridge in the hands of a company. It was adopted for the road, and for aught he knew this might be the case elsewhere, though he recollected no other such case.” A bridge also had been built over the White River at Indianapolis.

The Wabash River bridge was not a new proposition:

It would be recollected that, on a previous occasion, this same proposition had been inserted by the Committee on Roads and Canals of the Senate, in a Cumberland road appropriation bill. Objections were then made, elsewhere, not here, on the suggestion that this bridge would or might injure the navigation of the river. This fear prevailed, and the clause was stricken out of the bill. Since then the Senate have directed, by resolution, that the United States engineer

superintending the road should examine and report on that subject; and the report is, that a bridge, such as is recommended, will not in any degree injure the navigation. The fact of previous objections having existed to this bridge makes it the more necessary now that the bill should direct the construction.

He rebutted the claim that the Cumberland Road was not a commercial road:

It is true that it is not a highway of foreign commerce; but, for all the purposes of domestic commerce, it is certainly more emphatically a commercial road than any other of like extent west of the mountains. It is the principal thoroughfare of emigration from the Eastern States to the central parts of the three Northwestern States.

Emigrants to the new States to the north had access to water routes, but that was not the case for the western middle States:

And, sir, if an account had been, or could be opened between this road and the Federal Government, giving it credit, as it is fairly entitled to, for a large share of the present prosperous condition of the country by it, how far on the back ground would be placed the small and inconsiderable sums which you have appropriated for its construction. But the sums which were at first injudiciously expended on this road upon the mountains and east of Wheeling, as well as the sums which have more recently been expended on the same eastern road for repairs, made necessary by your refusal to put toll-gates upon it, or to transfer it to the States, have also been mentioned as fairly chargeable against the road, and the fund set apart for making it. Well, sir, take this all into the service against this road, and still the amount will be a pitiful sum, compared with its great advantages to the Northwestern States and to the treasury of the Union.

He argued that the cost of the road east of Wheeling should not be charged to the new western States:

Surely not; for this road, east of Wheeling, has been more valuable to Kentucky, Tennessee, and western Virginia, than it has been to the States of Ohio, Indiana, and Illinois; because more people have been profited by it from the south side of the Ohio river than from the north side of it . . . . Is it fair, then, to charge all this upon the two per cent. fund, undertaken as it was chiefly for the benefit of others, who have to this day enjoyed most of its benefits?

Just as land sales in Ohio helped build the road to that State, it was only fair to use revenue from land sales in Indiana and Illinois for the road to those States. He also addressed the status of land sales revenue, repeating the \$7 million figure cited by Senator Tipton.

He responded to Senator Clay's proposal to reduce the amount of the appropriation to the same amount as in 1835:

But he would mention a fact, that the amounts appropriated last year were added to large balances of appropriations for the previous year remaining unexpended. This state of things was occasioned by the late period of the session at which the appropriation of that year was made, and by the late commencement of the work in the summer of 1834. This unexpended balance in Indiana was upwards of eighty thousand dollars, which, with the one hundred thousand dollars granted last year, was expended before the working season had ended, and the stone which had been prepared for the bed of the road, and which would have preserved it from injury wherever applied, could not be spread over it for want of funds. Should the motion prevail, it will be ominous to the speedy completion of the road.

He compared the situation with 1819 when the 130-mile road east of Wheeling was mainly completed after \$535,000 had been appropriated, "at a time, too, when we had a war debt upon us of about one hundred and fifteen millions, and some of this bearing interest of seven per cent." The road now under construction exceeded 350 miles:

We have a surplus of about thirty millions in the treasury, and yet it is proposed to diminish the appropriation contained in this bill. He hoped it would not be done, and that the Senator from Kentucky would yet withdraw his opposition, and lend us, as heretofore, his efficient helping hand.

Senator Hendricks sponsored the bill based on the compact with the States. Recalling the history of the road dating to President Jefferson in 1806, he said:

Appropriations, from year to year, have been made to this object ever since. They have been sanctioned by every administration, and it has long been considered a settled work of the country, for which estimates are continually made, as for other public works. The present bill is based on one of these estimates, and he supposed that no member of the Senate, not even those whose constitutional scruples prevented them from voting for it, wished the work now to be wholly abandoned.

The road has been finished (said Mr. H.) as far as Hebron, in the State of Ohio, and given up to the States through which it passed, for the purposes of preservation and repair, and much work is done on it beyond that point. It has been retarded in the western part of Ohio by continued efforts to change the route by Dayton, but the road is graded and bridged through the greater portion of Indiana, and is in a condition to be very much injured by neglect and delay in its completion. The continual and almost unparalleled travel on this graded road, subjects it to much injury, and makes continual repairs necessary. To some extent stone is prepared for covering the bed of the road, which, for want of funds, has not yet been put upon it.

He pointed out, too, that "every dollar heretofore appropriated to the improvement of the country northwest of the Ohio river has returned to your treasury amounts more than double." Indiana, for example, would contribute \$3 million to the general Treasury in

1836. "And are all these millions to be withdrawn from the interior, and expended on the seaboard? I too am for the military and naval defences of the country, but I shall give no vote here that will lose sight of my own section of the Union."

He concluded:

The bill before the Senate is based on estimates of the department; and if it be intended to complete this road, as it no doubt will be completed, then it is unquestionably good economy to appropriate the largest sum; for all the contingencies of the disbursements will be the same for the lesser sum as for the larger sum, and the road, if rapidly completed, will cost much less in repairs. As soon as completed it will pass into the hands of the States, as other portions of it farther east have done, and it will be a most valuable public work, of lasting duration, without further expense to the Government.

Senator Buchanan said it had been his fate to travel the Cumberland Road many times. He hoped to secure Senator Clay's vote, but he thought the chances were "somewhat slender." Moreover, the idea of completing the road on the basis of a compact was "perfectly illusory," given that the two-percent fund was exhausted. No, he would vote for the bill simply because the government's policy was "long since established." As far as he was concerned, he wanted to finish the road and be done with it, with the added hope that it not cost more than necessary because of delays caused by Congress. "This is the reason which will govern my vote; as to any compact, bargain, or obligation, I assent to no such doctrine."

Senator John J. Crittenden of Kentucky, an Anti-Jacksonian ally of Senator Clay, expressed his hope that the subject would be postponed. He called a time 16 or 17 years ago when the subject was before the Senate:

It was urged that this two per cent. fund would be prolific enough to repay any advances made for the younger members of the confederacy. The advances were made to them; and after a lapse of sixteen or seventeen years, he saw that this two per cent. fund was as prolific as ever. Why were these large appropriations asked? Why were claims made on a bounty that had already been exhausted? He wished to see a feeling of gratitude for the bounties of Government cherished; and the way to cherish that feeling was to acknowledge the bounties conferred.

Some gentlemen acted as if the two-percent fund was not exhausted. As far as Indiana and Illinois were concerned, "if they were not satisfied, they never would be":

If gentlemen wanted this appropriation, let them take it as the bounty of the Government, and strike out from the bill the delusive clause which promises repayment out of a fund long ago exhausted.

As for the compact they spoke of, he said they should "stand by that bargain." He asked, "How would it be violated by stopping the road at the Ohio? Then Senator Crittenden "entered into a lengthy argument to show that the Government was not bound by the

compact, to carry the road beyond the Ohio, and that the two per cent. fund being long ago exhausted, every appropriation for the road in the new States proceeded from the bounty, and not from the obligation of the Government.” He denied that the road was in exchange for the agreement of the new States not to tax the public lands “and that Congress had the power, when it admitted those States into the Union, to impose, as a condition, that they should not tax the public lands within their limits.”

Advocates from Indiana claim the road has aided commercial success, telling “us that the population is dense along the road – the lands, therefore, are sold.” Kentucky had never been endowed in the same way with a commercial road, and yet:

She has not sprung up under its patronage; nor ought she to be called on to vote an appropriation in which she is not to participate. Gentlemen go too far when they ask us to do so. We cannot get a dollar for our own State, and yet we are continually solicited to do something for others. The idea of any compact is entirely futile. The grant of this fund was a gift of the Government – a mere bounty. If gentlemen would view it in this light, he would do much more for them than at present he was inclined to do.

As far as he was concerned, the States south of the Ohio River, “which were not permitted to participate in the bounties of the Government, were, on every principle of justice, or good policy, and national interest, as much entitled to appropriations for their public roads, as the States favored by the bill.”

Senator Tipton addressed the idea, raised by Senator Crittenden, that because the two-percent fund was exhausted, the compact no longer existed. He explained that based on “the quantity of public land sold and to be sold in the States and Territories, from the eastern boundary of the State of Ohio to the Rocky Mountains, he will find that the two per cent. is over seven millions of dollars, and we have not yet had half that sum applied to this road.”

He dismissed Senator Crittenden’s wish to lay the bill on the table, as if arguments might be presented that would prompt him to approve the bill. Senator Tipton would appreciate his vote at some later date, “but prefer taking the question at this time, even if we are so unfortunate as not to be favored with his support; and we expect a favorable decision of the Senate on this important measure, for the northwestern States and Territories.”

He also addressed the talk “about different plans of making roads, and of the science of road making.” He did not claim to be an expert on such matters, “but the national road in Indiana was placed under the direction of an able and efficient officer of the corps of the United States engineers, who was capable of judging of the best method of constructing this road, and was responsible for its faithful execution.” Under this officer, the road was progressing, “with hands and tools enough on the road, to finish it through our State within three years, and a very large portion of the road was now ready to receive the stone.” The stone, as everyone familiar with roadmaking knew, “was the most expensive item of this work, and it would be economy of both money and time, to give the full amount of his estimates for the present year’s appropriations on the work.”

Early approval of the bill was essential, with the construction season commencing in three or four weeks. If additional funds did not become available for use of the superintendent, "the laborers now on the road will be forced to seek employment elsewhere, and he will not be as well prepared to prosecute the work at the beginning of the fall as he will be on the 1<sup>st</sup> of April":

Gentlemen will see that it is vastly important for us that they decide this matter speedily. If the road is to drag on slowly, under limited appropriations, say so. If it was to be abandoned, let us know it. We are now as well prepared as we expect to be at any future time, to abide the disastrous consequences to our new and rising country. The estimate to continue the work in Ohio, this year, is \$320,000. My colleague (Mr. Hendricks,) has withdrawn his proposition to increase it. The estimate to continue the road and for bridges, in Indiana, is \$350,00; for Illinois, \$191,000; making the round sum of \$861,000; a little more than was paid into the treasury for lands sold by the United States within the State of Indiana in January last. This small item, I hope, will not frighten our friends. We can as easily appropriate thousands as hundreds, when we have enough to spare. We are anxious to obtain appropriations from your overflowing treasury, sufficient to finish the road, and to surrender it to the States through which it passes, that they may keep it in repair, and stop any further drains from the treasury for that object. Let those who use the road contribute to its preservation in all time to come.

The road, he said, was completed east of the Ohio River and had been taken over by the three States and converted to toll roads. "Gentlemen from the Southwest [southern States east of the Mississippi River], who have business at the seat of the national Government, all ascend the Ohio river to Wheeling, and take the Cumberland road for the Eastern cities."

On that note, Senator Tipton concluded his remarks:

There is not a man in the nation, no matter how hostile he may have been or now is to internal improvement by the General Government, who, whilst comfortably seated in the stage, and viewing the fine bridges and magnificent scenery, as he glides swiftly and smoothly over the majestic Alleghanies, can feel otherwise than proud when he reflects he is a citizen of the United States, and that this work will for ever stand forth as an unfading monument of the liberality, enterprise, and munificence of his country.

Senator Buchanan pointed out that "it had been his fate to travel on this same Cumberland road very often," and "it had been a standing subject before Congress, ever since he had been first a member of the other House." He would vote for the bill:

He did not think the friends of the bill should consent to lay it upon the table at the request of the Senator from Kentucky, (Mr. Crittenden,) in the hope that further reflection might induce him to change his opinion. His remarks had induced Mr. B. to believe that the prospect of such a change was but feint.

He had to agree with that Senator that the compacts with the three States did not bound Congress to approve the appropriations:

It cannot be demanded from us as a matter of contract. The two per cent. fund, arriving out of the sales of the public lands, in these States, has long since been expended. It is now millions in the arrear, more than it will ever pay.

He doubted the estimate that the fund would eventually amount to \$7 million. “At all events, it is a prospective contingent calculation; and the money to make the road is required immediately.” He was inclined to grant it, but he wanted to be “distinctly understood” that his support was not contingent on the compact:

Why, then, shall I vote for this appropriation? Simply because it has long been the established policy of Congress to construct this road as far west as the Mississippi. We have acted upon this principle steadily for many years. Shall we now arrest the progress of this road, and abandon the policy which we have so often sanctioned. Is there a single Senator within the sound of my voice, who believes seriously that this will be done? No, sir. The road must be completed.

Senator Buchanan pointed out that Senator Hendricks, as chairman of the Committee on Roads and Canals, had informed the Senate that the amounts contained in the bill were the amounts requested by the engineers “and that they believe this amount of money can be judiciously expended upon the road during the present year.” (Senator Hendricks interrupted to point out that the sums in the bill “were minimum of what the engineers required.”)

He wondered what the basis for withholding the funds could possibly be. “If the road must be made – will be made – why not pass this bill” at a time when the general Treasury was overflowing? He continued:

Besides, if you grant the engineers what they required, and hold them to a strict responsibility for its expenditure, they can never excuse themselves hereafter by alleging that the expense has been increased by your refusal to give them the sum necessary to prosecute the work in the best and most economical manner . . . . I am disposed to complete the work as rapidly as it can be done consistently with the permanent and proper construction of the road.

Senator Buchanan also addressed the lament of the two Senators from Kentucky that the roads in their State, in contrast with the western States, “has been entirely neglected.” Kentucky was not alone; his own State of Pennsylvania had suffered from the same neglect:

I feel proud to say, that she has almost completed her vast system of internal improvements without having received one dollar from the national Treasury. It is true she is in debt, more than twenty millions; but the income which she will derive from these very improvements will, ere long, prevent this debt from being a burthen upon her people. I would advise Kentucky to do likewise.

He also commented on the Maysville veto that Kentucky's Senators were still raising in opposition to the present appropriation bill:

I voted for that bill, and whatever I may have thought, at the time, of the veto on that particular road, I am convinced that the principles which were asserted in it have been of great service to the country.

If we had pursued the system of appropriating money for the construction of roads and canals all over the Union, the attention of Congress would thus have been diverted from the great objects entrusted to our care by the constitution. Our time would have been almost exclusively occupied in this business. Besides, although each member might have prescribed it as a rule for himself to grant no appropriations except to national objects, yet when a road or canal was proposed affecting nearly the interest of his own constituents, he would have been ingenious in satisfying himself that it was of general importance. Such is also the nature of man . . . .

The natural tendency of the system was to proceed to such an extent that, instead of legislating for the great interests of the Union, the chief objects of our pursuit would have been to obtain money from the Treasury to be expended on roads and canals for the benefit of our constituents.

Notwithstanding all the knowledge and all the ability which are centered in Congress, in my humble opinion, we would constitute a very inefficient and injudicious board of internal improvements. I am glad this system has been checked. I think it the very worst mode which we could adopt of expending the surplus in the Treasury.

Senator Buchanan recalled that at an early age, "he had been in Kentucky . . . and yet retained and ever should retain a lively and grateful impression of that visit, but added in conclusion:

But he must also say that he never should forget their roads. He was glad to learn that the road between Lexington and Maysville had been turnpiked. It needed it. He would venture to say, that before this turnpike was made, all the horses which could have been attached to any vehicle of sufficient dimensions to accommodate Orozimbo, would not have drawn him in the spring season of the year, from Maysville to Ashland.

He had hoped Kentucky "might have had the benefit of a set of excellent and able men," to advance the State, as Pennsylvania had, "but who, I am sorry to add, have been swept away by the besome [sic] of reform."

He hoped to obtain Senator Clay's vote, "but he thought the chance of it somewhat slender":

As to completing the work upon the idea or principle of a compact, that was perfectly illusory. The two per cent. fund was long ago exhausted; and the balance in favor of the Government was at least five millions. Why, then, (said Mr. B.) do I vote for this appropriation? Simply because the policy of constructing this road was long since established. Government must, at any rate, be at the expense, and the only question to be considered was one of time. Let it be finished and done with; and leave it not to be said hereafter that the work cost more because of our delay. This is the reason which will govern my vote; as to any compact, bargain, or obligation, I assent to no such doctrine.

Senator John M. Niles of Connecticut, who was new to Congress, said he did not intend to enter into a general discussion of the bill or the Cumberland Road, which in his view was of a local interest far removed from his own constituents. He had no special interest in the subject, but “this was the first time he had been called on to act in relation to the Cumberland road; and, considering that it had been an old and constant claimant, having been for more than thirty years before Congress, he was perhaps called on to pay his respects to it.” It appears to have been a favorite of the government and, like all favorites, had absorbed “a larger share in the public bounty.”

Instead, he wanted to comment on some of the suggestions from the two Senators from Kentucky. He would not do so to take a position on the road, “in the fate of which he felt no particular solicitude.” Rather, he disagreed with some of their positions. By contrast, he understood the position of the two Senators from Indiana, whose “object is to get through this road, to have it made at the expense of the Government, and as soon as possible; and consequently they wish to obtain as large appropriations as they can.” That was only natural.

He understood Senator Clay to say he had long supported the Cumberland Road, “but he seems now to intimate a reluctance to sustain it, because the system of internal improvement, of which he says this road was a part, is suspended.” Note, he said, the word “suspended”:

I will take the liberty to use a more definite term, and inform the gentleman that I think this favorite system of his is ended; that it is overthrown, not only by the act of the Executive, but by public opinion, and that it is ended now, henceforth, and forever.

He says the veto of the bill for the Maysville and Louisville [sic] road had destroyed the system, and that those who sustained the administration which had put down the system, could hardly expect the support of those who are friendly to it. But whilst he still professes to be friendly to the object of this bill, he insists on placing it on a ground, which he must know, would be fatal to it, not only in another quarter, but in Congress. He says the Cumberland road cannot be distinguished from any other work of internal improvement, and that it can rest on no other foundation than the existence of a power in this Government to construct roads. Sir, if this bill can stand on no other foundation than this, it cannot stand at all – it cannot be sustained – it must fall to the ground.

As far as Senator Niles was concerned, the road began because of the compacts, was continued on that basis, and they remain in effect. He regretted that the compacts had been enacted, but “having received the sanction of every administration, from that of Mr. Jefferson to the present, and of every department of the Government – it becomes a grave question, whether we can stop short and now abandon it; whether after all that has been done, after the long course of action on this subject for more than thirty years, the nation is not in some sense committed – is not in some way pledged to complete this road?”

If it is, whether the funds were made available in one year or over several was “not perhaps very material.” The only question concerned “time and convenience, and a wise economy in the expenditure of the money.” In view of the current surplus, “we may perhaps as well appropriate what can be profitably and advantageously expended.” He added, “The sooner we are done with the road the better; it is time this Government was clear of it.”

Senator Clay, however, “appears to have another object in view; to receive his favorite system in another form, by the distribution of the proceeds of the public lands.” It was not surprising “that that gentleman should feel sensibly and deeply the loss of that system.” It was like “a fond child of his; one which he cherished with parental solicitude during its brief and troubled existence.” And now that it has been taken from him, it appears even more interesting, more lovely than if we possessed it. Senator Niles understood Senator Clay’s longing for his dream:

I trust that system is something more than suspended; it is, I hope, ended, and never to be revived, either in its original shape or in any new form or disguise. I hope never to see the day when there will be such an enlargement and extension of the powers and patronage of this Government, as that system is calculated to bring with it. Sir, the accumulation of power here, in this central, this engrossing, engulfing Government, is sufficiently rapid and alarming, without giving any new impetus to its natural tendencies.

Senator Clay wanted to spread the blessing of the government across the whole country with an even hand. “But what does he regard as the blessings of this Government?” Is it the extension of roads and canals? The distribution of large sums of money?:

Sir, I hope never to see the day when the States of the Union shall be encouraged and induced to look up to this central power for money, whether to make their roads and canals, or any other object. I hope the day will never arrive, when the sovereign States shall be reduced to a dependence on this Government; when they shall become its pensioners, as are now the surviving remnants of the glorious army of the revolution.

If these are the blessings the gentleman alludes to, I hope we may be long saved from them. Sooner than vote for such a system, I would see this arm fall from its socket. Would the gentleman have this Government like that of France, where forty millions are expended annually by the Executive on the public roads, and an

immense patronage attending it? If the States are taught to look to this Government for means to construct roads, and to carry on their works of internal improvement, they will soon look here for means for other objects – for the erection of their public buildings, for education, and even for their ordinary current expenses.

It would be “a system of degradation and dependence,” “a vast accumulation of power,” and “a revolution in the system.” The “swelling flood which is now flowing into your Treasury, according to the gentleman from South Carolina, (Mr. Preston,) and which he so eloquently described the other day, would all be wanted to keep up a system like this, and would all go to extend the patronage of this Government.”

The true blessings of this government were diffused over the whole country and all share in them, as he explained in his conclusion:

These blessings are the moral power and influence of this Government; the protection and security which it affords to all; the consciousness of this security, and the peace and happiness which flow from it . . . .

This Government acts on the great body of the people only by its moral power and influence, and the blessing which it confers may almost be compared to those dispensed by Divine Providence: we enjoy, we realize them; we feel their influence, but hardly know the source of the power whence they flow; it is far removed, invisible, and felt only in the blessings it diffuses over the Union.

Senator Benton pointed out that after 30 years, the road still had not reached the Mississippi River:

Some of the superintendents, by the smallness of the sums which they had applied for, had seemed to consider their occupation as a life estate, which it would be a pity to bridge. He had often, and years ago, spoken to the chairman of the Committee on Roads and Canals (Mr. Hendricks) to have these appropriations increased, and the work carried forward more rapidly, as the same superintendent could overlook large portions of the work; and now that large appropriations were actually asked for, a motion was made to reduce them, a motion which Mr. B. hoped would not prevail.

If every project overseen by superintendents would move forward more rapidly, “the public interest would be benefitted by it, though the private interests of some of the superintendents might not.” They might like a long and slow job, but “quick work does best for the country, and now that a good appropriation was asked for, he trusted it would be granted.”

Based on the compact between the general government and the new States, every president beginning with Jefferson and continuing through Jackson had supported it and “had even prevailed in either House of Congress; and, therefore, should not be opposed now”:

It needed bridges, especially over the Wabash, and he hoped they would not be denied. The same road, on this side of the Ohio, had many noble bridges erected on it, of which he would mention the one on the Yohogany [sic], in the State of Pennsylvania; and he should be in favor of treating both ends of the road alike.

He had some views on the complaint about the absence of stone between the Wabash and Mississippi Rivers:

The general character of the country was that of scarcity of stone quarries; but he had been informed by Col. McRae, one of the commissioners for reconnoitering the country for its location, that gravel pits abounded, which would furnish a flint gravel, well adapted to the cover of the road; and he had seen these pits near Vincennes, in the famous swamp called Purgatory, through which General Clark's men marched to surprise the British post at Vincennes, and the character of which was indicated by its name. The ground for many miles was a trembling morass, in which men and horses often sunk, and required help to get them out. Now a good road is there; boughs from the trees being cut and laid on the morass, to form a bed for the gravel which was got from pits in the same prairie which contained the swamp.

Finally, he commented on the dispute between St. Louis and Alton for the Mississippi River crossing. The question did not matter until the road reached Vandalia:

The Senators from those States, now on this floor, were not disposed to balk the bill by a premature difficulty, and he hoped nobody else would raise difficulties for them, while they were in harmony, and disposed to proceed amicably. Sufficient for the day is the evil thereof.

The present goal was to reach Vandalia, with the continuation of the road to be decided then. "All they asked at present were good appropriations for the road and the bridge, and a speedy passage to the bill, that the season for doing the work might not be passing by before the work could begin."

(The Battle of Vincennes, along the Wabash River near the city of that name, took place on February 23-25, 1779. General George Rogers Clark led a militia to victory over a British garrison, Fort Sackville, under command of Lieutenant Governor Henry Hamilton.)

Senator John Davis of Massachusetts, the former Representative who had joined the Senate in 1835, said he had not seen the estimates Senator Hendricks had referred to. "A good deal had been said on the subject, which was an interesting one to all; but he certainly must desire a further opportunity of obtaining information on the subject." For that reason, he moved for an adjournment, which the Senate agreed to, ending the debate for the day.

(On February 29, 1836, Senator John Tyler submitted his resignation from the Senate. In 1834, the Whig-controlled Senate had voted for a measure introduced by Senator Clay to

censure President Jackson for withholding documents related to the Second National Bank of the United States. In 1836, Senator Benton introduced a motion to expunge the censure. The Virginia General Assembly directed Senator Tyler to vote for the motion. Because doing so would violate his beliefs, he resigned his seat. The Senate approved the motion in January 1837.)

When the Senate resumed discussion of the bill on March 4, the first order of business was a vote on Senator Clay's amendment to reduce \$320,000 to \$200,000 for the road in Ohio. The motion was carried, 21 to 19, with Senators Benton, Buchanan, and Webster among the nays.

The Senators next considered the motion to reduce the appropriation for Indiana to \$100,000 instead of \$350,000. Indiana Senator Hendricks pointed out that the motion would reduce the appropriation below the \$182,000 appropriated the previous year. Senator Nehemiah R. Knight of Rhode Island said he "went on the principle that \$200,000 was as much as could be economically expended in one year." Senator William King of Alabama agreed on the amount of \$200,000 as being sufficient for one season. "He thought they ought to complete a part of the road as far as they went, and not leave any of it in an unfinished state, so that it might be transferred to the States."

Senator Clay argued that he could not go beyond \$200,000 "and went into a detail of the several amounts that had been appropriated and expended on the road." He had another amendment to reduce appropriations for Illinois:

He had supposed the appropriation was to go to grading the road in Illinois. If it was to be Macadamized with material to be hauled some thirteen miles, the road from the Wabash to the Mississippi would cost from ten to fifteen thousand per mile. For one, he was not willing to put such an expenditure upon it. The road from Maysville to Lexington, Kentucky, had cost only at the rate of five thousand dollars per mile.

Senator Hendricks pointed out, "There was only about half the distance to work upon the road in Ohio that there was in Indiana. The difficulty in procuring stone was not so great as some gentlemen had imagined, as there were gravel beds of considerable extent convenient to the road."

Senator Benton commented "that it was really wasteful to make these small appropriations," but Senator King said the road had cost more than it was worth:

He would prefer that a reasonable estimate should be made of the expense necessary to complete it, and that companies should be incorporated by the Legislatures of States through which it passed, to make it; and that Congress should make an appropriation to assist them in doing it.

He was certain that this method would cost less than the present proposal. He pointed out that the Senators from the States most involved were the biggest supporters of the road:

They would be glad in his State to have an appropriation even to their common roads. He was disposed to be liberal, but not lavish. He had no disposition to embarrass any of the new States. He lived in one himself. He would vote to limit the appropriation to \$200,000.

Senator Robinson stressed the importance of the road “and would feel sorry if measures should be taken to prevent its being Macadamized”:

The Government had induced people to believe it would go on and make this road, in consequence of which they had been induced to purchase the Government lands at an advanced price, and not to go on with it would be doing injustice to them. Its importance in a national point of view would be enhanced by the increased expedition in transporting the mails.

Moreover, plans for the road had greatly reduced the estimated cost:

He ventured to assert there was no one place where stones would have to be drawn the distance of twenty-five miles. There was one place where a bridge was to be build, to which stones would be drawn thirteen miles.

Senator Tipton said the argument about shipping stones did not apply in Indiana, “where it was abundant.” The engineers, he said, said they could use as much as \$600,000, but could get by with \$350,000 – the amount in the bill. “They did not ask a pledge to make it at the expense which the gentleman from Kentucky [Mr. Clay] had said it would cost, by hauling stone twenty-five miles.”

Senator King asked if the road did not pass through an extensive prairie”:

If it did, he well knew the difficulty and expense in making roads through them, and explained the nature of them at some length. A railroad would, in his opinion, through that level country, answer a better purpose, and cost less, than Macadamized road, and he would prefer that it might be changed to a railroad.

Senator Hendricks replied that those remarks applied to Illinois, not to Indiana:

As the road had been graded with a view to Macadamizing it, the grading would have to be changed, and nearly all the expense of grading that had been done would be lost.

With that, the Senate voted on Senator Clay’s motion to strike out \$350,000 for Indiana and insert \$100,000. The motion lost in a tie, 22 to 22, again with Senator Benton, Buchanan, and Webster voting nay.

Senator Clay introduced a new motion:

. . . provided the expenditure of that portion of the appropriation to be made in the State of Illinois shall be limited to the graduation and bridging of said road,

and shall not be construed as pledging Congress for future appropriations for Macadamizing said road.

He explained that if the purpose was to build a road on the McAdam principles, “it would be cheaper to make both a railroad and a Macadamized road – a railroad to transport the stone upon for the Macadamized road.” He urged his colleagues to approve \$200,000 for Illinois.

Senator Robinson pointed out that while stone was scarce in Illinois, portions of the country abounded with limestone. He opposed the motion.

Senator Clay made one last pitch for his amendment:

[He] had hoped that an amendment so innocent in its character would not have been opposed. If the amendment was not adopted, the Government would stand pledged to go on and Macadamize the whole road. He hoped the amendment would be adopted, and demanded the yeas and nays, which were accordingly ordered.

The motion carried 30 to 13, with Senators Benton and Buchanan voting nay, but Senator Webster voting yea.

Senator John Black of Mississippi offered an amendment to appropriate \$150,000 for repair of the road from Chattahoochie to Chotocton and from Mobile to New Orleans. He contended that “the road embraced in his amendment had as much of a national character as the road through Ohio, Indiana, and Illinois.” It was the route for transporting the southern mail. He added that “population was so sparse in places along these roads that they were not able to keep them in repair.” Although some of his colleagues saw merit in the proposal, they preferred not to clutter the current bill with additional matters. They rejected the motion, 6 to 34, with Senator Clay among those voting for it. Senators Benton, Buchanan, and Webster voted nay.

Senator Arnold Naudain of Delaware offered a motion providing that the appropriations for Ohio, Indiana, and Illinois should be used to complete the greatest continuous portion of such road as possible so they could be surrendered to State control.

Senator Crittenden moved to amend the bill by striking out the words “to be repaid out of the fund reserved for making roads leading to said States.”

After unreported “further remarks,” the Senate adjourned.

Early in activities on March 7, Senators introduced motions, petitions, and other matters for later consideration. During his period, Senator Clay introduced a motion:

*Resolved*, That the Secretary of the Treasury be directed to communicate to the Senate, the total amount expended in constructing and repairing the Cumberland

road, (including bridging,) and distinguishing the sums expended east of Wheeling, and in the three States of Ohio, Indiana, and Illinois, and that he also communicate to the Senate the total amount of the two per cent. fund, which, by the compacts with the States of Ohio, Indiana, Illinois, and Missouri, respectively, was reserved; and of the net proceeds of the sales of the public lands, for making roads or canals leading to those several States, distinguishing between the amounts of that fund which have accrued in each of those States.

The resolution “was considered and agreed to.”

When the Senate returned to the subject on March 11, it shifted to the Committee of the Whole to consider the Crittenden Amendment to strike out the words drawing funds from the two-percent fund reserved for the Cumberland Road. At Senator Clay’s suggestion, Senator Crittenden withdrew the motion, after which Senator Clay offered an amendment to appropriate \$250,000 for Indiana and \$150,000 for Illinois. With these amounts, the bill would be \$600,000. The Committee concurred with the motion, without a recorded vote, after which the motion was reported to the Senate.

Senator Benton, saying Missouri was as interested in these matters as the States to its east, “was much dissatisfied with the slow progress made in carrying this road to the Mississippi.” He also was “much surprised at the manner in which gentlemen had agreed to the reduction of these appropriations. He meant to record his vote in opposition to the retardation of the roads towards the Mississippi.” He wanted a vote so he could register his opposition.

Senator Alexander Porter of Louisiana said “there was also considerable dissatisfaction among his constituents,” but for a different reason than Senator Benton had indicated was the case in Missouri. It related to the overall bill:

They were in Louisiana against taking the public funds for this road, unless an appropriation was made in which all the States could participate. They of the Southwest were called upon to vote for an appropriation of \$600,000 for a road in which they had an interest so weak as to be virtually no interest at all.

He referred to Senator Clay’s land sale revenue distribution bill to enable States to undertake a system of internal improvements throughout the country. He hoped Senator Clay would introduce the bill now, “as this was as good a time as any to do it.” He added, “Voting upon the two per cent. fund was a mere delusion. He hoped the Senator from Kentucky [Mr. Clay,] would oppose this bill now, unless it was made general.”

Senator Clay pointed out that the question at hand was only on reducing the amounts in the overall bill. He hoped Senator Porter would vote yea. “But when the question came to be taken upon the bill itself, perhaps it would be well enough, if the gentleman continued of the same mind, to vote against it.”

Senator Porter said he may have been acting on a misapprehension that only motions related directly to the bill were pertinent. Senator Linn thought the Senator from

Louisiana was referring to Senator Black's motion about a road through Alabama and Mississippi:

The policy, expediency, or power of Congress to make such an appropriation for such an object was not, if I remember right, called in question on that occasion. The question was simply, will the Senate, by adopting this amendment, and others that would probably have been proposed, consent so to load the bill as ultimately to ensure its defeat; for if the amendment offered by the Senator from Mississippi had prevailed, my duty to my constituents would have obliged me to propose another having for its object an appropriation to make the road through the State of Missouri to its western boundary; other members, doubtless, would have felt themselves constrained to have pursued a similar course. It became apparent to every friend of this great national work, that this course would have ensured its certain defeat. Now if the gentleman from Louisiana is anxious his constituents should enjoy a portion of the benefits of this road, all he has to do is to vote a continuance of this great highway through Missouri, Arkansas, and Louisiana, on to the Gulf of Mexico, in the course of which route it is or will be much wanted for military purposes, on account of our proximity to the Mexicans, and the vast hordes of Indians thrown along our borders by the policy of the General Government.

Senator Benton discussed the motion actually before the Senate. He opposed it. He had labored for years to increase annual appropriations for the Cumberland Road to accelerate its progress to the Mississippi River. For many of those years, the Treasury did not have enough funds for that purpose. Now, however, "the treasury was full, there was no earthly reason why this great and necessary work should be delayed":

The people of Missouri were becoming impatient on the subject, and he and his colleague had for years been receiving petitions and memorials of citizens, and resolves of their Legislature, earnestly asking for the completion of the road.

The two Missouri Senators had tried for years to satisfy their constituents, but "nearly at a successful termination of their labors, they found the appropriations reduced, by some arrangement of which he knew nothing; if there had been no arrangement, he mistook the signs evinced, and would take back his words."

With that, the Senate voted to approve Senator Clay's motion, 29 to 11, with Senator Webster voting yea and Senators Benton and Buchanan among the nays.

Senator Porter submitted an amendment, in place of the amendment that Senator Crittenden had withdrawn, to strike out the reference to the two-percent fund. He said he wanted to get a sense of the Senate's views on the matter:

It has been admitted on all hands that this two per cent. fund had long ago been exhausted, and there seemed to imply an absurdity that the money was appropriated out of this fund.

Senator King and Senator Porter “made some remarks in opposition to each other in relation to the exhaustion of the two per cent. fund.” Senator Hendricks argued that the fund would “go far beyond” what was needed for the road in Indiana:

And as the gentleman from Alabama [Mr. King] had said the road east of Wheeling was made more for Kentucky and Tennessee than for Indiana, he could not see the object of this amendment, unless it was to make the bill less acceptable to some gentlemen on the grounds of the compact.

Senator Clay, according to the *Register*, said that “as there seemed to be some inaccuracies in the minds of the Senators on this subject, he would give a history of its origins and progress.” His comments were not reported except for this summary:

He then went into a detailed estimate of the appropriations to the road and the two per cent. fund, for the purpose of showing that the fund was exhausted.

Senator Ewing said that Senator Clay had “fallen into the common error of jumbling all the States immediately interested in this road together, in making his application of the two per cent. fund.” A separate calculation referencing each State “would show a very different result from that to which the Senator from Kentucky had arrived.”

The Senate then voted on Senator Porter’s amendment, rejecting it, 21 to 22. Senators Buchanan and Webster joined Senator Clay, Crittenden, Porter, and others who voted yea. Senator Benton voted nay.

The next vote, on whether to order the overall bill to be engrossed for a third reading, was decided in the affirmative, 27 to 16. Senators Benton, Buchanan, Clay, and Webster voted yea.

The Senate completed its action on the Cumberland Road appropriation bill on March 14 when the bill “was read a third time and passed.” The *Register* did not record discussion or the details of the vote.

Although President Jackson had achieved his goal of paying off the national debt for the first time in history, and running a surplus, he was concerned about developments in Congress. He had followed the debate in the Senate on the Cumberland Road, as Specht explained:

He had still not completely acquiesced to congressional pressure. For example, when the Cumberland Road bill was first introduced in the Senate on February 26, 1836, an amendment was proposed which would have changed the usual means of funding the project. Instead of using the two per cent fund in each affected state, as usually had been the case, the amendment would have required continued direct appropriations from the federal government with no provision for the states to repay.

Jackson immediately began preparing a veto message. In his veto notes, he discussed the history of the Cumberland Road and its finances. He noted that he, like past Presidents, had signed several bills appropriating funds for the road. As the latest Cumberland Road bill now stood in the Senate, however, “the condition which has so uniformly attached to the appropriations for this object viz that the money should be a charge on the two percent funds, has been deliberately [sic] stricken out . . .” To Jackson, such an action was clearly an attempt to have the bill “regarded as a precedent for a general system of appropriations for Internal Improvements.” He could not approve such a step even if it means delaying the completion of the Road and its eventual cession to the states. The Senate, unaware of the President’s veto preparations, failed to pass the amendment . . . .

(After Senator Clay’s distribution plan failed in the House, he worked with Senator Calhoun on a variation involving the growing surplus instead of land-sale revenue. The Heidlers, in their Clay biography, described the result:

They described the money being divided among the states as a loan in order to satisfy the constitutional qualms of opponents, but this transparently semantic dodge fooled nobody. The states would never pay back the money. In addition, the Deposit-Distribution Act, as its name indicated, required the initial deposit of money in state banks before distribution to state governments. Even worse from Clay’s perspective, the bill provided for only a single act of distribution and did not tie the policy permanently to the sale of federal lands. Most expected Jackson to veto it, but to everyone’s surprise he signed the bill into law. Old Hickory judged the large majorities that had favored the bill as veto-proof, and he was careful to avoid hurting Van Buren’s election in the fall by opposing a popular measure.

President Jackson signed “An Act to Regulate Deposites of the Public Money” on June 23, 1836, with funds to be released on a quarterly basis beginning in January 1837.

### **House Consideration of the 1836 Senate Bill**

The House, from early in the session, was disturbed by the failure of a \$3-million Fortification Bill in the previous session when differences with the Senate could not be reconciled – at a time when war with France was a strong possibility. President Jackson’s seventh annual message to Congress on December 8, 1835, had cited the failure of the bill:

Much loss and inconvenience have been experienced in consequence of the failure of the bill containing the ordinary appropriations for fortifications which passed one branch of the National Legislature at the last session, but was lost in the other. This failure was the more regretted not only because it necessarily interrupted and delayed the progress of a system of national defense, projected immediately after the last war and since steadily pursued, but also because it contained a contingent appropriation, inserted in accordance with the views of the

Executive, in aid of this important object and other branches of the national defense, some portions of which might have been most usefully applied during the past season. I invite your early attention to that part of the report of the Secretary of War which relates to this subject, and recommend an appropriation sufficiently liberal to accelerate the armament of the fortifications agreeably to the proposition submitted by him, and to place our whole Atlantic seaboard in a complete state of defense. A just regard to the permanent interests of the country evidently requires this measure, but there are also other reasons which at the present juncture give it peculiar force and make it my duty to call to the subject your special consideration.

In the aftermath of the failure to approve the bill, Representative Cambreleng was particularly upset because the newspapers “stated that his (Mr. C’s) published remarks upon the three million appropriation bill were not made till after the adjournment of Congress, or, in other words, that they were never made at all.” He wanted an opportunity to discuss the matter and thought many other Representatives would want to be speak to the issue as well.

On January 22, 1836, the House engaged in a lengthy debate on the “Fortification Bill of Last Session,” with the Cumberland Road bill cited repeatedly to place the timing of events in context.

Representative John Quincy Adams went into great detail on the matter, while other members of the House interrupted, attempted to interrupt, and complained about his statements.

Representative Henry A. Wise of Virginia gave a lengthy speech in which he summarized the final actions of the previous session based on the record of House debates, during which Representative Cambreleng seethed as he was being portrayed as the cause of the failure.

On the final day of the 23<sup>rd</sup> Congress, the House had decided to notify the Senate that a conference was desired to reconcile differences between the House and Senate versions of the Fortifications Bill. The House then took up other matters, including a “bill to render permanent the present mode of supplying the army, &c., which took up considerable time.” Other matters were raised, but the *Register* noted that “the House was delayed by continual efforts to take up particular subjects not in order.”

Representative Wise continued:

The House then proceeded to the consideration of the Cumberland road bill. Previous to the vote on this bill, the conferees on the three millions amendment had returned into the House.

[Mr. Cambreleng here said, no, no; he had remained in the House, after being appointed on the committee of conference, until the vote on the Cumberland road bill, and voted on that bill; that the committee did not return to the House

until about time of the vote on the Moore and Letcher resolutions, which was some time after 12 o'clock.]

Representative Wise said that Representative Cambreleng “must be mistaken, or he was guilty of a neglect of duty in delaying so long to attend the committee of conference”:

From the time of the appointment of the conferees until the vote on the Cumberland road bill, more than an hour elapses; and if the gentleman was so conscientious about the time of night he legislated, he should have hastened to do his duty on the committee of conference, lest the House should expire before this precious bill could in conscience be saved.

As he recalled, the committee had returned to the House before the vote on the Cumberland Road bill, which “was taken up after 12 o'clock at night,” as he knew from two circumstances.” One was that Representative George R. Gilmer, who was not a member of the 24<sup>th</sup> Congress, had “pulled out his watch, and audibly announced to the House that he could no longer sit in his place and vote, for the reason that the hour of twelve had arrived. He immediately left the House.” The House, after midnight, was “defunct.” Representative Gilmer had not depended “upon that false clock face, (pointing to the clock above the Speaker’s chair,) the hands of which were made that night to point backwards.” Aware of the real time, Representative Wise had intended to oppose the bill based on the end of the 23<sup>rd</sup> Congress on March 4, 1835, “as well as constitutional objections, when I was prevented by my friend from Pennsylvania [Mr. McKennan,] who held me down, in a playful way, in my seat, which circumstances he may recollect”:

Thus I am certain, that when the vote on the Cumberland road bill was taken, the hour had come and was past! I voted on that bill on account of my constitutional objections to it, and declined several votes afterwards, until my colleague [Mr. Mercer] and others convinced me there was no foundation for the objection to voting after 12 o'clock. On the question, “Shall the bill pass?” the vote stood: Yeas 94, nays 80. Number of votes 174.

This sir – this was the last bonafide vote of the last House of Representatives. Here it died, strangled by fraud and foul play!

He asked the House to “stop here a moment” to recall these events from the end of the 23<sup>rd</sup> Congress:

The House will please to remember that the committee of conference was appointed long before the vote on the Cumberland road bill, and time enough for them to have reported before the hour expired.

Remember that the committee of conference returned just before or at the time of the vote on the Cumberland road bill, or just before or at the time of the vote on the Moore and Letcher resolutions. I care not which.

That, from the offering of the three millions amendment until the Cumberland road bill, inclusive, the yeas and nays were called five times, showing, at the different times 186, 175, 197, and 195, and, immediately preceding the Moore and Letcher resolutions, 174 members present and voting.

Mark, now, the names of those who voted on the Cumberland road bill knowingly and wittingly, with proclamation of note, after twelve o'clock at night.

He noted that Representative Samuel Beardsley of New York, had voted yea, but "in a breath afterwards," excused himself from voting because the 23rd Congress had expired. Representative Beardsley interjected that by his watch, the vote had taken place before midnight. "He recollected that there was a diversity of opinion about the hour."

Representative Wise insisted he was certain the vote had occurred after midnight. "I remember well the fact that Mr. Gilmer, whose conscience did keep a strict watch over his timepiece, announced it to the House and departed from his post, which he never did unless compelled by sickness or a sense of duty; and I know that I was held in my seat by the strong arm of a strong friend of the Cumberland road bill." He pointed out that Representative Cambreleng was among those voting nay on the bill. (Here and elsewhere, he was chastised for mentioning the names of other Representatives in violation of the House rules.)

As the debate continued on the failure of the Fortification Bill at the end of the 23<sup>rd</sup> Congress, the Cumberland Road bill was repeatedly mentioned as the last vote before midnight of March 3, 1835, or the first after midnight.

The House did not consider the Cumberland Road itself during the discussion.

On February 11, 1836, Representative Mercer introduced a motion that was amended and agreed to:

*Resolved*, That the Secretary of War be directed to lay before this House a statement of the length and cost of the several portions of the national road west of the river Ohio, which have been completed; also the length and cost, so far as any expense has been incurred upon the same, of such other portions of the said road as have been located, opened, and graduated, or in part constructed; distinguishing respectively in such statement, the cost of the location, opening, graduation, bridges, masonry, and stone covering of the various parts of the said road; that he add to the above statement an estimate of the probable cost of the residue of the said road as far as the river Mississippi; and, also of the relative expense of graduating and covering with stone such parts of the said road as may not have been definitively located and graduated, with reference to the future use of the same as an ordinary Macadamized road and a railway: also, the relative cost of substituting a railway for a Macadamized road on the said graduated surface, and the relative expense of the future repairs of such railway and roads; and that he inform the House by what regulations the economy of the public expenditure on the said road is now secured; and especially whether the said road

is constructed by public contracts or otherwise; and if by contracts, how the execution of those contracts are supervised.

On February 19, Ohio Representative Vinton, a member of the Committee on Roads and Canals, introduced an amendment to the act for continuation of the Cumberland Road act. The amendment was not about funding, he said; it was concerned exclusively with the location of the road in western Ohio:

It was not necessary, therefore, that the bill should be committed. It was important, both to those who opposed and advocated it, that it should be speedily determined so that the work upon the road might progress. Those who intended to object to the passage of the bill, had no objection that it be ordered to a third reading, and they contemplated opposing it on its passage. He hoped, therefore, that the bill should be ordered to be engrossed, and that its further consideration be postponed until the second Tuesday in March.

Representative Samson Mason of Ohio opposed the bill, “but had no objection to dispose of it at present as proposed by his colleague (Mr. Vinton)”:

The people who were interested in opposition to the proposed change in the route of the road, were now moving, and their remonstrance would be sent in at an early day. Some time, however, was necessary, to afford them an opportunity of being heard on the subject. The day to which his colleague had proposed to postpone the bill, would give the desired time, and he had no objection, under the circumstances, that the bill should be ordered to be engrossed. An important report of Lieut. Canfield, accompanied by a plat, on this subject, was ordered to be printed some six weeks since. He was sorry that this printing had not been executed; and without intending to cast any censure upon the printer, he was in hopes that the report to which he referred would be laid on their tables before the bill was finally acted on, as it would facilitate and lead to a correct decision of the subject.

Representative Mercer “said a few words, (which, as usual, from his manner of speaking,) were not distinctly understood by the reporter. He was supposed to be opposed to the bill.”

Members argued that the bill should be committed to committee because there was no reason to give priority to the Cumberland Road bill when other bills of more importance awaited action. Representative Vinton responded “that by ordering the bill to be engrossed, no person’s rights were committed.” He thought it “strange that objection should be made from a quarter not interested, when those who were opposed to the bill did not oppose the course which he had proposed.”

Representative Daniel Wardwell of New York referred to the history of the controversy on the location of the road in western Ohio, “and contended that it was an ordinary proposition, and not entitled to any precedence or extraordinary consideration at the

expense of other measures before the House. It was likely, however, to create a great deal of debate, and he desired that it should take the usual course.”

Representative Vinton argued against commitment, which was then negatived, yeas 46, nays not counted.”

The House approved Representative Vinton’s motion to delay a third reading until March 2. On that date, the subject did not come up; the House considered other matters, including a contested election from North Carolina, a bill for relief of sufferers from the fire in New York City, and the Naval Appropriation Bill.

On April 20, 1836, the War Department sent a letter to Speaker of the House James K. Polk, who had assumed the office on December 7, 1835. The letter was in response to the House resolution of February 11 seeking information on the Cumberland Road west of the Ohio River. Lieutenant Brewerton responded to the House resolution for the State of Ohio. A native of New York City, Brewerton served on the Cumberland Road in Ohio from 1832 to 1836. He would be promoted to Captain on September 21, 1836, and reassigned to work on the Hudson River.

He reported that total expenditures on the road from the Ohio River to the Indiana State line, were \$1,501,068.81 as of September 30, 1835. The road had been completed to Columbus. Completing the road in Ohio would cost \$844,920.98.

With the road completed to Columbus, his estimate for a railroad as a substitute for a McAdam road was based on the distance from that city to the Indiana border:

It may be proper to remark, however, that although the change proposed commences at a point nearly in the centre of the State, still, when the rail-roads now under construction and those contemplated are completed, an unbroken line of communication will be kept up from Baltimore to the Ohio river, and from thence west through the several States traversed by the Cumberland road.

His estimate covered a double-track railway, “to be constructed of flat iron plates, two inches in width by half an inch in thickness, resting on a double road of wooden rails, supported by sleepers of the same material.” Some variations in routing between the road and the railroad would be required, “principally at the crossings of the streams.” Such changes would require a change in law – “no authority being now given for any departure from the original location.”

The total length of the railroad would be 98.2 miles (compared with 96.7 miles for the road), with a total cost of \$1,003,002.17.

He added:

The estimates of the expense of the two kinds of road in repair, and comparison of these results, must of course be considered in some measure conjectural, not

having sufficient data in this country on which to base a rigid examination of the subject

With that caution, he estimated the annual cost of repair to be \$66,121.65.

In summary, he reported that the McAdam road would be 1.5 miles shorter than the railroad; the road would cost \$180,081.19 less than the railroad; and the railroad would cost \$23,334.39 less annually for repair.

Captain Ogden provided an update to General Gratiot on the road in Indiana and Illinois. Neither the Department of War nor Congress had been satisfied with the work of civilian superintendents, Homer Johnson and John Milroy, in Indiana and Illinois. As mentioned earlier, the Act of June 24, 1834, had called on the Department of War to appoint “an officer of the corps of engineers” who “shall be charged with the disbursements of the funds” for construction of the road in Indiana and Illinois. He “shall have, under the direction of the engineer department, a general control over the operations of the said road, and over all persons employed thereon.”

To meet this requirement, General Gratiot appointed Captain Ogden to take over the job. He decided on Terre Haute, Indiana, as his base of operations, despite protests from officials and residents of Indianapolis. Terre Haute was located about midway along the 240 miles of the road he would oversee.

He reported that the timber had been cleared from the road 80 feet wide in Indiana, with all stumps removed from the center 30 feet. Grading had been completed 25 miles east and west of Indianapolis, “after which it was determined to open the road for travel in the shortest possible time, and the graduation was, consequently, thereafter confined to the most difficult and expensive parts, and is now in such a state of forwardness that it can be completed the present year, with the exception of a mile and a quarter on the Wabash bottom.” Although stone was being gathered, none had been put on any part of the road.

As of September 30, 1835, expenditures in Indiana totaled \$570,363.61. To complete the road in accordance with McAdam’s principles would cost \$644,669.99 east of Indianapolis, and \$1,134,596.56 to the west, for a total completed cost in Indiana of \$2,349,573.16. Captain Ogden estimated that the annual cost of repair would be \$189,788.20.

The House resolution had asked about the cost of a railroad instead of a McAdam road in the corridor. Captain Ogden stated:

There is no data on record by which a correct estimate could be made for the cost of graduation and masonry of a rail-road, and the amount put down in *red ink* is the mere conjectural result of a comparison of portions of the road with those of a similar character in Ohio.

With that caveat in mind, he estimated that construction of a railroad would cost \$2,176,611.26, while an additional \$98,976.57 would be needed annually for repair.

In Illinois, the road was through a prairie for the most part. Only a total of 64 miles was through timber land. “The grading on this road has, until the last year, been confined to the timber land and cannot be completed in less than two years.”

Captain Ogden provided data on the cost of the road from the Indiana border only to Vandalia. The dispute on where the road would cross the Mississippi River meant that the location of the road west of Vandalia was not known and could not, therefore, be estimated. Expenditures as of September 30, 1825, totaled \$277,594.83. An additional \$939,407.30 would be needed to complete the road, for a total cost of \$1,217,002.13. The annual cost of keeping the road in repair was \$113,565.47.

With the understanding that the cost of a railroad across the State was speculative, he provided an estimate of \$1,10,926.94 and an annual maintenance cost of \$58,620.03. [*National Road West of the Ohio*, Letter from the Secretary of War, Ho of Reps. War Dept., 24th Congress, 1st Session, April 20, 1836, Doc. No. 230]

On May 4, 1836, the *Register* recorded this discussion of the Cumberland Road:

The bill from the Senate, entitled “An act amendatory of the act for the continuation of the Cumberland road,” was read a third time; and the question being on its passage,

Some debate took place, in which Messrs. MASON, of Ohio, and CRANE, took part.

The hour of one o’clock having arrived, the special order was announced.

Representatives Mason discussed the routing dispute at the Ohio/Indiana border, and opposed the provision in the pending bill that would shift the road to the Dayton-Eaton alignment. Representative Crane responded to his colleague’s views and urged approval of the shift. Before he concluded his remarks, the time for debate was up and the House shifted to the special order to take up the Army Appropriation Bill.

On May 10, President Jackson sent a letter to the Senate and House informing them that the dispute with France had been resolved:

To the Senate and House of Representatives:

Information has been received at the Treasury Department, that the four installments under our treaty with France have been paid to the agent of the United States. In communicating this satisfactory termination of our controversy with France, I feel assured that both Houses of Congress will unite with me in desiring and believing that the anticipations of the restoration of the ancient cordial relations between the two countries, expressed in my former messages on this subject, will be speedily realized.

No proper exertion of mine shall be wanting to efface the remembrance of those misconceptions that have temporarily interrupted the accustomed intercourse between them.

The letter relieved any remaining urgency to appropriate funds to prepare the country for war.

On June 4, Representative Cambreleng said that with so many important bills pending in the House so late in the session, he was compelled to move consideration of the “bill making appropriations for certain fortifications for the year 1836,” and asked for yeas and nays on the motion.

Representative George L. Kinnard of Indiana was one of several Representatives who moved to add other measures to the bill, in his case the Senate bill on the Cumberland Road. Missouri Representative Ashley moved to amend Representative Kinnard’s motion by adding continuation of the national road from the Mississippi to Jefferson City, but his motion lost.

Representative Jonathan McCarty of Indiana “then asked for the yeas and nays on the amendment of his colleague (Mr. Kinnard,) which were not [sic] ordered, and the amendment was not agreed to.”

The House then rejected the Cambreleng motion, 99 to 89, when a two-thirds vote was required.

The subject came up again on June 7, during discussion of the Fortifications Bill. Because of the threatened war with France, consideration of the bill had taken up extensive debate throughout the first session of the 24<sup>th</sup> Congress. On June 7, Representative Kinnard informed his colleagues that the subject “has already consumed its equal share of the consideration of this House,” to the expense of consideration of “other great questions about which the people of the country had more anxiety than about the appropriation of the enormous amount of money embraced in the amendments proposed to the bill,” particularly the people of the western States, “to whose affairs very little time had as yet been devoted”:

He would instance the case of the Cumberland road. It was well known that the work on that great thoroughfare had long been suspended, on account of the failure to pass the necessary appropriation. Considering the time when it was acted on in the Senate, and introduced in this House, Mr. K. thought it was entitled to an early consideration. When, some days since, the chairman of the Committee of Ways and Means proposed to make the present bill the special order of the day, Mr. K. felt it his duty to solicit the honorable chairman to include in his motion the Cumberland road bill. His wishes, and the measure to which he referred, seemed to meet with no favor from that quarter.

Representative Kinnard pointed out that the Senate had reduced the total appropriations for the road:

On what grounds, sir? The ostensible reason, although Mr. K. believed it untenable, was, that there would not be time to expend the money. While this delay is to be extended, is it fair to apply such an argument against the measure in which the whole West is interested, while it falls powerless in the estimation of some gentlemen, when urged against the amendments now under consideration? Here you propose to add to the fortification bill, an immense amount of the public money exceeding by millions the original estimates. Are we satisfied that this amount will be required before the next session? Is your corps of engineers so numerous as to justify the expectation that this money can be judiciously applied to the construction of the works which they are to superintend during the present season, or within twelve or eighteen months?

He doubted that was the case and yet the House endlessly debated expenditures that could not be completed in the near future, while postponing "fair treatment to the other interests of the country." He was interested in funding the national defense "in the proper time and manner," but "he was the representative of a laboring, agricultural, tax-paying and patriotic people," and in their name "would endeavor to avoid giving his approbation to any system of prodigality which might be proposed from any quarter."

These comments did not result in further discussion of the matter before adjournment for the day.

The Cumberland Road came up again briefly on June 21. The Vinton Bill to amend the act for the continuation of the Cumberland road to change the location in western Ohio was read a third time. With the question pending on passage of the bill, Representative Crane "spoke, at some length, on the subject, and was followed by Messrs. Kinnard, Pearce of Rhode Island, Boon, Mason of Ohio, Vinton and Webster. The whole debate related to the proposed change of route in the bill."

Representative Mann, "rose amidst loud calls for the question." He did not intend to make a speech, but stated that "as he was in favor of a straight route on this occasion, he moved the previous question." At the suggestion of several Representatives, he withdrew the motion:

Mr. Mason of Ohio then asked for the yeas and nays on the passage of the bill; which were ordered, and were, yeas 79, nays 88. So the bill was rejected.

The House took up the Senate bill on June 25, this time to consider conversion of the unbuilt portion of the road to a railroad. The Committee on Roads and Canals, with the Department of War's April 20 report in hand, had a question pending on an amendment that would "change the road from a Macadamized road to a railroad." Hulbert discussed this proposal:

But the dawning of a new era in transportation had already been heralded in the national hall of legislation. In 1832 the House Committee on Roads and Canals had discussed in their report the question of the relative cost of various means of intercommunication, including railways. Each report of the committee for the

next five years mentioned the same subject, until, in 1836, the matter of substituting a railway for the National Road between Columbus and the Mississippi was very seriously considered.

In that year a House bill (No. 64) came back from the Senate amended in two particulars, one, authorizing that the appropriations made for Illinois should be confined to grading and bridging only, and should not be construed as implying that Congress had pledged itself to macadamize the road.

The House Committee struck out these amendments and substituted a more sweeping one than any yet suggested in the history of the road. This amendment provided that a railroad be constructed west of Columbus with the money appropriated for a highway. The committee reported, that, after long study of the question, many reasons appeared why the change should be made. It was, they said, stated to the committee by respectable authority, that much of the stone for the masonry and covering for the road east of Columbus had to be transported for considerable distances over bad roads across the adjacent country at very great expense, and that, in its continuance westward through Ohio, this source of expense would be greatly augmented. Nevertheless the compact with the admission of the western states supposed the western termination of the road should be the Mississippi. The estimated expense of the road's extension to Vandalia, Illinois, sixty-five miles east of the Mississippi, amounted to \$4,732,622.83, making the total expense of the entire road amount to about ten millions.

The committee said it would have been unfaithful to the trust reposed in it, if it had not bestowed much attention upon this matter, and it did not hesitate to ground on a recent report of the Secretary of War, this very important change of the plan of the road. This report of the War Department showed that the distance between Columbus and Vandalia was 334 miles and the estimated cost of completing the road that far would be \$4,732,632.83, of which \$1,120,321.01 had been expended and \$3,547,894.83 remained to be expended in order to finish the road to that extent according to plans then in operation; that after its completion it would require an annual expenditure on the 334 miles of \$392,809.71 to keep it in repair, the engineers computing the annual cost of repairs of the portion of the road between Wheeling and Columbus (127 miles) at \$99,430.30.

On the other hand the estimated cost of a railway from Columbus to Vandalia on the route of the National Road was \$4,280,540.37. Thus the computed cost of the railway exceeded that of the turnpike [by] about 20 per cent., while the annual expense of repairing the former would fall short of more than 56 per cent. In addition to the advantage of reduced cost was that of faster time consumed in transportation, for, assuming, as the committee did, a rate of speed of fifteen miles per hour (which was five miles per hour less than the then customary speed of railway traveling in England on the Liverpool and Manchester railroad, and about the ordinary speed of the American locomotives) it would require only

23 hours for news from Baltimore to reach Columbus, forty-two hours to Indianapolis, fifty-four to Vandalia, and fifty-eight to St. Louis.

One interesting argument for the substitution of the railway for the National Road was given as follows:

“When the relation of the general government to the states which it unites is justly regarded; when it is considered it is especially charged with the common defense; that for the attainment of this end and the militia must be combined in time of war with the regular army and the state with the United States troops; that mutual prompt and vigorous concert should mark the efforts of both for the accomplishment of a common end and the safety of all; it seems needless to dwell upon the importance of transmitting intelligence between the state and federal government with the least possible delay and concentrating in a period of common danger their joint efforts with the greatest possible dispatch. It is alike needless to detail the comparative advantages of a railroad and an ordinary turnpike under such circumstances. A few weeks, nay a very few days, or hours, may determine the issue of a campaign, though happily for the United States their distance from a powerful enemy may limit the contingency of war to destruction short of that by which the events of an hour had involved ruin of an empire.”

[Hulbert was summarizing and quoting from *Cumberland Road – Ohio, Indiana, and Illinois* (To accompany Senate bill No. 64), Ho. of Reps., 24th Congress, 1st Session, Rep. No. 671]

These issues came up on June 25. Representative William Jackson of Massachusetts said that he had urged the Committee on Roads and Canals to change the bill from funding a macadam road to a railroad. Further, “having, as I think, given the subject a careful investigation, I feel desirous, notwithstanding my usual repugnance to addressing this House on any subject, of presenting some of the reasons which have operated to produce entire conviction on my mind of the expediency of making this change.”

He had, he said, “been in favor of this enterprise, and urged this change because I wish to continue to act with its supporters, but cannot consistently do so unless the change takes place.” The “motives and reasons” for extending the road west of Wheeling as a national road “have for years ceased to have any existence at all”:

At that time it was urged, and urged with great force and propriety, that it opened an indispensably necessary communication between the Atlantic seaboard and the great West – facility in the benefits of which a large proportion of the nation would participate; and that, by thus facilitating this intercourse, it would bring these remote parts of our wide-extended country into a nearer and more profitable intercourse, and operate as a bond of union between them. But it is now perfectly obvious to me, and I think must be so to all who give to this subject but a slight examination, that these considerations do not now exist and that this Congress

have none of the motives to prompt them to the continued support of this road which induced the Congress in 1820 to commence it.

The mode of travel and exportation have, since that time, undergone an entire change. Science and ingenuity have opened a far better mode of communication between these two extremities of the nation than the most sanguine dreamer could have anticipated from the construction of this road. It is now no longer a connecting link between the Atlantic and the West; nor would it, during a great proportion of the year, be used at all by the travelling community in passing from Wheeling to St. Louis, even if it were finished and in perfect order throughout its whole extent. The Ohio and Mississippi rivers are now the great travelled routes, and far superior in point of convenience, speed, and economy, to anything which a Macadam road ever can be.

After citing the more than 460 miles between Wheeling and Vandalia, as well as proximity to the Ohio River west of Wheeling, he continued:

Not a pound of her foreign supplies or home productions will ever reach their respective destinations by a transit over this road; nor would a trader, in view of his own ease or interest, think of passing over this road from one of these places to the other. The same is true with regard to Indianapolis, the capital of Indiana. This city is only about 100 miles from Cincinnati, and more than 300 from Wheeling. In fact, neither Indiana, Illinois, Missouri, nor any other State in the Union, have any more interest in that part of the Cumberland road located within the limits of Ohio than they have in any of the other roads in that State; and so long as it remains a Macadamized road, the nature of the case forbids the expectation that they ever should have. Nor can it with any more propriety be denominated a State road than a hundred others in Ohio.

The capital of Columbus had little communication with Wheeling, a Virginia city, in contrast to Ohio's own city, Cincinnati:

If the three per cent. reservation from the sales of public lands is the property of and rightfully belongs to Ohio, Indiana, and Illinois, so narrow is the extent of the circle of the benefits of this road, that I should not expect one in a dozen of the Representatives of these States to be willing to have it expended on this road; and, in my opinion, the time is coming, and not far distant either, when the Representatives of those three States will stand in one undivided phalanx on this floor, and tell Congress the construction of this road through their territories has done them, as States, no good, and that the money so prodigally expended upon it ought not be considered as a payment of the three per cent. reservation. What is more, such a statement will be true to the letter, and the inference just as inevitable.

But change the plan of the road, make it a railroad, and it becomes national again, by becoming the shortest and speediest, the most convenient and the most economical route by which the Atlantic and Western extremities of this great and

growing nation can reach each other. When this road was commenced there was almost no practicable way by which the farthest West could be reached by land, and the passage by water from Wheeling to St. Louis was dangerous, tedious, and expensive. Now it requires, and would require, if the Cumberland road was completed on the present plan, two or three days longer, much more labor and fatigue, and nearly double the expense, to go by land which it would do by water; neither way, however, could it be done in less than six days.

By a railroad, forty hours, stops included, will be time enough. Some of our railroad engines travel at a rate, ordinarily, which would pass over this whole route in thirty hours, and this, too, over so much of the road as is built by the United States at an expense only sufficient to keep it in repair and pay for transportation – probably about two cents per mile.

He discussed the cost estimates, summarizing:

The result of the whole of which is, a railroad, with a double track, may be constructed for less money than a Macadamized road, and be kept in repair at half the expense.

Ohio recognized the value of railroads. “The seat of Government in Ohio will doubtless soon be united to its commercial capital, Cincinnati, by a railroad, over which the products of this part of the State and their foreign necessities will continue to pass . . . . The Legislature of Ohio, if I am rightly informed, have already granted a charter for a railroad from Wheeling to Columbus; and the Lake Erie and Mad river railroad, now in the process of construction, runs parallel and near to the line of the Cumberland road, west of Columbus . . . . When these roads are finished, what will that part of the Cumberland road be worth to this nation? Nothing, absolutely nothing.”

In view of all these facts, Representative Jackson asked, “can it be that the congregated wisdom of this nation, at this time of day, will determine to continue this extravagant expenditure in the way and on the plan they have heretofore done?” The road must be abandoned and turned over to the State “as all other mere neighborhood roads are.”

In “the light of truth . . . the soundness and propriety of the measure now recommended are absolutely incontrovertible.” Nothing was odder, he said, “than the strange determination manifested by intelligent gentlemen on this floor, to throw dust into each others’ eyes, in relation to this very subject”:

A railroad is a monopoly! – not so democratic! They are willing that gentlemen of wealth, and aristocrats, should build railroads, and travel on them if they choose! But their constituents are all democratic republicans! – plain men – and want a road on which they can all travel together: no toll, no monopoly, nothing exclusive – a real “people’s” road.

Mr. Chairman, I do not think this a fair representation of the democracy of the West. It requires something more than the mere looking with contempt upon the

pride, luxury, and extravagance of wealth, to make an American democrat. He is himself intelligent, and his means are chosen with a wise adaptation to the end he had in view. The fare on the railroad from this city to Baltimore is higher, in proportion to distance, than upon any other in the Union – the cost of construction being four times as great as it need be in Illinois and Indiana. Now, I would ask the honorable gentlemen if they can fix their thoughts upon one of their intelligent democratic constituents, who would carry his no-monopoly doctrine into practice so far as to pay three dollars and fifty cents for his fare to Baltimore on the turnpike, and be six or eight hours on the road, in preference to paying two dollars and fifty cents in the cars, and be set down in Baltimore after a very comfortable ride of less than three hours? The truth is, none but men of wealth can afford to travel upon the gentlemen's democratic people's road.

The honorable gentleman from Indiana [Mr. Lane] says, "What if a railroad is better!" – and intimates that if the people prefer a common road, it being for their use, gentlemen from other parts of the Union ought not to interfere in the matter – ought not to deny them such a road as they choose.

Mr. Chairman, if this doctrine is true, and the position here assumed tenable, it is a mere local road, and upon no proper rule of action can Congress appropriate another dollar for its continuation or support. But, sir, this road was undertaken and laid out as a national one; has been uniformly defended on this floor on the ground of its generally beneficial and national character, and every dollar expended in Indiana and Illinois has been from the funds of the nation, the reserved fund having long since been exhausted; and I suspect that the honorable gentleman himself will, when the main question on this bill comes up, defend it on the same ground.

According to the *Register*, several Representatives from Illinois and Indiana made "some remarks," but the account did not describe them. However, "the amendment was rejected," without elaboration. "The bill was then laid aside, to be reported to the House."

On June 27, the House Committee of the Whole quickly considered an amendment to an appropriations bill effecting certain Indian treaties. Representative Ashley "objected on the ground that he wished the Cumberland road bills first disposed of, as they had precedence in the order of the House." The House rejected the motion on the treaty bill, then took up a bill making appropriations for certain military and other roads, including examinations and surveys for 1836.

Representative Thomas Corwin of Ohio moved to strike items in the bill for continuing the Cumberland Road in Ohio and Indiana "on the ground that they were embraced in another bill, which was agreed to."

After other amendments, unspecified, were considered, the committee took up the bill for the erection of a bridge across the Ohio River on the route of the Cumberland road. The motion "was considered, and the blanks filled up."

Next, the Committee of the Whole took up the bill for continuing the road from Vandalia to the Mississippi River. The pending question was on a motion introduced by Representative Albert Gallatin Hawes, a Jacksonian from Kentucky, to strike out the provision that the road should be graded to permit the laying of rails on it. After some unspecified discussion, “the amendment was agreed to: Ayes 92, noes 38. The bill was then laid aside, to be reported to the House.”

Next the committee took up the bill to continue the road from the Mississippi River to Jefferson City. Again, Representative Hawes moved to strike out the language calling for grading to allow railroad tracks, which was agreed to.

On June 28, after a move to adjourn failed, 55 to 67, the House again took up passage of the Senate bill. However, parliamentary actions prevented movement on the bill. Representative Mann moved the previous question, while Representative Horace Everett of Vermont moved to lay the bill on the table. Representative McCarty called for a vote on this motion, and Representative Hardin “moved a call of the House, while Representative Hawes moved for adjournment.” The House agreed on adjournment, 60 to 53.

This brief discussion resulted in some confusion and ill consequences for Ohio Representative Taylor Webster when the House returned to the Senate’s Cumberland Road bill during the daytime session on June 29. The discussion began with the pending motions by Representative Mann to “move the previous question” and Representative Everett’s motion to lay the bill on the table. Because the House had adjourned before either motion had been seconded, the House acted on that requirement for the Everett motion “and it was now taken, and decided in the negative without a division.” The *Register* provided an account of what followed:

The question then recurred upon seconding the demand for the previous question, and it prevailed – 70 to 50.

Mr. WEBSTER said he had voted against the motion of the gentleman from Vermont [Mr. Everett] to lay the bill on the table, with the belief that the previous question would not be sustained, and that the bill would be yet modified to meet his views. But as the previous question had now been ordered, so as to cut off all the proposed amendments, that further time might be had to deliberate, and for the friends of the bill to compromise their different views, he renewed the motion.

Mr. LANE called for the yeas and nays; which were ordered, and were: Yeas 67, nays 103. So the House refused to lay the bill on the table. The main question was then ordered to be put; and being put and carried, the bill was ordered to a third reading. The House then, according to order, took recess till four o’clock.

When the House returned for its evening session, Representative Webster would explain the consequence of his out-of-sequence vote, namely that he would not be able to introduce amendments he would explain later in the debate.

As the evening session began, the question was on passage of the Senate bill on appropriations for the Cumberland Road in Ohio, Indiana, and Illinois. Representative McCarty took the floor to provide “at some length” a review of the bill in its present condition and explained his objections (not detailed in the *Register*). He moved to recommit the bill to committee with these instructions:

Strike out from the provisional clause in the first section to the end of the section; and strike out the second section, and insert the following:

Section 2. And be it further enacted, That the money hereby appropriated for the continuation of said road in Indiana and Ohio shall be applied to the graduation and bridging; the same to be let out in contracts and sections, upon public notice, to the lowest bidders, by such superintendent or superintendents, engineer or engineers, as may have charge of said road, under the direction of the Secretary of War: *Provided*, the said Secretary may direct so much of the appropriation for the continuation of the road in Ohio as may be necessary for the completion thereof east of Springfield, to be applied to that purpose: *And provided*, That not more than twenty thousand dollars of the amount thus appropriated for the continuation of the road in Indiana shall be applied in the collection of materials for the bridge over the Wabash.

Following a few words from others that were not recorded, New York Representative Vanderpoel moved the previous question, “but the House refused to second it: Ayes 64, noes 69.”

Representative Webster, an editor and publisher from Hamilton, Ohio, southwest of Dayton and Eaton, said “no member could be more sensitive than he was that the House was fatigued with debates; and while those members most favored of the House could only rise under the repeated cry of ‘question, question, question,’ he could not hope to be heard with attention.” The session had been unusually long, featuring “unparalleled labors,” and members were “preparing for their departure.” Therefore, he did not want to “trespass long,” but the bill “in its present shape would not so well advance the permanent interests of the West as an amendment, which he contemplated, would.” He did not want to defeat the bill, but he supported the motion to recommit it so that it could be perfected. If that motion failed, “though with much reluctance, he would vote for its passage.”

He had submitted an amendment in the Committee of the Whole recommending that future appropriations place the remaining work under the Ohio Board of Public Works:

He had long been of the opinion that the system under which that road had been constructed was extremely faulty, and that the progress of the work, and interests of the public Treasury, required that it should be corrected.

Part of the problem was that the “corps of cadets, and their agents, which were quartered on this road fund, required a large amount for their own pay, and rendered the agency extremely expensive”:

But this was not the greatest objection. The money had been applied, and the work directed, without that regard to economy which had characterized the progress of the public works which had been prosecuted so successfully under the management of the State of Ohio and her corporate companies. . . . Ohio had, with great success and commendable economy, prosecuted her great system of internal improvements.

The work had been accomplished by “men of great scientific attainments in their profession,” and they were Ohio residents:

And it is a subject of cherished pride and boast, that so much has been accomplished for the honor of the State, and for the public good, and for the advancement of the common interests of all her citizens, with so little burden of her treasury. A very different state of feeling existed in regard to the national road.

He was convinced that his amendment “would be a great saving to the road fund, and would greatly accelerate the progress and completion of the work”:

And this proposed amendment having been cut off by the call for the previous question, was one of the reasons which induced him to desire that the bill should be laid, for the present, on the table.

He regretted to say that other proposed amendments, matured and reported by the able and experienced Committee on Roads and Canals, had been cut off. In his opinion, these amendments were essential to the profitable expenditure of the appropriation. It will be recollected by the gentlemen, that the plan of the construction of this road had been once entirely changed; and that the old road east of Wheeling, which had been put in at great expense, had failed to answer the purpose, and had been replaced by a new and different one, at very great expense to the Government, and much inconvenience to the travelling community.

The adopted plan for macadamizing the Cumberland Road may have been appropriate in the mountainous country east of the Ohio River, but “would not long be tolerated through the level and fertile and populous valley of the West.” People there were “too well adapted to a much more easy, cheap, and rapid mode of communication.”

That brought him to his point, namely that the road should be converted to a railroad:

The enterprise of the West would not be content with the tedious and fatiguing stage of six or eight miles per hour, when they can with more safety, much more ease, and at less expense, and the important saving of time, travel 20 or 25 miles on a railroad.

If Congress insisted on completing a macadam road, he had no doubt it would soon be “abandoned by the traveler for the facilities of a railroad, which may be constructed on the same line, or near it.” He believed that when the Baltimore and Ohio Company completed its line parallel to the Cumberland Road east of Wheeling, that road, too, would be abandoned:

It must be so, for there will be few travelers so attached to the old mode of travelling as to be jolted and bruised for days in the stage, when they can make the trip in a single day, and comparatively without fatigue. The old road will doubtless continue to be used as a neighborhood road, to travel from village to village; but should a road for such a purpose be constructed at such expense? He understood the national road to be constructed for national purposes – for general travel.

Anyone who had traveled by railroad understood:

The prosperity of the West demands the speedy construction of such a work; and its enterprise would speedily accomplish it. The construction, then, of a Macadamized road would be unnecessary.

The spread of railroads was shortening the time between cities. For example, “the distance between the termination of the Baltimore and Ohio railroad and the Mississippi would be travelled in two days. It was no idle fancy”:

Unlike most roads, which must wind their grades circuitously through an uneven country, the greater part of that road may be constructed on straight lines and even grades. On a crooked track the speed of the cars cannot exceed a certain limit with safety; but on a straight line almost any required speed may be attained; and all this line between Zanesville and the Mississippi river could be travelled at the rate of twenty miles per hour as safely as the line between this city and Baltimore, or that winding through the mountains between Baltimore and the Ohio river, could at twelve or fifteen miles per hour.

What was needed was “the spirit of the age and the growth of the West. It would be to the travelled community of the West what her great rivers were to her commerce”:

Let this railroad be completed from the Ohio to the Mississippi, and to the farthest West, and it will greatly advance all the interior towns and villages between your canals and rivers, will form a much more valuable channel of communication for commercial purposes than any other road, to forward the production of the interior to their destined markets, and receive in return whatever the necessities of the country require.

For those not familiar with railroads, “this picture may appear too high-wrought.” But anyone who has used railroads would “readily admit its practicability”:

He had himself travelled at a greater speed than twenty miles per hour; he travelled twenty continuous miles in less than an hour over a track not so well adapted to great speed as that now projected.

Many of his colleagues would recall the days when people went from place to place in their own carriages, “and when the tedious journey from the West could only be performed with great fatigue on horseback”:

No one thinks now of making a journey in this style. He who would attempt it would be laughed at as unfashionable and eccentric; as one who neither consulted his ease, his economy, nor his leisure. A private carriage, or a traveler on horseback, is seldom met on any of our great travelling thoroughfares. This results from the great facilities of travelling to any desired point faster and cheaper by other means. And as the number of contiguous lines of stages, steamboats, and railways, is increased, each adds to the importance and increases the business of the other. This was the boasted age of inventions; the hand of improvement was seen and its influence felt every where, advancing the interest and promoting the happiness [sic] of society . . . . The general adoption of railways will accomplish all that is desirable; and, viewed in this light, the connexion of the great Eastern and Western sections of the Union by a railway is of the utmost importance.

Representative Webster had been surprised that his colleagues advocated a macadam road “when they knew that no private company nor their States would adopt any other than a railroad, in several of which they were already engaged”:

He knew them to be gentlemen of intelligence and enlarged views of public policy, and knowing this, he was only the more surprised that they should descend to the argument of the demagogue and cant of the pot-house politician, when, by taking an elevated stand on this subject, so much that is so desirable might be attained for the advancement of the West.

He realized that some of his colleagues rejected the idea because they doubted “that the Federal Government had any power to construct such works.” He had nothing to say to them:

But to those who were willing to complete the national road, he hoped the superior advantages of a railroad would be seen and adopted . . . . The plan should be changed. It was important that the decision should be early made; the interests of the whole country require it. Let its benefits extend to those who may come after us. Let it be not for our use alone; but for our country and posterity.

In closing his speech, which occupied most of four double-columned pages of the *Register*, he said:

His constituents felt a deep interest in the location of this road. That question he had hoped would have been settled before this bill. In this he had been disappointed. Such had been the course of the application for that change, that he

had not been able to present his views upon it. It was the belief that the interests of a large majority of his constituents required that the bill proposing a change of route should be first passed, that had induced him to move to lay this on the table. He regretted that he could not comply with the wishes of all his constituents in reference to it; but as they were themselves divided, he could only endeavor to advance the greater interest.

He would now only say, that he hoped, when that bill came up, he should be able successfully to meet every objection, and refute every argument against its passage, and prevail upon the House to do justice to one of the most populous, fertile, and interesting sections, through which a road could be made in the West.

When Representative Webster concluded, Representative Edward A. Hannegan of Indiana “moved an additional instruction to strike from the bill every thing in relation to a bridge across the Wabash river:”

Mr. LANE said it was not his object to detain the House by a speech, and more especially not to make a speech against the bill, or to submit a motion, which, if adopted, would of necessity result in its defeat; on the contrary, to insure its passage by asking the previous question; which was seconded by the House: Ayes 75, noes 46.

Mr. McCARTY called for the yeas and nays on ordering the main question; which were ordered, and were: Yeas 101, nays 74, as follows:

Finally, Representative McCarty called for the yeas and nays on passage of the bill. The House approved the bill, 105 to 82, with Representative Webster voting, as promised, yea.

After tabling a bill making appropriations for certain military and other roads, the House turned to a “bill for continuing the Cumberland road east of the river Ohio.” On motion of Representative Hardin, the House agreed to lay the bill on the table for later consideration, then took up the bill to continue the road from Vandalia to the Mississippi River. The *Register* described the quick action:

The amendment of the Committee of the Whole was concurred in.

Mr. [John] REYNOLDS, of Illinois, called for the yeas and nays on the engrossment of the bill; which were ordered, and were: Yeas 92, nays, 80.

So the bill was ordered to be engrossed for a third reading to-morrow

The House then took up the remaining bill, to continue the national road from the Mississippi river to Jefferson City, in the State of Missouri.

The amendment of the Committee of the Whole, to strike out that part of the bill providing for the grading of the road in such a manner as will permit the laying of

the rails thereon, was concurred in, and the bill was ordered to be engrossed for a third reading to-morrow.

On June 30, Representative McCarty requested a suspension of the rules for consideration of a joint resolution:

*Resolved by the Senate and House of Representatives of the United States of America,* That in the construction of the Cumberland road in the State of Indiana, the Secretary of War shall cause the appropriation of two hundred and fifty thousand dollars, passed at the present session of Congress for the continuation of the Cumberland road in the State of Indiana, to be applied to the bringing and graduation of said road through the said State, until the said graduation and bridging is finished, except so much as may be necessary for the collection of materials for a bridge on the Wabash, not exceeding twenty thousand dollars.

*And be it further resolved,* That it shall hereafter be the duty of the Secretary of War, in the further construction of said road, to cause the same to be let out by contracts to the lowest bidder, upon notice, under such regulations as the War Department may direct.

He then asked for the yeas and nays, which amounted to 78 yeas and 75 nays, not the two-thirds required to suspend the rules for consideration of the joint resolution.

On July 1, the House read a third time and approved two engrossed bills:

The “Act to continue the national road from Vandalia, in the State of Illinois, to the Mississippi river,” and

The “Act to continue the national road from the Mississippi river to Jefferson city, in the State of Missouri.”

The Senate did not approve either bill.

President Jackson signed “An Act for the continuation of the Cumberland road in the States of Ohio, Indiana, and Illinois” on July 2, 1836. The Act appropriated \$200,000 for continuing the road in Ohio, \$250,000 for the same purpose in Indiana, “including materials for erecting a bridge across the Wabash river”; and \$150,000 for the road in Illinois. The funds were to come from the general Treasury “and replaced out of the fund reserved for laying out and making roads under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri into the Union on an equal footing with the original States.”

The Act added two qualifications:

*Provided,* That the expenditure of the appropriation herein made for the State of Illinois shall be limited to the graduation and bridging of the road therein, and shall not be construed as pledging Congress to future appropriations for the purpose of McAdamizing the same.

Sec. 2. *And be it further enacted*, That the moneys hereby appropriated for the construction of the said road in the States of Ohio and Indiana, be expended in completing the greatest possible continuous portion of said road in the said States, so that such finished parts thereof may be surrendered to the said States, respectively.

In the end, the 24<sup>th</sup> Congress also passed a Fortifications Bill that President Jackson signed on July 2, 1836.

### **The Strong Economy**

In early July 1832, with the charter of the Second Bank of the United States due to expire in 1836, Congress had passed legislation rechartering the bank by a vote of 28 to 20 in the Senate and 167-85 in the House. President Jackson, who had long opposed national banks, vetoed the bill on July 10. Congress was unable to overturn the veto. In anticipation of the bank's closure in 1836, President Jackson had begun withdrawing funds from the bank and shifting the money to State banks. Economic historian John Steele Gordon described the result:

Since these deposits were very large, thanks to the increasing surplus, they allowed the state banks to issue more bank notes. But when the Second Bank of the United States ceased to be the nation's central bank in 1836, it lost its ability to discipline the other banks by refusing to accept their notes in payment of taxes if it thought the issuance of such notes excessive. State banks began to issue more and more bank notes, often using them to create loans on undeveloped land.

The result was a considerable increase in the nation's money supply, which fueled speculation in land and securities. Wall Street saw its first great bull market in 1836 (the year *Wall Street* entered the American lexicon as a synonym for the nation's financial community). Meanwhile, land sales on the frontier soared. The federal government had taken in a total of \$2.5 million from land sales in 1832, but its income from this source had reached \$5 million a month by the summer of 1836. Indeed, this is the origin of the phrase *doing a land-office business*.

President Jackson was horrified by the speculation and the supply of paper money. On June 23, 1836, he had signed, probably reluctantly, the Deposit-Distribution Act that authorized distributing the surplus beyond \$5 million to the States according to population. As a further protection after Congress adjourned in July, Jackson issued the Specie Circular on July 11:

This required that all land sales by the federal government must be paid for with gold and silver [*specie* in economic terms], except for land up to 320 acres that was intended to be occupied by the purchaser. [Gordon, John Steele, "Perils of the Surplus," *American Heritage*, May 2001]

President Jackson submitted his eighth and final message to Congress on December 6, 1836. The economy remained strong, as he pointed out in his first sentence:

Addressing to you the last annual message I shall ever present to the Congress of the United States, it is a source of the most heartfelt satisfaction to be able to congratulate you on the high state of prosperity which our beloved country has attained. With no causes at home or abroad to lessen the confidence with which we look to the future for continuing proofs of the capacity of our free institutions to produce all the fruits of good government, the general condition of our affairs may well excite our national pride.

Expenditures during the years had increased 75 percent to more than \$30 million, but the surplus was nearly \$20 million.

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Receipts into the Treasury during 1836 would total \$47,691,898, including \$22,523,151 from customs, \$24 million from land sales, and the balance from miscellaneous sources:

The expenditures for all objects during the year are estimated not to exceed \$32,000,000, which will leave a balance in the Treasury for public purposes on the first day of January next of about \$41,723,959. This sum, with the exception of \$5,000,000, will be transferred to the several States in accordance with the provisions of the act regulating the deposits of the public money.

Treasury estimated that on January 1, 1837, the unexpended balance of appropriation would be \$14,636,062, “exceeding by \$9,636,062 the amount which will be left in the deposit banks, subject to the draft of the Treasurer of the United States, after the contemplated transfer to the several States are made”:

If, therefore, the future receipts should not be sufficient to meet these outstanding and future appropriations, there may be soon a necessity to use a portion of the funds deposited with the States.

Although he had reluctantly approved the Deposit-Distribution Act, it was “merely for the deposit of the surplus moneys of the United States in the State treasuries for safekeeping until they may be wanted for the service of the General Government.” He was concerned that the States often were advised to use the funds as a gift, “without

regard to the means of refunding it when called for.” The suggestion, he said, “has doubtless been made without a proper attention to the various principles and interests which are affected by it”:

The banks proceeded to make loans upon this surplus, and thus converted it into banking capital, and in this manner it has tended to multiply bank charters and has had a great agency in producing a spirit of wild speculation. The possession and use of the property out of which this surplus was created belonged to the people, but the Government has transferred its possession to incorporated banks, whose interest and effort it is to make large profits out of its use. This process need only be stated to show its injustice and bad policy.

He was proud that the national debt had been extinguished, “but it will be in vain that we have congratulated each other upon the disappearance of this evil if we do not guard against the equally great one of promoting the unnecessary accumulation of public revenue”:

No political maxim is better established than that which tells us that an improvident expenditure of money is the parent of profligacy, and that no people can hope to perpetuate their liberties who long acquiesce in a policy which taxes them for objects not necessary to the legitimate and real wants of their Government . . . .

Should a surplus be permitted to accumulate beyond the appropriations, it must be retained in the Treasury, as it now is, or distributed among the people of the States.

Leaving the surplus in the Treasury was “impracticable; it is, besides, against the genius of our free institutions to lock up in vaults the treasure of the nation.” He did not want to use the surplus to support a standing army, beyond need. “Such a treasure would doubtless be employed at some time, as it has been in other countries, when opportunity tempted ambition.” Simply distributing the surplus among the citizens would be “sporting with the substantial interests of the country, and no system which produces such a result can be expected to receive the public countenance”:

Nothing could be gained by it even if each individual who contributed a portion of the tax could receive back promptly the same portion.

Merely distributing the surplus to the States “would seem to be highly impolitic, if not as dangerous as the proposition to retain it in the Treasury.” He had, in his earliest annual messages (1829 and 1830) recommended this option, but experience in the past two years had “operated a partial change in my views upon this interesting subject.” He regretted that his earlier statements had “been greatly misunderstood”:

At that time the great struggle was begun against that latitudinarian construction of the Constitution which authorizes the unlimited appropriation of the revenues of the Union to internal improvements within the States, tending to invest in the

hands and place under the control of the General Government all the principal roads and canals of the country, in violation of State rights and in derogation of State authority.

Now that the surplus existed, he wanted to clarify suggestions from his earlier messages:

In view of the dangers of such a surplus, and in preference to its application to internal improvements in derogation of the rights and powers of the States, the suggestion of an amendment of the Constitution to authorize its distribution was made. It was an alternative for what were deemed greater evils – a temporary resort to relieve an over-burdened treasury until the Government could, without a sudden and destructive revulsion in the business of the country, gradually return to the just principle of raising no more revenue from the people in taxes than is necessary for its economical support.

As already intimated, my views have undergone a change so far as to be convinced that no alteration of the Constitution in this respect is wise or expedient. The influence of an accumulating surplus upon the credit system of the country, producing dangerous extensions and ruinous contractions, fluctuations in the price of property, rash speculation, idleness, extravagance, and a deterioration of morals, have taught us the important lesson that any transient mischief which may attend the reduction of our revenue to the wants of our Government is to be borne in preference to an over-flowing treasury.

President Jackson's annual message was accompanied by the usual departmental reports, including one from Secretary of War *ad interim* Benjamin F. Butler (who also served as Attorney General). He transmitted a report, dated November 30, 1836, from General Gratiot on the work of the Engineer Department. He attached a report on work in Ohio, but had not yet received a report on progress of the work in Indiana and Illinois. He also attached a report from Captain Delafield on the Cumberland Road east of the Ohio River, but on that subject, stated in his own report:

It will be perceived that the completion of the bridge over Dunlap's creek, which was anticipated at the date of my last report, has been delayed by the unprecedented wet weather, high water in the river, and scarcity of mechanics. The difficulties interposed by the authorities of Bridgeport [as] to its location, caused so much delay in commencing the masonry for the abutments, that the contractors, who had engaged to finish the work before the great rise in the price of labor, provisions, and mechanics' wages took place, not being able to commence their operations early last season, declined to comply this year with the terms of the contract made the last, and thus caused an increase in the cost of its construction. The great rise in the price of iron, of which the bridge is to be constructed, from \$35 to \$55 per ton, and the withdrawal of all the officers of the army, has made it necessary to employ civil agents, which was not considered in the original estimate, and also materially added to its cost, and now renders necessary for its completion, and to perfect the whole work, \$7,183.63, or a fraction less than one per cent. on the original estimate.

All the repairs are finished, except the execution of the contract for completing the bridge over Will's creek, and that for furnishing the masonry, casting the iron work, and putting it in place for Dunlop's creek bridge.

In planning the bridge between Brownsville and Bridgeport, Captain Delafield had proposed to move the touchdown in Bridgeport from the location of its two predecessors. The city feared the shift would divert traffic from the town, hurting its economy. In the end, Captain Delafield was forced to design the bridge to the location in Bridgeport of the earlier structures.

He added the section of the road in Virginia had been turned over to the State in 1837, as a result of which "I have nothing to communicate concerning it."

The inflation General Gratiot cited was a result of dispersion of Treasury funds to State banks, which used the funds as noted earlier.

Lieutenant George Dutton's appended report on November 3, 1836, covered work in Ohio. Work had been partially suspended until mid-July in the absence of an appropriation, with advances made, "on its own responsibility by the Clinton Bank of Columbus, having prevented the operations from being entirely suspended":

This institution having, in July last, declined further agency in relation to the disbursements on the Cumberland road, the Merchants and Manufacturers' Bank of Pittsburg was therefore selected for that purpose, and has, with the aid of the officers attached to the road, performed the duties on the agency in a very satisfactory manner.

By the time of the appropriation of \$200,000 from the Act of July 2, 1836, "the general dispersion of the workmen and laborers, consequent upon the interruption above mentioned, and the great demand throughout the country for every species of labor, together with the high prices of produce, rendered an advance in the previous rates of labor of men, teams, mechanics, &c. indispensably necessary to enable the operations to be resumed, at that advanced state of the season, with the vigor necessary to compensate for the delay and injury arising from the suspension of the work."

Lieutenant Dutton reported that by September 30, 1836, Lieutenant Brewerton had completed the road east of Columbus and surrendered it to the State.

The Act had directed that the funds in the States west of the Ohio River be used to complete continuous portions of the road that could be turned over to the States:

After duly considering the limitations imposed by the act above referred to, it was found, after an attentive examination into the state of the road from Columbus to Springfield, that, owing to the advanced state of the season, the only continuous portion of road which could be completed and surrendered before its close was the first fourteen miles from Columbus, west, to the town of Jefferson.

At the time of the report, operations on the section were “in progress for the completion of the cover of the section of road from Columbus to Jefferson.” Lieutenant Dutton added, “This section of the road passes over swampy and unfavorable ground, and, being much shaded by the dense growth along its border, had presented many obstacles to its rapid completion.”

He reported that after the road was completed, the main expense for keeping it in repair would involve renewal of the metallic cover, “which, from the extent of the transportation over it in heavy coaches and wagons, is subjected to great wear”:

The vast amount of travel and emigration which follows this national thoroughfare, and the annual increase thereof, is such as to defy any attempt at even a conjectural estimate of the amount which may be expected after the lapse of a few years, and the final completion of the road. The amount of tolls already collected, and their rapid increase, afford satisfactory evidence of their future competency, with proper care and management, to keep the road in good and sufficient repair.

He estimated that an appropriation of \$293,390, early in 1837 would fund a plan of operation to complete the road from Columbus to Springfield; complete clearing and grubbing to the Indiana State line; grade the road west from Springfield 19 miles to the Miami River; construct the masonry of bridges and culverts to the Miami River, including quarrying the stone for a bridge over that river; and to erect wooden superstructures for bridges across Mad River and Jackson and Donnel’s creeks west of Springfield.

Captain Delafield’s report indicated that much of the work in 1836 involved completing the third and last stratum on the road in Pennsylvania west of the Monongahela River and the first 14 miles west of Cumberland:

There were, however, several sections through the mountain, the time for completing which had been extended, on account of the difficulty of procuring material, that have all been completed during the past summer.

Progress also was made on bridges:

The masonry of bridges Nos. 2 and 3, over Braddock’s run, was completed last month. The masonry of the large bridge over Will’s creek is progressing well; the two arches have been closed, and centres struck, and the whole structure may be finished by the end of October. The six arches of these three bridges are ellipses, and the stones forming them are all of large masses, cut and prepared on all their surfaces to conform with the curves of the arch from intrados to extrados, and end to end of the arches. The execution and workmanship, as also material of these bridges, are very excellent, and calculated to last for ages. Of the design I must leave others to judge.

As General Gratiot had stated, work on the Dunlap's Creek bridge had been delayed. Captain Delafield stated, "It is hoped to have this work finished for accommodating the travel in all the month of July of next year":

There remain to be executed, at this date, the contract for completing the bridge over Will's creek; the contract for building the masonry and making the castings for the Dunlap's creek bridge, and putting the casting in place.

The projects had been delayed for a reason Captain Delafield elaborated on:

The withdrawal of *every officer of the army and civil agent*, acting as assistant engineers, to aid me in conducting the extended operations on this road, has compelled me to seek for other assistants in the civil walks of life, the salaries for whom formed no part of the original estimate, and were not supposed to be necessary, as officers of the army, well qualified for the service, were detailed for these duties. The officers of the army associated with me in this duty were required with their companies, and the civil agent superintending the eastern end of the road was inducted to leave by a very advantageous offer from the State of Illinois, with a salary very far above the sum I was authorized by the Secretary of War to pay him.

As Secretary Butler noted in his report accompanying the President's message, the Corps of Engineers and Bureau of Topographical Engineers were understaffed, despite efforts in recent years to convince Congress to increase their ranks:

Operations have been also retarded by the difficulty of procuring laborers, and still more by the insufficiency of the Engineer Department to furnish an adequate number of engineers to superintend the constructions. Several important works, authorized at the last session, have not even been commenced, and but little has been done towards the completion of those previously undertaken.

Preparations for war, particularly against the Seminoles in Florida, also affected the availability of engineers. Lieutenant John J. Abert, Chief of the Bureau of Topographical Engineers, in his report accompanying President Jackson's message stated:

Early in the season the necessities of the army were such, that it was found proper to withdraw from topographical duty the greater part of the officers of the army who were then assigned to that duty; and lately, from the same cause, all those who had been previously left have been withdrawn and ordered to join their respective companies.

In addition to this, eight of the officers of the corps of topographical engineers (who whole corps consists of but ten) have been ordered to join the troops on the south and northwestern frontier. From which it will be readily perceived, that the means of this bureau for the executive of its duties have been greatly limited, and of consequence its operations.

As General Gratiot had mentioned, Captain Delafield reported a need for an additional \$7,183.63, “or a fraction less than one per cent. over the original estimate for perfecting the repairs of this road, and to be applied to the Dunlap’s creek bridge.” The inflation cited earlier had prevented the contractors from the Dunlap’s Creek bridge from completing the bridge early in the season. He also discussed the location problem as another reason for the increased cost:

A long and protracted correspondence grew out of the location of this bridge, by the refusal of the authorities of the town of Bridgeport to permit its being located on the site selected by the engineer as best suited for the public interest. The result was so much time lost, that the contractors were thrown into this year with the bulk of their work to perform, and declined doing it under existing circumstances. This additional sum is now asked to finish the whole work, caused as above stated. [*Message from the President of the United States to the Two Houses of Congress, 24th Congress, 2d Session, Ho. of Reps Executive, Doc. No. 2*]

### **Captain Ogden’s Problems**

On December 30, 1836, President Jackson sent documents to Congress from the Engineer Department covering the Cumberland Road in Indiana and Illinois. The report was from Captain Ogden, who was based in Terre Haute, Indiana, to General Gratiot. He had encountered two problems during the year in administering the funds appropriated by the Act of June 24, 1834. The appropriation for the two States had come with a condition that the funds be used to complete “the greatest possible continuous portions of said road in said States.” In July, Captain Ogden had outlined his plan for complying with this requirement:

With the present appropriation, it is proposed to comply with this section by working on three different points, and from thence continue the roads progressively to a junction, viz:

- 1st. At Richmond (within four miles of the Ohio line) from which the work shall continue westward in sections of ten miles; i.e. the grading of the first ten miles to be completed, and the grading of the next ten miles to be made, whilst the first layer of metal is put on the preceding, always giving precedence to completion from the place of starting.
- 2d. At Indianapolis, near the centre, and operating on sections of ten miles east and west, in the same manner as before stated.
- 3d. From the Illinois State line to ten miles east of the Wabash river, progressing eastward in the manner before stated.

It is proposed, preparatory to the operations above recommended, that all bridges and culverts that have been commenced be completed.

For the collection of materials for erecting a bridge across the Wabash river, and the materials for the bridge in the Wabash bottom, it is proposed that a steamboat

of a light draught of water, and six tow-boats, or scows, be constructed or procured immediately as a great portion of the stone will be procured at from 20 to 40 miles above the crossing of the Cumberland road.

In the State of Illinois, I propose to grade the most difficult parts of the road first, but to operate on the whole line. This project is considered the best calculated to serve the interest of the United States, and of Indiana and Illinois; but the execution of it is impracticable in my present situation, because, 1<sup>st</sup>, I am alone, and cannot personally attend to such extended works.

This personnel problem could be solved if he were given assistants stationed at Richmond, Indianapolis, and Terre Haute in Indiana; and assistants at Livingston, Greenup, and Vandalia in Illinois. The Engineer Department did not provide the requested assistance.

The second problem was based on the wording of the Act of June 24, 1834. It provided the officer chosen for the job “shall be charged with the disbursements of the moneys appropriated for the construction of the Cumberland road through the States of Indiana and Illinois.” Captain Ogden explained the problem in a letter to General Gratiot on August 12, 1836:

The law requires (for such has been the construction of it) that the officer selected should personally, and on his own individual responsibility, make disbursements from the Ohio State line to Vandalia, a distance of 240 miles. It is hardly necessary for me to state the impossibility of complying with the requirements of this law; and had the superintendent confined himself strictly to its provisions, he could not have operated on more than 50 miles at any one time – thus requiring five years to perform the work that should be done in one. A due consideration for the interests of the Cumberland road, and for his own reputation, induced the superintendent to employ agents in the disbursements, and by their assistance was enabled to carry on his operations the whole extent of the road . . . .

It is not my object to call your attention particularly to this section of the act, but I have referred it to [you] for the purpose of exhibiting the great pecuniary responsibility that devolves upon the superintendent.

He had previously employed up to six officers to make the disbursements. The disbursements were subject to human error, while the officers were subject to Department of War orders to shift to another assignment, leaving accounts hard to reconcile. The superintendent, who would be personally responsible for correcting errors, would be held liable “without recourse for remuneration”:

I would further state, that the pay and emoluments are not commensurate with the expenditures of the superintendent of the Cumberland road in Indiana and Illinois.

I therefore respectfully solicit your influence, by showing these things in their proper light, to have the proviso “that no per centage shall be allowed to such officer for disbursing moneys appropriated for the construction of such road,”

repealed. I ask for the repeal of this law, as it is personal, and can at present affect none but myself.

General Gratiot forwarded the issue to Secretary Cass, who contacted Attorney General Butler. On July 15, 1836, Butler replied:

I have the honor to state, that, in my opinion, the superintendent selected under that section may be allowed to disburse the funds committed to his care, by turning over the same to the various officers employed under him, and directing them to pay the same to persons doing the work. But though it is not necessary that he should personally pay over the money to the persons doing the work, I think he must be charged with the whole amount placed in his hands, and that he will be personally accountable for the correct disbursement thereof at the Treasury.

Captain Ogden summarized the year's activities in his report to General Gratiot dated November 27, 1836:

The balance of the expenditures of the year has been applied to the construction of the road from the State line of Illinois to twenty miles east of Terre Haute, and the collection of materials for the Wabash bridge, in accordance with the 2d section of the act making the appropriations, with the exception of some slight expenditure made for the preservation of the bridges at White river and Mile creek, and the payment of rakers to prevent the grading previously made from being entirely destroyed.

Grading. – The grading was commenced simultaneously at different points of the road, for 27 miles east of the Illinois line, early in August, and progressed rapidly until early in September; from which time till the close of the month it was almost daily interrupted by rains, and the little work done during this time was not to the best advantage; yet, under the daily expectation of change, and from the necessities of the laborers, it was not suspended at any time for more than a day.

Some detached pieces of the grade are finished, amounting in all to 15 miles, which will be ready for the first stratum of metal next spring; and during the year, from 12 to 15 miles will be put under cover.

Masonry. – The operations have been in cutting and preparing stone for the bridges and culverts, laying stone in the abutments of the bridge at Dewee's creek, for the purpose of rendering secure the work that had been previously commenced at that place, and in the construction of culverts.

Carpentry. – In preparing timber and framing the superstructure for bridges, and in construction of machinery, wheelbarrows, &c. [*Cumberland Road and Ohio River*, Message from the President of the United States, Ho. of Reps. Executive, 24th Congress, 2d Session, December 30, 1836, Doc No. 52]

## **As President Jackson Departs**

The day before leaving office on March 4, 1837, President Jackson signed several bills related to internal improvements:

An Act making appropriations for building light-houses, light-boats, beacon-lights, buoys, and dolphins, for the year one thousand eight hundred and thirty-seven.

An Act to provide for certain harbors, and for the removal of obstructions in and at the mouths of certain rivers, and for other purposes, during the year one thousand eight hundred and thirty-seven.

An Act to provide for continuing the construction, and for the repair of certain roads, and for other purposes, during the year eighteen hundred and thirty-seven.

The latter bill included \$190,000 for continuing work on the Cumberland Road in Ohio; 100,000 for the road in Indiana; and \$100,000 for Illinois:

*Provided*, That said road within the State of Illinois, shall not be stoned or graveled, unless it can be done at a cost, not greater than the average cost, of stoning or gravelling said road, within the States of Ohio and Indiana;

The Act provided that the funds were to be “paid out of any money in the Treasury not otherwise approved”:

*Provided*, That in all cases where it can be done, it shall be the duty of the superintended officers, to cause the work on said road to be laid off in sections, and let out to the lowest substantial bidder, after due notice.

*Sec. 2. And be it further enacted*, That the second section of an act for the continuation of the Cumberland road in the States of Ohio, Indiana and Illinois, approved the second day of July, eighteen hundred and thirty-six, shall not be applicable to expenditures hereafter to be made on said road.

Section 3 appropriated \$7,183.63 to reimburse a contractor for work on the Cumberland Road east of the Ohio River.

Section 4 of the Act provided that the Treasury funds appropriated for the Cumberland Road in Ohio, Indiana, and Illinois were to be replaced by revenue from land sales.

During the session, appropriations for the Cumberland Road generated none of the constitutional and expediency battles of years past.

Professor Larson summarized the result of President Jackson’s two terms on the internal improvement arguments:

By the end of the Jackson administration two things were equally apparent: Americans still wanted and needed internal improvements on a monumental scale, but they would not support a consolidated national government intentionally mounting or directing such projects. Nourished by the federal money and land grants disbursed under Adams and Clay – and reinforced by significant infusions of cash slipped past Jackson’s vetoes in appropriations for miscellaneous rivers, harbors, and internal improvements – political and economic leaders in the states once more put their shoulders to the wheels of progress in a second burst of state-level initiatives that quickly filled the space left by Jackson’s retreat from national action. The result, for another brief period, was that a decentralized approach might be satisfactory after all.

Professor Minicucci also summarized Jackson’s impact on internal improvements:

As his policy emerged, Jackson made clear that projects of a *national* character were appropriate objects of Congressional action (these included projects related to ports of entry and those dealing with the Mississippi and Ohio River systems). Thus the link between nation building and improvements was still clearly in evidence . . . .

Jackson’s improvement vetoes closed one avenue for transportation-related projects but federal improvements activity, as measured by total spending, continued to rise. The common historical truism that “President Jackson’s veto of the Maysville Road Bill essentially ended efforts to implement a national transportation program” is simply wrong. Spending rose steadily from Jackson’s first to his fourth Congress, the 24th, which appropriated more funds (direct spending) for internal improvements than any other during the antebellum period.

Although Jackson did not slow the expansion of federal internal improvements spending, he did bring about a significant shift in its composition away from canals (more than one-third of direct improvements spending under Adams, but less than 1 percent under Jackson) and toward territorial roads and river improvements, especially in the West.

Professor Larson added:

More surprisingly, Jacksonian congresses continued to appropriate money for internal improvements at a steadily rising rate (roughly two and half times the Adams administration’s record): Jackson spent almost as much in 1836-37 (while his heir-apparent, Van Buren, was running for the presidency) as Adams in four full years. Yet Van Buren was not entirely wrong when he claimed that Jackson’s vetoes in 1830 and 1833 effectively “banished” internal improvements from the national legislative docket. For nearly two decades nothing was done except under a shroud of Jacksonian disavowal. When distribution came in 1836 it was not Clay’s bill but a makeshift scheme of Calhoun’s to “deposit” with the states (as a loan) the surplus overflowing the federal treasury. Even this Jackson signed reluctantly, and candidate Van Buren campaigned openly in 1836 against any further distribution for the purpose of internal improvement. In the end,

Jacksonians seemed more determined to break up consolidated government than to bind up the nation or to harmonize the sectional interests in the Union. Promises of freedom and prosperity without constraining institutions, national programs, or legislative policies better suited the desires of a people who feared for any reason the exercise of power in Washington . . . .

By the end of the Jackson administration two things were equally apparent: Americans still wanted and needed internal improvements on a monumental scale, but they would not support a consolidated national government intentionally mounting or directing such projects. Nourished by the federal money and land grants disbursed under Adams and Clay – and reinforced by significant infusions of cash slipped past Jackson’s vetoes in appropriations for miscellaneous rivers, harbors, and internal improvements – political and economic leaders in the states once more put their shoulders to the wheels of progress in a second burst of state-level initiatives that quickly filled the space left by Jackson’s retreat from national action. The result, for another brief period, was that a decentralized approach might be satisfactory after all.

Specht summarized:

Total appropriations for internal improvements in 1837 were slightly less than those in 1836, but they were still over \$1,500,000. The situation had gotten so out of control that even Congress began to talk of reductions. The House Ways and Means Committee reported on January 31, 1837, that appropriations for internal improvements, especially river and harbors, were “unproductive” and recommended a “more certain and efficient and economical system” for conducting these types of projects. Jackson’s guidelines had not provided the complete answer to the problem.

## Part 8: Future Presidents Take Over

### President Martin Van Buren

On March 4, 1837, President Jackson's second term came to an end, as Vice President Martin Van Buren became President of the United States. He had received 764,198 votes and 170 electoral votes, with 148 needed to win the 1836 election.

His running mate was Representative Richard M. Johnson of Kentucky – the former Senator mentioned previously during discussions of toll-gate legislation and the Maysville turnpike bill. He received one less electoral college vote than needed to win election when Virginia's 23 electors, who were pledged to vote for him, violated that pledge. They objected to Johnson because he acknowledged his slave mistress, Julia Chinn, as his common-law wife. She died of cholera in 1833, but he raised their two mixed-race daughters, Imogene and Adaline, as his own, giving them his surname. The "faithless electors" voted instead for South Carolina Senator William Smith.

With Johnson one electoral vote short of the 148 needed to win election, the Senate applied the 12<sup>th</sup> Amendment:

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

On February 8, 1837, the Senate chose Johnson, 33 to 16. It was the only time this provision of the 12<sup>th</sup> Amendment has been employed in a vice presidential election. [Shafer, Ronald G., "He became the nation's ninth vice president. She was his enslaved wife," *The Washington Post*, February 9, 2021]

On March 4, 1837, President Jackson released a Farewell Address. In addition to expressing thanks for the responsibility the American people had placed on him, he discussed at length some of the issues he had addressed during his two terms in office.

The Constitution, he said, had begun as an experiment, had passed through many difficulties, and now "we have passed triumphantly through all these difficulties":

Our Constitution is no longer a doubtful experiment, and at the end of nearly half a century we find that it has preserved unimpaired the liberties of the people, secured the rights of property, and that our country has improved and is flourishing beyond any former example in the history of nations.

He went on to discuss such topics as the status of the Indians, who had been moved from their ancestral homes in the Southeast; the gratifying condition of foreign relations; efforts by some to divide the country by region; and his opposition to a national bank.

Returning to the Constitution, he wrote:

It is well known that there have always been those amongst us who wish to enlarge the powers of the General Government, and experience would seem to indicate that there is a tendency on the part of this Government to overstep the boundaries marked out for it by the Constitution. Its legitimate authority is abundantly sufficient for all the purposes for which it was created, and its powers being expressly enumerated, there can be no justification for claiming anything beyond them. Every attempt to exercise power beyond these limits should be promptly and firmly opposed, for one evil example will lead to other measures still more mischievous; and if the principle of constructive powers or supposed advantages or temporary circumstances shall ever be permitted to justify the assumption of a power not given by the Constitution, the General Government will before long absorb all the powers of legislation, and you will have in effect but one consolidated government.

He discussed the tariff battles that had occurred in recent years and the battle over the distribution bill (without mentioning his rival, Senator Clay, the sponsor of the concept). Referring to the high 1832 tariff bill, he wrote:

They succeeded in obtaining a tariff of duties bearing most oppressively on the agricultural and laboring classes of society and producing a revenue that could not be usefully employed within the range of the powers conferred upon Congress, and in order to fasten upon the people this unjust and unequal system of taxation extravagant schemes of internal improvement were got up in various quarters to squander the money and to purchase support. Thus one unconstitutional measure was intended to be upheld by another, and the abuse of the power of taxation was to be maintained by usurping the power of expending the money in internal improvements.

His veto had arrested “this prodigal scheme of injustice” to restore Congress “to the boundaries prescribed by the Constitution.” He was convinced that “this plan of unconstitutional expenditures for the purposes of corrupt influence is, I trust, finally overthrown.”

He pointed out that the national debt had been reduced to zero and that the general Treasury consisted of “a large accumulation of a surplus,” despite the reduced tariff rates approved in 1833. He warned:

But, rely upon it, the design to collect an extravagant revenue and to burden you with taxes beyond the economical wants of the Government is not yet abandoned. The various interests which have combined to impose a heavy tariff and to produce an overflowing Treasury are too strong and have too much at stake to surrender the contest. The corporations and wealthy individuals who are engaged in large manufacturing establishments desire a high tariff to increase their gains. Designing politicians will support it to conciliate their favor and to obtain the means of profuse expenditure for the purpose of purchasing influence in other

quarters; and since the people have decided that the Federal Government can not be permitted to employ its income in internal improvements, efforts will be made to seduce and mislead the citizens of the several States by holding out to them the deceitful prospect of benefits to be derived from a surplus revenue collected by the General Government and annually divided among the States; and if, encouraged by these fallacious hopes, the States should disregard the principles of economy which ought to characterize every republican government, and should indulge in lavish expenditures exceeding their resources, they will before long find themselves oppressed with debts which they are unable to pay, and the temptation will become irresistible to support a high tariff in order to obtain a surplus for distribution.

He urged his fellow-citizens not to be misled. "There is but one safe rule, and that is to confine the General Government rigidly within the sphere of appropriate duties."

He closed his message by writing:

My own race is nearly run; advanced age and failing health warn me that before long I must pass beyond the reach of human events and cease to feel the vicissitudes of human affairs. I thank God that my life has been spent in a land of liberty and that He has given me a heart to love my country with the affection of a son. And filled with gratitude for your constant and unwavering kindness, I bid you a last and affectionate farewell.

Although ill, President Jackson rode to the Capitol alongside 55-year old President-elect Van Buren in a carriage made from the timbers of the U.S.S. Constitution, which had been launched in 1797, saw battle in 1812, and remains afloat today for ceremonial and educational purposes. It was the first time the outgoing and incoming Presidents rode to the inauguration together.

*The Washington Globe* described the day, which was a "lovely day of brightest sunshine [that] gladdened every heart":

[The] paved avenue, of more than a mile in extent, was thronged with citizens from every quarter of the union, all dressed in holiday suits, and cheering each other with eager salutations. At twelve o'clock the late venerable chief magistrate, with his successor by his side, took his seat in the beautiful phaeton built of the wood of the frigate Constitution, and . . . proceeded to the CAPITOL, through the *Pennsylvania Avenue*. An immense crowd filled the square on the east front of the capitol . . . .

On ascending the steps of the eastern portico, cheers of unanimous greeting rose from the surrounding people, and were repeated with an affecting emphasis, when the whitened head of the toil-worn general was seen, for the first time since his sickness, and probably for the last time, rising above the rest, as he ascended the portico of the capitol.

As was customary, Vice President Johnson took his oath of office in the Senate chamber before the group moved onto the platform added to the East Portico. They were greeted by 20,000 people, although observers thought the crowd was more interested in saying goodbye to President Jackson than in welcoming President Van Buren. Senator Benton described the scene:

The day was beautiful – clear sky, balmy vernal sun, tranquil atmosphere; – and the assemblage immense. On foot, in the large area in front of the steps, orderly without troops, and closely wedged together, their faces turned to the portico – presenting to the beholders from all the eastern windows the appearance of a field paved with human faces. This vast crowd remained riveted to their places, and profoundly silent, until the ceremony of inauguration was over. It was the stillness and silence of reverence and affection; and there was no room for mistake as to whom this mute and impressive homage was rendered. For once, the rising was eclipsed by the setting sun. [Benton, Thomas Hart, *Thirty Years' View: A History of the Working of the American Government for Thirty Years*, Volume 1, D. Appleton and Company, 1883]

President Van Buren, referring to his predecessors, began his Inaugural Address by praising “the earliest and firmest pillars of the Republic – those by whom our national independence was first declared, him who above all others contributed to establishing it on the field of battle, and those whose expanded intellect and patriotism constructed, improved, and perfected the inestimable institutions under which we live.” He said, “I tread in the footsteps of illustrious men, whose superiors it is our happiness to believe are not found on the executive calendar of any country”:

Unlike all who have preceded me, the Revolution that gave us existence as one people was achieved at the period of my birth; and whilst I contemplate with grateful reverence that memorable event, I feel that I belong to a later age and that I may not expect my countrymen to weigh my actions with the same kind and partial hand.

(He had been born on December 5, 1782, in Kinderhook, New York, a little over a year after the United States victory in the Battle of Yorktown, October 19, 1781, led to the end of the Revolutionary War.)

As he took office, he said that “in all the attributes of a great, happy, and flourishing people we stand without a parallel in the world.” The country enjoyed the respect of other countries, while at home, “our Government quietly but efficiently performs the sole legitimate end of political institutions – in doing the greatest good to the greatest number – we present an aggregate of human prosperity surely not elsewhere to be found”:

The power and influence of the Republic have arisen to a height obvious to all mankind; respect for its authority was not more apparent at its ancient than it is at its present limits; new and inexhaustible sources of general prosperity have been opened; the effects of distance have been averted by the inventive genius of our

people, developed and fostered by the spirit of our institutions; and the enlarged variety and amount of interests, productions, and pursuits have strengthened the chain of mutual dependence and formed a circle of mutual benefits too apparent ever to be overlooked.

Despite difficulties that initially appeared to be insurmountable, the powers of the Federal and State authorities had been justly balanced. “Overlooking partial and temporary evils as inseparable from the practical operation of all human institutions, and looking only to the general result, every patriot has reason to be satisfied.” The Federal Government was performing its appropriate functions on foreign affairs and domestic matters of national concern, while “every State has remarkably improved in protecting and developing local interests and individual welfare.”

He explained:

For myself, therefore, I desire to declare that the principle that will govern me in the high duty to which my country calls me is a strict adherence to the letter and spirit of the Constitution as it was designed by those who framed it. Looking back to it as a sacred instrument carefully and not easily framed; remembering that it was throughout a work of concession and compromise; viewing it as limited to national objects; regarding it as leaving to the people and the States all power not explicitly parted with, I shall endeavor to preserve, protect, and defend it by anxiously referring to its provision for direction in every action. To matters of domestic concernment which it has intrusted to the Federal Government and to such as relate to our intercourse with foreign nations I shall zealously devote myself; beyond those limits I shall never pass.

He referred to his “illustrious predecessor” who had discharged the sacred trust placed in his hands “faithfully and so well [that] I know that I can not expect to perform the arduous task with equal ability and success”:

But united as I have been in his counsels, a daily witness of his exclusive and unsurpassed devotion to his country’s welfare, agreeing with him in sentiments which his countrymen have warmly supported, and permitted to partake largely of his confidence, I may hope that somewhat of the same cheering approbation will be found to attend upon my path. For him I but express with my own the wishes of all, that he may yet long live to enjoy the brilliant evening of his well-spent life.

He concluded by calling for “the gracious protection of the Divine Being” to look upon the country. “May her ways be ways of pleasantness and all her paths be peace!”

Following the Address, Chief Justice Roger B. Taney administered the Oath of Office to President Van Buren.

Senator Benton’s narration of the day’s events continued by describing the departure of former President Jackson from the platform:

At the moment he began to descend the broad steps of the portico to take his seat in the open carriage which was to bear him away, the deep repressed feeling of the dense mass brook [sic] forth, acclamations and cheers bursting from the heart and filling the air – such as power never commanded, nor man in power received. It was the affection, gratitude, and admiration of the living age, saluting for the last time a great man. It was the anticipation of futurity – unpurchasable homage to the hero-patriot who, all his life, and in all circumstances of his life, in peace and in war, and glorious in each, had been the friend of his country, devoted to her, regardless of self. Uncovered, and bowing, with a look of unaffected humility and thankfulness, he acknowledged in mute signs his deep sensibility to this affecting overflow of popular feeling.

I was looking down from a side window, and felt an emotion which had never passed through me before. I had seen the inauguration of many presidents, and their going away, and their days of state, vested with power, and surrounded by the splendors of the first magistracy of a great republic. But they all appeared to be as pageants, empty and soul less, brief to the view, unreal to the touch, and soon to vanish. But here there seemed to be a reality – a real scene – a man and the people – he, laying down power and withdrawing through the portals of everlasting fame; – they, sounding in his ears the everlasting plaudits of unborn generations.

Jackson, 69 years old, was eager to return to The Hermitage, but was delayed by his ill health. At the new President's request, Jackson remained in the Executive Mansion for a few more days. President Van Buren ordered the Surgeon General, Dr. Thomas Lawson, to accompany the former President at least as far as Wheeling in case he took a turn for the worse.

On March 6, the former President, his party, and Dr. Lawson, took a coach to the train depot at Second Street and Pennsylvania Avenue, NW. According to *The Washington Globe*, he looked “visibly mended since relieved from the cares of his late station; and we have now great hope that his recovery will be perfect, and that he will enjoy many years of health and happiness in the midst of the agricultural occupations of which he is so fond.” He was in good spirits:

The general exhibited an alacrity and gayety of spirit, on taking his departure, which he has not evinced before, since his sickness. Relieved from the cares of state, with all his preparations made for his return homeward, he could not but feel buoyant and happy in finding himself stout enough to undertake his journey, with the prospect of enjoying some years, with his beloved little family around him, at the Hermitage. During some part of the winter, he did not expect ever to revisit Tennessee but as a corpse. He now felt that Providence had willed it otherwise, and, so cheerful was his spirit, that it could not catch the melancholy contagion of his friends around, who were oppressed with the thought of parting with him. He told one merry story after another, rallied his friends, and, on proposing a match to a bachelor of his cabinet, whose eyes were filled with tears, told him that it was his habit to take care of his friends. What he said as a joke,

one at least of those present will ever remember with filial gratitude as a truth.  
[Quotes from *Niles' Weekly Register*, March 11, 1837]

At the station, he boarded a Baltimore and Ohio Railroad train, specially outfitted, for a ride to Ellicott's Mills (Ellicott City today), Maryland, where he would connect with the line to Baltimore to stay with Chief Justice Taney for a few days before returning to The Hermitage. Taney had served under President Jackson in several roles: Acting Secretary of War (June 18, 1831–August 1, 1831), Attorney General (July 20, 1831–November 14, 1833), and Secretary of the Treasury (September 23, 1833–June 25, 1834). President Jackson nominated Taney to become Chief Justice of the United States following the death of Chief Justice Marshall on July 6, 1835. Chief Justice Taney would serve from March 28, 1836, to October 12, 1864.

This was not General Jackson's first trip by rail. On June 6, 1833, he became the first President to take a trip by railroad. He had traveled by horse carriage to Ellicott's Mills, where he boarded a Baltimore and Ohio Railroad carriage for the 13-mile trip to Baltimore.

Author Carlton Jackson summarized former President Jackson's trip in 1837:

An observer noted that Jackson sat comfortably in his coach, waiting for the nine a.m. train to start toward Baltimore. A special car was attached to the train that housed his "travelling carriages," and another car housed a few horses that would pull him southward once the railroads ended . . . .

Before the train started, Jackson sat "composedly" in his car, smoking one of his long-stemmed pipes with tobacco that had probably been grown at the Hermitage. His traveling companions did likewise, some with cigars, considerably fogging up the train compartment. A reporter called the pipe-smoking "a very bad example . . . for if followed by others, public conveyances would become intolerable to those not accustomed to the refinement of pipes and cigars."

The author quoted biographer Marquis James's summary. Former President Jackson walked to the rear to wave at the large crowd that had gathered for his departure:

The conductor rang his bell. With a hiss of steam the cars began to move. General Jackson bowed. The crowd stood still. The train swung around a curve, its course described by a trailing plume of smoke. When this dissolved in the air the crowd began to melt away feeling, one had said, "as if a bright star had gone out of the sky."

After enjoying a day and a half visit with Chief Justice Taney, the former President left Baltimore on March 9, again by rail to the western terminus in Ellicott's Mills:

Arriving in Ellicott Mills, aides and assistants went about the tasks of removing the carriages from the cars that stored them as well as releasing the horses from their specially equipped compartments. From Ellicott Mills, the ex-President's cavalcade continued westward, toward Wheeling.

The account in the *Niles' Weekly Register* is somewhat different. He traveled by rail to Frederick; the Baltimore and Ohio Railroad had reached Frederick in December 1831. There, his carriage and horses awaited him, along with Representative Polk and his wife Sarah and other members of the party. They continued on to Cumberland. *The Washington Globe* reported:

Our latest account of the late president's journey is, that he had reached Flintville [Flintstone], about 70 miles, we believe, beyond Frederick. He was a little fatigued, and delayed by the crowds of his fellow citizens that pressed in from all sides to see and greet him. But he had suffered no relapse, and had every reason to expect an entire restoration of his health, and a speedy and safe return to the Hermitage, cheered at every step by the grateful and affectionate salutations of his countrymen. "Progress of Gen. Jackson," *Niles' Weekly Register*, March 18, 1837]

Author Jackson reported that upon reaching Frostburg, about 11 miles west of Cumberland, Jackson suffered an "indisposition" and needed the assistance of Dr. Lawson. After spending a day at the Highland Hall Hotel while Jackson regained strength, the party returned to the Cumberland Road, passing through Uniontown and Washington in Pennsylvania on March 14.

They reached Wheeling on March 15, the day of Jackson's 70<sup>th</sup> birthday. He did not want to celebrate his birthday at this time, preferring to await his return to The Hermitage. In contrast to his poor reception in Wheeling during his inaugural journey to Washington, he was greeted with birthday well wishes by the crowd.

On March 16, the party boarded the steamship *Fayette* to begin the river journey home, nonstop to Cincinnati, where he spent a few hours with old friends. "It now seemed that his health improved with each and every mile he traveled toward the South."

The *Fayette* reached Louisville on March 20. The city had planned a huge demonstration for the ex-President:

A "Committee of Arrangements" met him and, in a "splendid" open Barouche pulled by four "beautiful grey horses" escorted him to lodgings that had been prepared for him at the Louisville Hotel. Though nearing physical exhaustion, Jackson was "called upon" by hundreds of well wishers. He seemed particularly interested in greeting ladies and small children, "their countenances beaming with affection."

That evening, the *Fayette* resumed the journey. Author Jackson wrote:

Jackson's trip was now upriver, but the mood of everyone on the boat was decidedly upbeat. They came to Nashville late on March 24, and arrived at the Hermitage, amid much rejoicing from friends and neighbors, on Saturday, March 25, 1837. He was home!

## **The Panic of 1837**

In his Inaugural Address, President Van Buren had praised the peace and prosperity the country had enjoyed during the two terms of the Jackson Administration. A few weeks later, the Nation plunged into the Panic of 1837, one of the worst depressions of the 19<sup>th</sup> century. As the Heidlers explained in their biography of Henry Clay:

The Panic of 1837 had many causes, some related to the ill-judged policies of Jackson's administration, some completely beyond the control of any president or any government.

Gold and silver prices, cotton demand, President Jackson's elimination of the Bank of the United States, a poor harvest in England, speculation in land sales, the Specie Circular, and other factors contributed to the downturn:

These accumulating events reached a critical mass in early 1837, just as Van Buren was being sworn in. Panic shot through American financial markets, shattering the banking system and throwing the general population into disarray as a tide of business failures swept over the country. By summer, America had simply stopped working, and forlorn crowds of hollow-eyed men clustered at the doors of more and more banks, trying to get their money, wandering away dazed as those doors closed early, the vaults empty, their contents vanished . . . . Earlier financial downturns had never been so thorough and smashing . . . .

As Minicucci explained, many States that had taken bank loans, including loans from European banks, to finance internal improvements discovered the challenge of borrowing during a boom but having to repay a debt during a bust. As a result, the panic also affected State attitudes about borrowing to pay for internal improvements:

The Panic of 1837 brought an abrupt end to both state and federal improvements activities. The federal government was thrown into deficit for the first time since 1824 and federal improvements spending nearly halted. Suddenly, too, state improvement efforts seemed reckless, not ambitious. As the downturn lengthened into 1841 and 1842, nine states (Florida, Mississippi, Arkansas, Indiana, Illinois, Maryland, Michigan, Pennsylvania, and Louisiana) defaulted on debts, with four of these (Arkansas, Florida, Michigan, and Mississippi) actually repudiating debts of \$13.8 million. These failures, sometimes tainted by corruption, along with a popular rejection of state taxation to fund the not-self-financing improvements, led to a widespread "revulsion" against all government improvement efforts that included even successful states such as New York.

To address issues stemming from the panic, President Van Buren called a special session of Congress that opened on September 4, 1837. His special message to the session discussed banking, the State and Federal role, his opposition to a national bank, and the need for an independent treasury that would collect and disburse revenue (a subtreasury as it would soon be called).

Nearing the end of the message, he explained that the goal was not to aid individuals, directly, "who look to the action of this Government for specific aid to the citizens to

relieve embarrassments arising from losses by revulsions in commerce and credit.” He emphasized that the general government “was not intended to confer special favors on individuals, or on any classes of them; to create systems of agriculture, manufactures, or trade; or to engage in them, either separately or in connection with individual citizens or organized associations.” Such efforts, if attempted, would never be successful:

All communities are apt to look to Government for too much. Even in our own country, where its powers and duties are so strictly limited, we are prone to do so, especially at periods of sudden embarrassment and distress. But this ought not to be. The framers of our excellent Constitution, and the people who approved it with calm and sagacious deliberation, acted at the time on a sounder principle. They wisely judged that the less government interferes with private pursuits, the better for the general prosperity. It is not its legitimate object to make men rich, or to repair, by direct grants of money or legislation in favor of particular pursuits, losses not incurred in the public service. This would be substantially to use the property of some for the benefit of others. But its real duty – that duty, the performance of which makes a good Government the most precious of human blessings, is to enact and enforce a system of general laws commensurate with, but not exceeding, the objects of its establishment; and to leave every citizen and every interest to reap, under its benign protection the rewards of virtue, industry, and prudence.

Although he did not refer directly to internal improvements, his message was clear. He would not approve financing schemes for internal improvements.

The special session failed to approve the bill to establish an independent treasury. President Van Buren would not achieve his goal until July 4, 1840, when he signed “An Act to provide for the collection, safe keeping, transfer, and disbursement of the public revenue.”

President Van Buren had shared President Jackson’s restrictive view on internal improvements during the prosperous Jackson Administration. In the panic years of the Van Buren Administration, the appetite for internal improvements diminished even further. Professor Hill, in his book on the transportation work of the U.S. Army Corps of Engineers, summarized the situation:

Although President Jackson was a less ardent supporter of internal improvements than Adams, he was a less strict constructionist than Van Buren.

As an advisor to President Jackson, Van Buren had helped General Jackson shape his ideas and had written, at least in part, his key veto messages. Like his predecessor, President Van Buren favored only those projects that served national, not local, purposes. (President Van Buren issued only one veto, a pocket veto of a bill unrelated to internal improvements.)

With the spread of railroads, roads were declining as a primary national concern; one of the focuses, therefore, was on river and harbor bills. The first river and harbor act, approved in 1822, appropriated \$22,700 for the purpose. In 1836, Congress approved an

appropriation for river and harbor work totaling \$1,386,722. Professor Hill explained that after Congress appropriated \$1,512,194 for 1838, interest declined:

River and harbor improvement encountered increasing political and constitutional criticism after 1838 and was greatly reduced in volume. Appropriations became intermittent and reached extensive proportions only for two brief intervals before the Civil War.

The appropriation for 1839 was \$58,374. In 1841, operations were suspended.

Secretary of War Joel R. Poinsett, a diplomat and former member of the House of Representatives (1821-1825), shared President Van Buren's strict construction views on internal improvements. As Professor Hill explained:

Poinsett advocated revision of the system of river and harbor improvement, both in principle and in procedure. Too many works had been authorized without a careful determination of their commercial usefulness and comparison of their cost and value. Congress had often restricted the army engineers by requiring that funds be used according to some inflexible plan.

According to Professor Minicucci's count of internal improvements prior to the Civil War:

Federal appropriations for internal improvements amounted to \$119.8 million between 1790 and 1860. The bulk of this amount, \$77.2 million, was distributed to the states through indirect methods, such as land grants or distribution of land sale revenues, which would today be labeled "off-budget." And this figure included the 1836 "deposit" of the federal surplus in state banks, which was not explicitly earmarked for improvements. Thus, the first thirty-five Congresses [through 1859] appropriated \$42.6 million in federal funds for improvements to transportation of all sorts.

The largest category involved aids to navigation (\$14.9 million), including expenditures on rivers and harbors:

Of the \$10.4 million in direct road spending, the majority was dedicated to the National Road [\$6,834,000], the single largest federal project of the antebellum era.

### **President Van Buren on Internal Improvements**

As discussed earlier, President Van Buren had come to the Senate in 1819 as a supporter of internal improvements. Paul R. Alwine, in a 1968 thesis on Van Buren's views on internal improvements, identified Senator Van Buren's four supportive votes.

The first vote was for an 1822 bill appropriating \$9,000 for maintenance of the Cumberland Road and erection of toll-houses. In his autobiography, Van Buren said of the vote:

The Bill came up after I had taken my seat in the Senate and I voted for it rather on the ground of its paternity and the subsequent acquiescence in it, than from an examination of the subject.

According to Alwine, “Van Buren was referring to the approval of funds for the construction of the Cumberland Road by Congress and by Jefferson, Madison, and Monroe since 1806.” Alwine added:

There seems to be little doubt that the freshman senator was influenced by Clay, Calhoun and other supporters who took the lead in advocating passage of the Cumberland Road Bill. That the new senator held these men in high regard, when he entered the Senate, can be seen in his writings.

Consequently he followed their lead on the seemingly logical request for money for the upkeep of this national project. At this time Van Buren had not fully studied the implications and ramifications of federal financing; however, he was aware that proponents of federal financing were attracting much attention and support.

President Monroe, of course, vetoed the bill and provided a lengthy explanation of his views on internal improvements.

Senator Van Buren voted for a second Cumberland Road bill appropriating \$25,000; the bill was carefully worded in accordance with the limits President Monroe had specified for his signature:

Van Buren again supported the bill because \$1,800,000 of public funds had been spent to construct and maintain the road and he felt the money would have been wasted if the road were not kept in passable condition. No doubt he was also influenced by the number of connecting roads that had been constructed at state and county expense along the route and felt their investment should be protected. Monroe’s statement that Congress had the needed power to keep the road in repair must also have influenced his vote.

Although President Monroe signed the new bill, his veto of the earlier toll-gate bill prompted Senator Van Buren to explore the constitutionality of appropriations for internal improvements. In notes prepared before introducing an amendment on the subject, he examined President Madison’s objections to the Bonus Bill and President Monroe’s to the Cumberland Road bill. Alwine wrote:

According to his notes, it was Van Buren’s opinion that unless the constitutional question was clearly defined, “it would not be long in the power of those who were faithful to the principles of the Constitution to arrest or even to check the torrent of reckless legislation which had set in so powerfully.

As discussed earlier, Senator Van Buren introduced a constitutional amendment to provide the authority that President Monroe, and his two predecessors, Presidents Jefferson and Madison, had said was needed to give Congress the authority to appropriate

funds for internal improvements. However, Senator Van Buren was, at the time, not opposed to such appropriations. Alwine explained:

It was obvious that he was not then a firm opponent of federal financing for he said, "if the General Government has not now the power . . . he for one thought that, under suitable restrictions, they ought to have it." It was his hope that by amending the Constitution, the forces that considered the power already existing would co-operate with those who did not so believe and get the matter settled.

Senator Van Buren's amendment and one in the House were not approved.

In 1824, Senator Buren voted in support of a third internal improvements bill. The bill, which Senator Andrew Jackson supported, was for roads in the territory of Florida. It did not raise a constitutional question because Congress had express authority over all governmental activities in the territories.

During 1824, Senator Buren voted nay on a bill permitting Alabama to collect tolls on goods transported on her navigable rivers. During the debate, he pointed out that the Enabling Act allowing Alabama to join the union prohibited such tolls. That same year, he also voted against a bill appropriating \$500,000 to construct a canal from Albemarle Sound in North Carolina to the Atlantic Ocean and removing an obstruction from a channel connecting the Albemarle Sound with Pamlico Sound. He also voted against the General Survey Act of 1824.

During the next session of the 18<sup>th</sup> Congress, he voted for the fourth and final time in support of an internal improvements bill. Senator Benton had sponsored the bill to appropriate \$30,000 to mark a road from Missouri to Mexico through Indian territory.

Alwine's count of yea votes differed from Van Buren's account in his autobiography where he wrote that he had voted "against every similar proposition subsequent to the act to erect tollgates on the Cumberland Road."

Senator Van Buren was increasingly concerned by the growing number of internal improvement bills that had popular support. Alwine wrote:

As a result of the discord apparent whenever the question of federal financing was discussed in Congress and the increasing number of memorials and petitions for aid, Van Buren, as chairman of the Judiciary Committee, became more and more concerned about the legality of these appropriations. Another cause for concern was the mounting cost of these projects which were well known to Van Buren because he was a member of the Finance Committee. Then, too, the scramble for money and resulting log-rolling was getting to be the talk of Congress.

Reflecting on the popular support in Congress, he said "in a large majority of cases the interests of parties and those whose public fortunes they desire to advance are consulted before those of the Country." Van Buren was referring to the many surveys being conducted throughout the country at federal expense, most of which appeared to be of local rather than national benefit. He stated that

the proponents of federal assistance became so alarmed at the flagrant abuses of these surveys that they recommended “that the law should be so altered as to make a specific Act of Congress necessary in each case. No action was taken, however, as more and more requests for federal assistance were initiated by members of Congress. [Alwine, Paul R., *Martin Van Buren and the Internal Improvements Question*, A Thesis Presented to the Department of History and the Faculty of the College of Graduate Studies, University of Nebraska at Omaha, In Partial Fulfillment of the Requirements for the Degree, Master of Arts, November 1968]

With these concerns in mind, Senator Van Buren remained in Washington between sessions of Congress in 1824. He took this opportunity to visit Thomas Jefferson at Monticello, accompanied by Senator Mahlon Dickerson of New Jersey, an acquaintance of the former President. During Jefferson’s stint as Vice President in Philadelphia he had become acquainted with Dickerson who was practicing law in that city. Van Buren recalled the visit in his autobiography. The former President greeted his old friend, Senator Dickerson, and Senator Van Buren “cheerfully and heartily” as they discussed many topics. He added, “I have often reproached myself for having omitted to make memoranda of his original and always forcible observations and never more than at the present moment.”

Among his recollections was a discussion with former President Jefferson on internal improvements:

The subject of Internal Improvements by the General Government was another matter which occupied Mr. Jefferson's attention and caused him much concern. He spoke of it, with some feeling, as a mode of wasting the public revenues, without the probability of adequate returns, and involving violations of the constitution injurious to the interests it professed to advance, and expressed his approbation of the course I was pursuing in regard to the system in flattering terms.

This praise was for Senator Van Buren’s attempt to amend the Constitution, an idea that President Jefferson had expressed on several occasions. Alwine wrote of the visit:

The opinions stated by Jefferson, no doubt strengthened Van Buren’s determination to make another attempt to amend the Constitution. Upon his return to Washington he devoted considerable efforts to the task of preparing a new constitutional amendment.

After weighing all the evidence and ramifications of a change in position from one of swimming with the crowd to one of firm opposition, he announced his intention to oppose federal financing of internal improvements as the Constitution was written.

On December 20, 1824, he introduced a motion consisting of two resolutions. One stated that Congress did not have the power to make roads and canals in the States. The other

called for a joint committee of Congress to study the issue and “report a Joint Resolution, for an amendment of the Constitution, prescribing and defining the power Congress shall have over the subject of Internal Improvements, and subjecting the same to such restrictions as shall effectually protect the sovereignty of the respective States, and secure to them a just distribution of the benefits resulting from all appropriations made for that purpose.”

He explained that he had intended to introduce a Joint Resolution containing an amendment to the Constitution on internal improvements. However, he had listened to others who thought his intent could better be effected by calling for a select committee to be appointed to report on the subject. He doubted that their constituents “felt a more intense interest” in any matter “than the question of the *rightful* and *probable* agency of the General Government in the great work of Internal Improvement.” State projects “had been harmonious in their progress, and, as far as the means of the States would admit of, successful in their results.” Things were different for the general government:

From the first agitation of the subject, the constitutional power of Congress to legislate upon the subject had been a source of unbroken, and, frequently, angry and unpleasant controversy. The time, he said, had never yet been, when all the branches of the Legislative Department were of the same opinion upon the question. Even those who united in the sentiment as to the existence of the power, differed in almost every thing else in regard to it. Of its particular source in the Constitution, its extent and attributes, very different views were entertained by its friends. There had not been anything in the experience of the past, nor was there any thing in the prospect of the future, on which a reasonable hope could be founded, that this great subject could ever be satisfactorily adjusted by any means short of an appeal to the States.

Given the connection between internal improvements and the prosperity of the country, there always would be efforts to induce the central government to undertake such projects. At the same time, there was little reason “to expect that the opposition to it would ever be given up.” Congress had a duty to resolve the dispute. If it did not do so, the “recited complaints of constitutional infraction must tend to relax the confidence of the People in the Government, and that such measures as may be undertaken upon the subject must be constantly exposed to peril from the fluctuations of the opinion of successive Legislatures.”

He did not call for immediate debate on the resolutions:

He did not, of course, wish to press their immediate consideration, but would call them up at as early a day as would comport with the state of public business and the ordinary course of proceeding in the Senate.

For now, he hoped his colleagues would turn their attention to the subject “as soon as they conveniently could, to the end that, when it was taken up, it might be carried to a speedy decision, and not exposed to those unprofitable delays and postponements which

had heretofore attended measures of a similar character, and ultimately prevented an expression of the sense of the Senate on their merits.”

Presidents Jefferson, Madison, and Monroe, he said, had called for an appeal to the people in the form of a proposed constitutional amendment to resolve the issue. “As yet, no decided effort to effect this great object had been made; he permitted himself to hope that such effort would now be made.” He acknowledged that President Adams, by contrast, “entertained opinions, as to the power of Congress, which removed all difficulties upon the subject.” Senator Van Buren, who agreed with the earlier Presidents, said “he felt it his duty to bring the subject thus early before the Senate, and when the proper period for discussion arrived, would avail himself of their indulgence to assign his reasons for the course proposed.”

That “proper period” never arrived. This second attempt to secure an amendment was unsuccessful in the Senate and House. Alwine summarized the result:

While Congress took no action, Van Buren was now firmly opposed to all requests for federal financing of internal improvements without an amendment to the Constitution.

### **President Madison’s Advice**

In the fall of 1826, Senator Van Buren initiated correspondence with former President Madison. In a letter dated August 30, 1826, Senator Van Buren discussed his unsuccessful attempts during the last session of Congress to amend the Constitution:

They were not acted upon through the belief that existing circumstances were unfavourable. It is my intention to attempt something upon the Subject at the commencement of the next, & I take the liberty of saying to you, how much I would be gratified with such suggestions as your health leisure & disposition may permit, you to make.

In a long reply on September 20, 1826, President Madison wrote that he would “feel both gratification & obligation in giving any aid in my power towards making the Constitution more appropriate to its objects, and more satisfactory to the nation”:

But I feel also the arduousness of such a task, arising as well from the difficulty of partitioning and defining Legislative powers, as from the existing diversity of opinions concerning the proper arrangement of the power in question over internal improvements.

In balancing powers among the general and State governments, he considered the alternatives:

Give the power to the General Government as possessing the means most adequate, and the objections are 1. the danger of abuses in the application of the means to objects so distant from the eye of a Government, itself so distant from the eye of the people. 2. the danger from an increase of the patronage and

pecuniary transactions of the General Government, that the equilibrium between that and the State Governments may not be preserved.

Leaving the power exclusively with the States would result in several objections. First, because the Constitution deprives them “of the most convenient source of revenues,” namely tariffs, “improvements might not be made even in cases wholly within their own limits.” Second, where roads or canals might span State borders, “the necessary co-operation might fail from a difficulty in adjusting conditions & details from a want of interest in one of them; or possibly from some jealousy or rivalry in one towards the others.” Finally, if roads or canals might pass through a number of States, “particular views of a single State might prevent improvements deeply interesting to the whole nation.”

Dividing the power between the general and State governments “by allotting the appropriating branch to the former & reserving the jurisdiction to the latter . . . has doubtless, a captivating aspect”:

But to say nothing of the difficulty of defining such a division and maintaining it in practice, will the nation be at the expense of constructing roads & canals without such a jurisdiction over them as will ensure their constant subservience to national purposes? Will not the Utility and popularity of these improvements lead to a constructive assumption of the jurisdiction by Congress, with the same sanction of their Constituents, as we see given to the exercise of the appropriating power already stretching itself beyond the appropriating limit.

He thought “the policy and advantage of roads & canals” had taken such a permanent hold on “the public will, that the constructive authority of Congress to make them will not be relinquished, either by that or the Constituent body”:

It becomes a serious question therefore, whether the better course be not to obviate the unconstitutional precedent, by an amendatory article expressly granting the power. Should it be found, as is very possible, that no effective system can be agreed on by Congress, the amendment will be a recorded precedent against constructive enlargements of power: and in the contrary event, the exercise of the power, will no longer be a precedent in favor of them.

The former President suggested “that it is necessary to keep in view, the distinction between a usurpation of power by Congress against the will and an assumption of power with the approbation, of their Constituents.” As the Alien and Seditions Acts illustrated, when the usurpation is without public support, the people can appeal to Congress to set “every thing to rights.” But with public approbation, “the appeal can only be made to argument & conciliation, with an acquiescence, when not an extreme case, in an unsuccessful result.”

With that background, former President Madison, who had written the first 10 amendments to the Constitution, suggested two simple alternatives:

If the sole object be to obtain the aid of the federal treasury for internal improvements by roads & canals, without interfering with the jurisdiction of the States, an amendment need only say "Congress may make appropriations of money for roads & Canals, to be applied to such purposes by the Legislatures of the States within their respective limits, the jurisdiction of the States remaining unimpaired".

If it be thought best to make a constitutional grant of the entire power, either as proper in itself, or made so by the moral certainty, that it will be constructively assumed, with the sanction of the national will, and operate as an injurious precedent, the amendment can not say less, than that "Congress may make roads & Canals with such jurisdiction as the cases may require" [sic]

In closing, former President Madison commented on a phrase that often had been debated during discussion of the issue:

But whilst the terms, "Common defence & general welfare" remain in the Constitution, unguarded against the construction which has been contended for, a fund of power inexhaustible, & wholly subversive of the equilibrium between the General and the State Governments, is within the reach of the former. Why then not precede all other amendments by one, expunging the phrase, which is not required for any harmless meaning; or making it harmless, by annexing to it, the terms "in the cases authorized by this Constitution."

In a followup letter dated October 15, 1826, he addressed the suggestion in a report of the Committee on Roads and Canals, forwarded by Senator Van Buren, that President Washington interpreted that phrase about common defense and general welfare to mean that Congress had the power to appropriate funds for internal improvements. The former President commented that under the Articles of Confederation, the States were dominant, with little danger of Congress, "a Body so feeble," trying to assume greater power:

There is no evidence however that the old Congress ever assumed such a construction of the "terms common defence & general welfare" as is claimed for the new. Nor is it probable that Genl Washington, in the sentiments quoted from, or for him, had more in view than the great importance of measures beyond the reach of individual States, and, if to be executed at all, calling for the general authority of the Union. Such modes of deducing power may be fairly answered by the question, What is the power that may not be grasped with the aid of them?

On March 3, 1827, Senator Van Buren informed the former President that the plan for proceeding had been dropped at least until the next session.

In a reply on March 13, former President Madison replied:

You did well I think in postponing the attempt to amend the phraseology of the Constitution, on a point essentially affecting its operative character. The State of the political Atmosphere did not promise that discussion and decision on the pure

merits of such an amendment, which ought to be desired. Be pleased to accept, with my cordial salutations, the renewed expression of my great esteem.

Senator Van Buren's efforts to secure an amendment were unsuccessful. Alwine summarized the remainder of Van Buren's Senate years:

Van Buren resisted all bills for internal improvements during the remainder of his service in the Senate and while he did not prevent passage of many bills, he and his coalition succeeded in slowing down the number of bills passed.

Although his views would never change, Senator Van Buren had to accept the power of the Adams-Clay coalition, as he explained in his autobiography:

These movements excited the attention and received the approbation of Mr. Jefferson and raised for the moment the drooping spirits of many sincere State-rights men. It soon, however, became evident that there was no reasonable hope, for their success. It was obvious that the Virginia and Kentucky doctrines of Ninety Eight had been too successfully derided and contemned to leave, at that moment the slightest ground of confidence in the adoption of any such proposition. I therefore, after postponing its consideration from year to year in the hope of more favorable indications, suspended further efforts of that nature.

But it will be seen that I was not idle, and that my failure was not my fault.

Senator Van Buren, based on party concerns in New York, ran successfully for Governor in the 1828 election. He resigned from the Senate on December 20, 1828, and took office on January 1, 1829. He would serve only until March 12, 1829, before resigning to become Secretary of State under President Jackson on March 28.

In October 1832, as he was the candidate for Vice President in President Jackson's second term, Van Buren responded to a letter from a committee appointed during a public meeting in Shocco Springs, North Carolina. William M. Holland's 1836 campaign biography of Van Buren excerpted the portion of the letter covering internal improvements. In it, Van Buren wrote that although internal improvements were diversified, they could be divided into two types of works: (1) those the general government builds in the States, with the jurisdiction as well to ensure preservation and use; and (2) simple grants of money from the general government to the States, known as money power.

He did not believe the general government had the power to undertake internal improvements in the States. The power could not be derived from the fact that a State may consent to the project.

Money power had its own unique problems. No matter how clearly the rules for distributing the funds are prepared for congressional use, there was a "wide difference" between what was on paper and practical application. The difference had been observed "by all who have been entrusted with the management of public affairs."

President Jackson had explained the whole subject of internal improvements in his Maysville Road veto message, which had Van Buren's active, zealous, and anxious support. As discussed earlier, Secretary Van Buren played a pivotal role in writing President Jackson's landmark veto of the Maysville road bill:

The opinions declared by the President in the Maysville, and his succeeding annual messages, as I understand them, are as follows. 1st. That Congress does not possess the power to make or establish a road or canal within a state, with a right of jurisdiction to the extent I have stated; and that, if it is the wish of the people that construction of such works should be undertaken by the Federal Government, a previous amendment of the constitution, conferring that power, and defining and restricting its exercise, with reference to the sovereignty of the state, is indispensable. 2d. An intimation of his belief that the right to make appropriations in aid of such internal improvements of a national character, has been so generally acted upon, and so long acquiesced in by the federal and state governments, and the constituents of each, as to justify its exercise, but that it is nevertheless, highly expedient that even such appropriations should, with the exception of such as relate to light houses, beacons, buoys, public piers, and other improvements in the harbors and navigable rivers of the United States, for the security and facility of our foreign commerce, be deferred, at least until the national debt is paid. 3rd. That if it is the wish of the people that the agency of the Federal Government should be restricted to the appropriation of money, and extended in that form in aid of such undertakings, when carried on by state authority, then the occasion, the manner, and the extent of the appropriation, should be made the subject of constitutional regulation.

In these views I concurred and I likewise participated in the difficulties which were encountered and expressed by the President, in adopting the principle which concedes to the Federal Government the right to make appropriations in aid of works which might be regarded as of a national character; difficulties which arose as well from the danger of considering mere usage the foundation of the right, as from the extreme uncertainty of the best rule that had ever been adopted, or that could in the absence of a positive constitutional provision, be established. The reasons on which these objections were founded, are so fully stated in the document referred to, and have been so extensively promulgated, that it is unnecessary for me to repeat them here. Subsequent reflection and experience have confirmed my apprehensions of the injurious consequences which would flow from the resumption of appropriations for internal improvements, with no better rule for the government of Congress than that of which I have spoken: and I do not hesitate to express it as my opinion, that the general and true interests of the country would be best consulted by withholding them, with the exception which I have already referred to, until some constitutional regulation upon the subject has been made.

In this avowal, I am certainly not influenced by feelings of indifference, much less of hostility to internal improvements. As such, they can have no enemies. I have never omitted to give them all the proper aid in my power; for which by the way, I claim no particular merit, as I do not believe there is an honest and sane man in the country, who does not wish to see them prosper – but their construction, and the manner in which, and the means by which they are to be effected, are quite different questions. Rather than again expose our legislation to all the corrupting influences of those scrambles and combinations in Congress,

which have been heretofore witnessed, and the other affairs of the country, to the injurious effects unavoidably resulting from them, it would, in my opinion, be infinitely preferable to leave works of the character spoken of, and not embraced in the exception which has been pointed out, for the present, to the supports upon which they have reposed with so much success for the last two years, viz: state efforts and private enterprise. If the great body of the people become convinced that the progress of these works should be accelerated by the federal arm, they will not refuse to come to some proper constitutional arrangement upon the subject. The supposition that an equitable rule, which pays a proper respect to the interest and condition of the different states, could fail to receive, ultimately the constitutional sanction, would be doing injustice to the intelligence of the country. By such a settlement of the question, our political system, in addition to the other advantages derived from it, would, in relation to this subject at least, be relieved from those dangerous shocks, which spring from diversities of opinion upon constitutional points of deep interests – and in the mean time, the resources of the country would be best husbanded by being left in the hands of those by whose labor they are produced. [Reproduced in Holland, William M., *The Life and Political Opinions of Martin Van Buren, Vice President of the United States*, Belknap & Hamersley, 1836]

### **The Cumberland Road in 1837**

President Van Buren submitted his first annual message to Congress on December 5, 1837. His message reflected the fact that by then, the country saw some signs that the Panic of 1837 was subsiding. He told Congress:

The pestilence which, invading, for a time, some flourishing portions of the Union, interrupted the general prevalence of unusual health, has happily been limited in extent, and arrested in its fatal career. The industry and prudence of our citizens are gradually relieving them from the pecuniary embarrassments under which portions of them have labored; judicious legislation, and the natural and boundless resources of the country, have afforded wise and timely aid to private enterprise; and the activity always characteristic of our people has already, in a great degree, resumed its usual and profitable channels.

At the start of the year, the balance in the Treasury was \$45,985,023. Receipts during the year totaled an estimated 23,499,981, for an aggregate of \$69,468,504. By the end of the year, the general government will have expended \$35,281,361 on appropriations by Congress, leaving a nominal balance of \$34,187,143:

But of that sum, only one million eight-five thousand four hundred and ninety-eight dollars is considered as immediately available for, and applicable to, public purposes. Those portions of it which will be for some time unavailable, consist chiefly of sum deposited with the States, and due from the former deposite banks.

He had, accordingly, asked the departments to prepare their estimates for 1838 on an economical scale:

In the great and often unexpected fluctuations to which the revenue is subject, it is not possible to compute the receipts beforehand with great certainty; but should they not differ essentially from present anticipations, and should the appropriations not much exceed the estimates, no difficulty seems likely to happen in defraying the current expenses with promptitude and fidelity.

He did not discuss internal improvements. However, he submitted reports from the departments containing “such suggestions as their experience might enable them to make as to what further legislative provisions may be advantageously adopted to secure the faithful application of public moneys to the objects for which they are appropriated; to prevent their misapplication or embezzlement by those entrusted with the expenditure of them; and generally to increase the security of Government against losses in their disbursement.”

Secretary of War Poinsett’s message to the President included reports on the status of the Cumberland Road. One of the reports was from Captain Delafield, who discussed the progress of operations on the Cumberland Road east of the Ohio River during the year ending September 30, 1837. At the time of his report a year earlier, “there remained unfinished the stone bridge over Will’s creek, near Cumberland, and the cast iron bridge over Dunlap’s creek, between Brownsville [sic] and Bridgeport.” The Will’s creek bridge had been finished, “crossing the entire valley of Will’s creek.”

The masonry for the Dunlap’s creek bridge was finished in September 1837:

It is constructed of very large, heavy masses of stone, with beds and joints cut true from face to rear of the walls; laid in cement mortar where exposed to the water, and on the outside; and with cement mixed with lime mortar on all parts.

The arch was to be of cast iron, but was not entirely completed. Captain Delafield said of the bridge:

This work is no where, in that district of country, exceeded in its execution for durability and workmanship . . . .”

The previous year, he had \$29,968.87 to finish repairs of the road, but said at the time that \$7,183.63 more was needed. After spending \$27,626.76 on the bridge across Dunlap’s Creek, he found that additional funds would be needed for completion. He estimated he needed an additional \$7,000 for small items, including “Macadam metal for roadway, scaffolding for raising the bridge, tar and paint for preserving it from rust, and earth for filling the wing walls, after this winter’s settling”:

In again asking for an appropriation to finish this work, the only explanation I have to offer for its necessity are the facts set forth above, that have arisen from the novelty of the undertaking, nothing of the kind ever having been executed in this country, so far as I can learn, and no individual concerned in its construction ever having worked on similar operations.

Lieutenant Dutton, writing from the Cumberland Road Office in Springfield, Ohio, discussed the status of the road in that State. Work had continued through the year, except for “a partial suspension occasioned by the intervention of the last winter.” Even then, “the preparation of metal for covering” the road continued without interruption.

With the \$190,000 appropriated by the Act of March 3, 1836, for the work in Ohio, Lieutenant Dutton “determined to apply as much of the available means to the completion of the road from Columbus to Springfield, a distance of forty-three miles, as could be done consistently with the general interests of the work; and the balance to the extension of the road to the west of Springfield. Most of the funds went to building a McAdam pavement between Columbus and Springfield:

The sub-division of fourteen miles west from Columbus, to the town of Jefferson, was completed during the winter, and received by the Executive of the State on the 25th March last. The preparation of all the metal required for . . . nine miles, in continuation of the twenty-third mile, was completed in May, and six inches laid on the same on the 10th June. The remaining three inches being prepared and in readiness to lay thereon as soon as the former shall have been sufficiently packed to receive it, which has not yet taken place in consequence of the travel during the dry weather of the past season having preferred the by-roads in preference to passing over metal newly laid. This object will, however, soon be effected by the approaching wet weather . . . .

The laying of six inches of metal from the 32d to the 43d mile-stone, in the town of Springfield, was completed in September; and all the grading between Columbus and Springfield will be completed on the 1st of November . . . .

All the masonry on the above division, has been completed and the stone bridges furnished with parapets of cut limestone from the quarries at Springfield.

With the contracts now underway, and expenditure of the most recent appropriation, additional work at an estimated cost of \$30,455 will be needed to complete the entire segment and turn it over to the State, probably next summer:

To the west of Springfield, the operations have this season been extended to the Miami river, sixty-one miles west of Columbus. A contract was entered into in the month of August, for grubbing seven miles from the 55th to the 61st mile, inclusive, to be completed during the ensuing winter.

He added:

After the completion and general use of this thoroughfare, the needful repairs may be made on very reasonable terms by contract or otherwise, and fully, it is confidently believed, within the competency of the tolls to meet.

By proper regulation of the travel, and the encouragement by the rule of tolls or legal enactment of the use of wheels of wide bearing upon vehicles transporting

heavy loads, the extent and cost of the repairs may be diminished in a material ratio.

Lieutenant Dutton estimated that he would need \$243,200 in 1838 for work on the road in Ohio.

Captain Ogden, based in Terre Haute, discussed operations in Indiana and Illinois for the year ending on September 30, 1837. For Indiana, he noted that the Act of July 2, 1836, appropriated \$250,000 to continue the road, but with the condition that the funds be expended “in completing the greatest possible continuous portion of said road in the said States, so that such finished parts thereof may be surrendered to the said States, respectively.” As a result:

In consequence of this provision of the law, the operations, with the exception of some slight measures which were deemed essential to the preservation of the road, were confined to that part of it situated between the Illinois State line and twenty miles east of Terre Haute.

During the fall of 1836 and throughout 1837, operations on this portion of the road consisted of:

Grading – At different points along the line.

Quarrying and hauling stone – For bridges, culverts, and Macadamizing.

Masonry – Cutting stone and laying it in bridges and culverts, and smithery for the same.

Carpentry – Getting out timber for superstructure of bridges; for scows or stone flats for Wabash bridge, and for wooden railway leading from one of the Wabash bridge quarries to the Wabash river; constructing tools, implements, &c.

During this period, the operations in the above branches were pushed forward with all possible despatch; but owing to the excessive rains of the season, they were greatly disturbed and retarded.

Due to the rain, the new grade was first cut into ruts and gullies, then washed partly away; roads to the quarries were rendered unusable; pits sunk for foundations were filled with water; some sites for bridges were overflowed. When the water subsided, work on the foundations was resumed, “only to be overflowed and filled again.”

Starting December 1, work was suspended except for carpentry and cutting and quarrying stone.

The Act of March 3, 1837, appropriated \$100,000 for the extension in Indiana. The legislation dropped the reference to continuous sections, but required Captain Ogden to stop using hired labor for the work and instead use contractors. Therefore, when operations could resume, he brought the hired labor back to finish previously begun work, while letting contracts for new work. Work resumed mostly in early April.

However, he was still hindered by the provision making him responsible for making disbursements at multiple locations in Indiana and Illinois, an impossibility for a single superintendent covering two States. He approached several banks, most of which “were loath to accede to the propositions”:

The bank at Richmond was an exception. It acceded, at once, to the propositions; and arrangements were immediately made for starting a party of engineers to that point of the road. A day was appointed for the stage to make its first trip for the season. Seats were engaged; but the road was deemed impracticable, and, being thus twice disappointed, a private conveyance was at length obtained, and on the 11th of April, a party of engineers, with their instruments, set out for Richmond. The engineers were followed by the superintendent in this, as well as in their other movements of the season.

Preparation of the surveys, drawings, estimates, and specifications allowed for work to be put under contract in May and the early part of June:

The contracts, at this point, provide for the grading, draining, and bridging of more than eight and a half miles of the road; commencing within one mile of the Ohio State line, and proceeding west through the towns of Richmond and Centreville. The sections leading through those towns are to be [sic] graded, paved, and covered with broken stone; and the contracts were taken by the respective town corporations, at the engineer’s estimate.

The engineers proceeded to Indianapolis in early June where they put work under contract on June 19 and 26:

The contracts, at this point, provide for the entire completion of about five miles of the road, leading through the town of Indianapolis, and extending about one mile east, and three miles west. With a view of expediting the work as much as possible, and in order to insure the laying on of two coats of metal during the season, one set of contracts was entered into, providing for the repairs of bridges, for grading and draining the road, and for laying on the metal; while another and different set of contracts provided for the timely delivery of the Macadamizing materials.

After Indianapolis, the team of engineers split into two:

Some of them were engaged in making preparations for putting out contracts on the road, in the western part of Indiana and in the eastern part of Illinois; while the others, followed by the superintendent, proceeded to Vandalia, Illinois, and, about the 1st of July, joined an assistant engineer who had been making preparations at that point during the preceding part of the season . . . .

After returning from Vandalia, six sections of the road were put under contract, at Terra Haute, on the 2d and 6th of September. These contracts provided for the grading, draining, and bridging of a portion of the road, commencing about three miles east of Terre Haute, (to which point the grading, draining, and bridging was

mostly completed,) and proceeding about three and a half miles to the east. Among other things provided for by these contracts, was the construction of bridges, of 60 feet span, over Middle and East Lost creeks.

A contract was let in late June for the delivery of stone “upon the bank of the Wabash river, at a point about 15 miles below Terre Haute. This stone was intended for the Wabash bridge, and will be towed to Terre Haute by a steamboat constructed for the purpose.”

Captain Ogden reported that the contracts in the vicinity of Terre Haute were awarded at the engineer’s estimate; the contracts at Richmond were awarded “at an advance upon the estimate of less than 20 per cent”; but the Indianapolis contracts “were taken at an advance upon the estimate of more than 60 per cent”:

When the contracts at Indianapolis were taken at these high, not to say extravagant rates, it was certainly nothing more than reasonable to suppose that the contractors would push forward, and complete their contracts. But these reasonable expectations have in some cases been disappointed; and this is the only point in the State at which the contractors have willingly relinquished and abandoned their contracts; and the reasons assigned for doing so, are, that the work cannot be done for the contract prices.

Three contracts providing for grading and macadamizing the road through Indianapolis and immediately east and west of the city were abandoned. “The lateness of the period at which these contracts were relinquished, made it impossible to relet them, and to have more than one stratum of metal put on the road during the season.” The single stratum “would have been ground down, and buried in the earth long before spring,” resulting in a waste of the expenditure. Two other contracts, for grading and macadamizing, were relet and were “progressing rapidly, and there is every reason to hope that the works will be completed according to the stipulations of the contracts.”

The contracts awarded at Richmond and Terre Haute were progressing satisfactorily.

For the work planned in 1838, he would need \$500,000.

Switching to Illinois, Captain Ogden reported that in 1836, most work had been on the portion of road between the Indiana border and a point 30 miles west of it. Later in the season, work commenced in the vicinity of Vandalia:

But the officer having the immediate charge of this division of the road being ordered to join his regiment, the operations were discontinued soon after their commencement.

Overall, the work of grading, quarrying and hauling stone, and cutting stone was halted about December 1 due to unfavorable weather. “Some portions of the grade were finished, but the greater part of it was left, at the close of operations, in an unfinished state.”

Because the Act of March 3, 1837, made “so radical a change in the method of conducting the operations,” he allowed previous work to be completed by hired hands, but had to conduct “an entire new survey and estimate of those portions of the road intended to be put under contract.” He dispatched an assistant engineer to Vandalia to conduct the needed work, “but his health being ill, and it being impossible to furnish him with any aid, until after the lettings in Indiana . . . the operations, at this point, were necessarily delayed until late in the season.”

Others joined the engineer at Vandalia around July 1, and on July 20, the first lettings for Illinois took place. The last sections put under contract at Vandalia were let on August 12, 1837. Between August 31 and September 25, additional contracts were let at Marshall for work east of Vandalia. Overall, 21 sections were put under contract during the 1837 season, with the work contracted for at \$27,543.71 over engineer’s estimates.

All in all, the “road, to the termination of its location at Vandalia, has been opened throughout its whole extent”:

Those portions of the grade which have been finished make a firm, smooth, and delightful road . . . . During the greater portion of the year the road may be travelled with comparative ease; but during the thaws of the spring, and the seasons of heavy rains, it cannot be passed without great fatigue and difficulty.

He estimated that completing the road in Illinois would cost \$300,000. “The above amount of \$300,000, it is respectfully recommended may be furnished at as early a day as practicable.”

Captain Ogden concluded his reported with remarks on the road in the two States. Because completion of the road depended on unpredictable appropriations, he could not estimate how long it would take. He estimated that if the funds were made available without delay, the work could be completed in 3 years, with the possible exception of the Wabash River bridge. He summarized:

The history of these works, since they came under the charge of their present superintendent, has been one of difficulty and embarrassment throughout, arising partly out of the nature of the previous operations; the character and scarcity of labor; the small amounts and unseasonableness of the appropriations; the restrictions and changes in the method of conducting the operations; the difficulty of making disbursements; the magnitude and extent of the charge on the superintendent; and the shifting and unsettled character of the assistance allowed him.

Since 1834, an entire change has taken place in the character of the materials and workmanship employed in the construction of the road.

The recent switch to contracts resulted in a “loss to the works of a great portion of the season.”

He concluded his report with a discussion of how personal liability for disbursements over a road in two States had caused “many difficulties”:

As a last resort, propositions were submitted to the different banks along the line of the road. The only terms that could be offered were that the banks should receive the money on desposite, make out the accounts, and pay off laborers, contractors, or others, without expense to the United States or to the superintendent. Onerous as the conditions might appear, they were freely accepted by some of the banks, and were, in consequence of voluntary arrangements among the citizens, finally acceded to by all. These institutions are now making the disbursements for the road; but, by a single order of the directors, the arrangement could be destroyed, and difficulty and embarrassment would inevitable ensure. The speedy adoption of some measures by which the liability to such results may be removed, and by which the money may be disbursed with regularity and certainty, is earnestly but respectfully recommended. [*Message from the President of the United States to the Two Houses of Congress, 25th Congress, 2d Session, Doc. No. 1*]

### **The Fight for Dollars**

Despite President Van Buren’s well-known opposition to appropriations for internal improvements in the absence of a constitutional amendment, friends of the Cumberland Road were ready to try again for funds to continue construction.

In December 1837, they introduced bills in the Senate and House for continuation of the Cumberland Road in Ohio, Indiana, and Illinois. Debates would take place, but with little discussion of constitutional issues. The driving issue was the jealousy of the States that were not receiving funds for internal improvements – unlike Ohio, Indiana, and Illinois –

as well as the usual desire never to hear about the Cumberland Road again.

On December 21, 1837, Indiana Senator Tipton reported a bill appropriating \$1,100,000 for the extension through Ohio, Indiana, and Illinois. It was ordered to a second reading.

The Senate began debate on the bill on February 21, 1838. As soon as Senator Tipton called for taking up the bill, Senator John Norvell of Michigan submitted an amendment and moved to lay the bill on the table and print the amendment. He was a Democrat who had joined the Senate after Michigan became a State on January 26, 1837. His amendment called for public land to be granted to several States, including Michigan, for purposes of using revenue from the sale of the land for internal improvements. Each grouping of States was to receive a grant of public lands “equal to the number of acres which have been granted by Congress to the State of Ohio.” Proceeds from land sales were to be used for roads, bridges, and canals, as well as improvement of water-courses, and the draining of swamps, “and such roads, canals, bridges, and water-courses, when made or improved, shall [serve] for the transportation of the United States mail and munitions of war, and for the passage of their troops, without the payment of any toll whatever”:

The amendment, he said, was a very important one, and one that properly ought to be tacked to the bill. It was a kindred subject also; and by moving to attach it to the bill, he wished to learn whether the treasures of the Government were to be monopolized by two or three States only.

Senator Benton said he would support the proposal if it were a separate bill. "As an amendment to the bill, however, he held it to be an incumbrance, and calculated to embarrass its passage." As long as he had been in the Senate, he said, each Cumberland Road bill "never had any other matter appended to it."

Senator Ambrose H. Sevier of Arkansas agreed that Cumberland Road bills always were unencumbered. In addition, however, they came with surveys and estimates:

It was considered beneficial in a national point of view, like the motion before us, and an appropriation was made, it was generally considered that we were bound to go on with it, and the appropriations were made from time to time; but in the case of the amendment, we were asked to attach it to a bill belonging on an exclusive object, without surveys, estimates, or anything to guide us in our research.

Like Senator Benton, Senator Sevier did not object to the substance of the amendment, only to its being attached to the Cumberland Road bill. He thought that Senator Novell, by insisting on his amendment, appeared to be trying to embarrass the bill.

Alabama Senator King took exception to the "exceeding liberality" of Senator Sevier:

The gentleman went from appropriation after appropriation for roads in Arkansas, because he said they were "roads commenced and not completed." We appropriated the other day, said Mr. K. for roads in Arkansas, and they were called military roads, because they lead to a temporary garrison, which the Secretary of War may abandon at his pleasure. But, continued Mr. K. when we tried to get a small appropriation for a military road in Alabama, on which twenty thousand dollars have been expended, we could not get it either on the plea of its having been commenced and not completed, or it being a military road. We were told, said he, that it was altogether unconstitutional; that when the appropriation was made it was rightly done, because the road was in Indian country, but that now the Indian title was extinguished, the State of Alabama must make the road herself. He then tried to get the road out of the two per cent. fund belonging to his State, but this appropriation of a few thousand was refused on the ground that the two per cent. fund was to be reserved for making roads leading to the State, and that was within it.

The bill appropriated \$300,000 for the road in Illinois, but Senator King referred to the dispute about the terminus on the Mississippi River. "Was it a road commenced when they did not know where it was to be?" Further, because the Cumberland Road was to be built with proceeds from the two-percent fund, "gentlemen seemed to be forgetting all constitutional scruples with regard to it." The government had spent far more on the road

than could be reimbursed from the fund – at least “ten times more,” according to Senator King:

There never was so extravagant an expenditure of the public money, as had been made on some parts of this road, and such a road as some considerable portions of it was not to be seen in any country. Several years ago, when the Senator from Kentucky took part in the debate on this road bill, he showed that it was not possible to construct an important part of it, without such an expense that ought not to be thought of.

Based on Senator Clay’s presentation, the Senate had “limited the appropriation” to opening the road. “Now they were called on for these heavy appropriations, without knowing where this road was to go, or what further expenses it would involve.” Was the road going on to Texas? Across the Rocky Mountains? To the Columbia River? No one knew.

Senator King also recalled the battles of past years:

He had looked at this Cumberland road for many years. It was an old offender against the Constitution and law of the land; so much so, that gentlemen who supported it had no means to satisfy their constitutional scruples but by putting a direct fraud in the bill. A clause in the bill declared that the appropriation was to be paid out of the two per cent. reserved for making roads to these States, when it was notorious that every dollar of this fund had been long ago exhausted, and that there would not be another dollar of it for a hundred years to come.

He regretted having to be so blunt but the “strenuous objections” to Senator Norvell’s reasonable and just amendment required him to question “the propriety of continuing the bounty of the Government to two or three States, and refusing it to others, who had received nothing.” Senator King would vote against the bill because of constitutional concerns, but first he wanted to see an amendment made to it that “would be doing something like equal justice.” The original goal of the legislation that President Jefferson signed was to get across the mountains, “and when that was done, it ought not to have gone farther.”

Senator Robert J. Walker of Mississippi agreed. When Alabama and Mississippi had sought appropriations for internal improvements, the Senate voted it down. And yet, “now we see (said Mr. W.) two or three States, that have received donations of millions of acres for purposes of internal improvement, calling upon an exhausted Treasury for a million of dollars which we should have to borrow.” He urged the Senators to “look at the enormity of such a measure, and the prejudicial bearing it would have upon the whole Confederacy.”

The bill, with its supposed reliance on the two-percent fund, was “a palpable fraud upon the very face of the documents, and yet we were called upon to vote for it.” It was not a national object, but would benefit only a few States, with the money coming out of his constituents’ pockets:

The people of Alton and St. Louis were quarreling about the point at which the road should pass, and by and by we should have the same disputes about passing Texas or the Rocky Mountains. If the Senate did not check it now, it would never stop.

In summary, “Mr. W. said it was partial, iniquitous, and unjust, and he, for one, would never see injustice or inequality prevail without lifting his voice against them.”

Senator Oliver H. Smith of Indiana acknowledged that Senators King and Walker had revived “the old opposition . . . with a laudable zeal.” He, like Senator Benton, thought the bill should stand on its own, without the Norvell Amendment. He had not examined it closely, but would not support it “simply because it embraced objects new in themselves, and in no wise connected with the plain and simple matter before them.” He hoped Senator Norvell would withdraw the amendment so the bill could proceed without delay.

Senator Sevier took the floor again, noting that when he had spoken earlier, he had no idea the debate on the Cumberland Road would be reopened in such a fashion. He had merely explained why he did not support the Norvell Amendment. But since Senator Walker had described the clause in the bill regarding the two-percent fund as a “palpable fraud,” Senator Sevier wanted to remind his colleagues of why the phrase was in the bill by recalling the 1836 legislation:

He had voted against it, and it was struck out; but, on the bill being sent to the other House, it was ascertained that it would be vetoed without the clause; and it was, therefore, put in there by way of amendment; and, coming back to the Senate, passed through, notwithstanding the constitutional scruples of gentlemen who had before voted against it. General Jackson, the great Apollo of the South, required it to hold the States to their bargain, and it was put in to remove his constitutional scruples and to sooth the consciences of his friends. To say, therefore, that this clause was a palpable fraud, came with a bad grace from gentlemen on that side, when it was put in to satisfy their constitutional scruples.

If the Norvell Amendment were adopted, without estimates of project costs, and the Senate approved the bill, it would go to the House, which would stop it “because that body never will pass an appropriation, without having the estimates and all other necessary information before them”:

And more: the President who professes to follow in the footsteps of his predecessor will veto the bill, because it contains new objects, and then we shall have no Cumberland road at all.

Senator Norvell defended his amendment. He thought it was “a little extraordinary” to hear about the absence of estimates and old roads and new roads. He pointed out that “the proposition was not for the construction of a road, but for a grant of land to certain of the new States for the purposes of internal improvement, who had hitherto received nothing of the kind – a grant which had been made several times before.” He offered the

amendment in good faith. If it were added to the Cumberland Road bill, he would vote for the bill but only “if the clause about reimbursement was stricken out.” He could not vote for the bill otherwise, “consistent with his ideas of justice.”

Senator Richard M. Young of Illinois thought the amendment “was of a very extraordinary nature – a kind of dog and manger policy. Because they could not get what they wanted, they would vote against the bill.” This attitude was “suicidal.” He said, “The whole country has been more or less benefited by the Cumberland road, and he hoped gentlemen would not now seek to embarrass or defeat it.” The issue of Alton versus St. Louis had nothing to do with the present bill. It could “at any time be adjusted by the people of their respective States, without trouble.”

Senator Walker was not persuaded. He said, “there could be no more just grounds for voting against an appropriation than because it was unequal.” If the appropriation benefited the whole country, “it would be a different affair; but it was rather unreasonable for twenty-three States to be told that they are wanting in liberality and public spirit, because they vote against a monopoly.” Expecting him to support taking money out of his constituents’ pockets “for the purpose of perpetrating this system of monopoly, was asking more of these States than they could reasonably be expected to grant.”

At Senator Benton’s suggestion, the amendment was to be printed and, in the meantime, the Senate adjourned.

The Senate took up the Cumberland Road bill again on March 27. The *Globe* did not detail the discussion, summarizing it instead:

The bill was opposed mainly on the ground of the existing embarrassments and bankruptcy of the Government; partly on that of the want of sufficient information, and partly on that of the inequality and injustice of the appropriation which it involved.

The bill was laid on the table:

On motion of Mr. BUCHANAN, the Secretary of War was directed to inform the Senate what portions of the estimates for the construction of the Cumberland road in Ohio, Indiana, and Illinois, might be dispensed with without injury to the road, and without violating existing contracts.

This request halted consideration of the bill until the Secretary of War’s report was received.

The House also was working on a bill appropriating funds for the western extension of the Cumberland Road. Kentucky’s Representative John Pope of the Committee of Ways and Means had reported a bill on December 28, 1837, and it was committed to a Committee of the Whole on the state of the Union.

Initial discussions of the bill, judging from the *Globe*, were perfunctory.

On March 29, Ohio Representative Mason brought the bill up to the Committee of the Whole. He moved an amendment “providing a change in the mode of superintendence of the road, but subsequently withdrew the motion.”

Representative McKennan, on behalf of the Committee on Roads and Canals, moved an amendment “to provide for the erection of guard fences on the road east of the Ohio, and for widening the same at Laurel Hill, and for the payment of the expense incurred in the erection of toll-houses on said road.” The committee adopted the amendment, 72 to 50, then voted the bill to the full House. The *Globe* referred to “a few remarks” but did not elaborate on them.

The background for the amendment is that the House had adopted a resolution, introduced by Representative McKennan, on December 11, 1837:

*Resolved*, That the Secretary of War be directed to report to this House a plan for the erection of fences or guard-posts where they may be necessary for the safety of the travel on the National road from Cumberland to Wheeling, accompanied with an estimate of the expense in making the improvement.

Secretary Poinsett submitted the report on January 29, 1838. He transmitted a letter from Captain Delafield, who wrote that in crossing the mountains, “we find the road-way passes up and down the sides of the different ridges, with inclinations varying from a fraction over one degree, to as high a grade as six degrees, or 554.9 feet to the mile. At the same time, the inclination of the hill-side is most generally forty-five degrees; and, in many places, between that slope and vertical.”

The horizontal direction of the road was “very winding or tortuous, often turning suddenly to the right and left – at all angles between the right line and a right angle; and, in a few cases, even with an acute angle.” In all seasons, this condition “renders risk and danger” to travelers, especially at night. “Great skill and a perfect knowledge of every turn of the road, on the part of the conductors of the public conveyances, alone secure them from repeated accidents; and private travel seldom, or never encounters these difficulties at night.” However, the risk was much increased during winter:

The ditches, after a few days of freezing weather, becoming filled with ice, cease to conduct the water from the innumerable springs in the hill-side to the culverts. Its only escape is then across the face of the road; and, by continued supplies of water and action of frosts, there ceases to be any ditch; the face of the road, at these positions, then becomes covered with ice, inclining outwards towards the precipice, instead of retaining the constructed profile of the road, sloping inwards towards the hills. At such times, a carriage of any kind descending the mountain is constantly slipping towards the valley, and is only kept on the road by skilful management.

When this ice formation takes place at the turn of the road, the centre of which curve lies within the mountain slope, then a descending carriage, with the velocity it acquires coming down the mountain, is always in danger of being thrown

outwards by its centrifugal force; and, at times, it becomes truly dangerous for every description of carriage.

In reconstructing the road according to the McAdam system, the engineers had been forced to construct, all on the steep grades, “across the face of the road, at distances varying from 20 to 50 rods, catch-waters. The object was “to prevent the accumulating volume and velocity of the rain-water passing down the face of the road, and thus washing off the material. When the catch-waters became filled with ice, they were “another fruitful source of accident”:

Other risks are to be encountered after a fall of snow, and before the track is beaten. At night, it is then extremely difficult to keep the centre of the road, and the risk of encroaching upon the precipice is thereby much increased.

These are very far from imaginary risks and dangers; accidents have frequently happened, and lives have been lost.

As a corrective, Captain Delafield suggested the erection of a post-and-rail fence “to serve as an unerring guide for the horses and drivers; and in case of the carriages slipping so near the precipice as to be in danger, the wheels will find sufficient resistance from the posts, and the body of the carriage from the rails, to prevent its being thrown off the side road”:

The plan that appears to give all the requisites for these guard-fences and posts, is to set posts about three and a half feet in the ground, charred or burnt on the surface to a coal, to guard against rot, distance seven feet from centre to centre, of five by eight inches square, surmounted by a rail of four by eight inches square, secured on the tops of the posts, at a height of four feet above ground, by a mortise and tenon pinned together; care being taken not to mortise through the rail to admit the weather and thus hasten its decay; and the whole to be so much inclined outwards that the hubs of the wheels will not injure the posts and rails.

He estimated the cost for erection of the guard-posts to be \$18,571.74.

In converting the road to the McAdam plan, engineers would have erected guard-posts on the most dangerous parts of the road, “but after applying the funds appropriated to the most important parts,” the balance of funding was insufficient. The State commissioners accepted the road without guard-posts, then found that receipts from tolls were sufficient only for repair of the road, not erection of the protective barrier:

These commissioners have been unable to do any part of this fencing, from the amount of tolls collected being too limited to keep the face of the road in the order they could wish. During the past year the tolls collected amounted –

In Maryland, to	\$ 9,600.00
In Pennsylvania, to	\$ 15,009.98
And in Virginia, to	<u>\$ 4,200.00</u>
Total	\$28,809.98

The whole of which has been applied to the repair of the road, with the exception of a portion the commissioners in each State were compelled to apply to finishing the toll-houses and erecting the gates.

Captain Delafield had advertised the construction of toll-houses and gates, “and turned over the commissioners the sum bid for their completion.” However, this was “the period of great fluctuation in prices of material and workmanship.” As a result, the commissioners were unable to complete the work “for the sum provided them from the appropriation.” They “had to take the tolls of the road to perfect this part of the work, to the following amounts:

In Maryland, where one toll-house remains unfinished:	\$ 175.00
In Pennsylvania (on account of five toll houses, of which the sum of \$250 is now due and pledged by the road commissioners from the tolls):	\$1,103.26
And in Virginia, on account of one toll-house:	<u>\$ 150.00</u>
Total:	\$ 1,428.26

That amount, plus the cost of erecting guard-fences, gave a total of \$20,000 “that could be very advantageously applied to promote the public welfare and interest of a large portion of the people of the country.” [*Guard-Posts – National Road*, Letter from the Secretary of War, Ho. of Reps War Dept., 25th Congress, 2d Session, Doc. No. 134]

The House took up the bill, on its third reading, on April 11 to consider the amendment approved in the Committee of the Whole:

The question was on concurring with the Committee of the Whole in an additional section, making appropriations for guard fences on the road east of the Ohio, for widening the road leading down Laurel Hill, etc.

Representative Joseph R. Underwood of Kentucky moved to recommit the bill to the Ways and Means Committee, “with instructions to report a bill ceding the Cumberland road to the States through which it passes west of the Ohio, as had been done in reference to that part of it east of the river, and asked for the yeas and nays thereon.” The *Globe* did not describe Representative Underwood’s explanation of the motion, although comments by others suggested the contents.

Representative John Campbell of South Carolina, in seconding the motion, said he appreciated Representative Underwood’s motion, especially coming from him, and thought it was “indicative of a better feeling upon the subject of public expenditure, and hoped, if successful, that an eternal separation would take place between the Government and this favorite object of internal improvement.”

He recalled that the Cumberland Road dated to the Enabling Act in 1802 for Ohio. “Whether it was then supposed that this would become, what it has long since been, a charge upon the public Treasury, it is not material to inquire.” However, if our understanding of constitutional authority “were settled by precedent, the frequent appropriations for this road, extending through a period of more than thirty years, would

be sufficient to establish the constitutionality of this bill.” He did not intend to condemn the policy that resulted in the start of this road. That the view today was very different from the view then, Representative Campbell illustrated by quoting from Senator Uriah Tracy’s 1805 committee report, quoted earlier:

Politicians have generally agreed that rivers unite the interest and promote the friendship of those who inhabit their banks, while mountains, on the contrary, tend to the estrangement of those who are separated by their intervention. In the present case, to make the crooked ways straight and rough ways smooth, will, in effect, remove the intervening mountains, and, by facilitating the intercourse of our western brethren with those on the Atlantic, substantially unite them *in interest*, which the committee believe to be the only efficient cement of union applicable to the human race.

Representative Campbell informed his colleagues that these goals had been achieved. “The crooked ways have been made straight, the rough ways smooth, the intervening mountains have been scaled – not by this road only, but by numerous communications that owe their existence, not to Governmental patronage, but to individual enterprise; to enterprise prompted by enlightened views of commercial advantages, and the strong stimulant arising from the hope of individual wealth.”

Further, other formidable arguments from 1805 had lost their force:

Formidable tribes of savages at that time being upon the skirts of our infant settlements on the western side of the Alleghany Mountains, for whose defense it may have been proper to form a communication by this road with the Atlantic border. How changed is the prospect? The magician has waived his wand, and the transitions have been as rapid as the shifting scenes of a moving panorama!

Those infant settlements have sprung up into flourishing communities; the extended forest that then reposed in the deep solitude of primeval silence, is now a cultivated country, whose fields teem with fertility, whose towns and villages and cities resound with the hum of busy multitudes. Over a country, at that time untrodden, save by the foot of the untutored Indian or solitary trapper, independent States now hold sway over a population, numerous, intelligent, patriotic, brave; a population that, except on the extreme frontier, is so far from requiring defence from others, we must look to with pride and pleasure as being not only able but willing to afford effectual assistance to their Atlantic brethren should they ever be invaded by a foreign foe.

The Cumberland Road had been completed well into Ohio, “and has been worked upon in different places as far west as Vandalia, in Illinois, within less than 100 miles of St. Louis.” He acknowledged the argument that the appropriations could help connect the different parts to make them available:

But look, sir, said he, to the condition of the Treasury. The report made a few days since by the Committee of Ways and Means shows that on the first of

January last, *there was less than five hundred thousand dollars* in the Treasury of the United States applicable to public expenditures. In the same report the estimated resources of the present year, including \$7,000,000 of Treasury notes, are placed at \$31,000,000. Of which \$13,000,000 are estimated as the receipts from customs, and \$3,000,000 from public lands; both of which resources are admitted, in the present condition of the country, to be uncertain.

Nobody could predict with certainty what revenues would be available:

It must, however, be obvious to all, that the fever of land speculation, which, under the influence of credits easily obtained, had been stimulated almost to delirium, is rapidly subsiding, and that the purchases of the public land will for the present year be limited almost exclusively to the demand for settlements. This last demand will be diminished at the public sales, from the strong and pernicious tendency to seize upon the best portions of the public domain not yet brought into market. He observed some of the representatives from the new States smile incredulously at this assertion. But with the most respectful defence to those who advocated this system, he could not but think that it held out an inducement to avarice that operated unfavorably upon the morals of our pioneer population.

Representative Campbell's comment, which he acknowledged was a digression, was a reference to "preemption," which had been debated in the Senate earlier that year on the initiative of Mississippi Senator Walker of Mississippi (who would serve as Secretary of the Treasury under President Polk (1845–1849)). The Heidlers discussed preemption in their biography of Clay. Referring to the period before the Panic of 1837, they wrote:

Clay still hoped to distribute that money to the states for internal improvements and colonization. Widespread support for distribution included some Democrats under political pressure from constituents eager to receive the money. Yet western senators persisted in their wish to reduce the price of federal lands, a move sure to endanger the surplus, and Clay had to fight them at every turn. At the end of March 1836, he stoutly opposed Robert J. Walker's plan to reduce land prices for people who had settled on public property. Walker wanted to grant them "preemption," which meant exclusive rights to purchase land at bottom dollar. Clay called these people squatters, a term Walker found objectionable when applied to those he claimed were the backbone of the nation, the very men who had fought under Jackson at New Orleans. Walker exclaimed that if the men Clay derided as squatters had been in Washington in 1814, they would have saved the city from the British torch. The gallery loved this sort of talk, and it greeted Walker's tribute to patriotic American yeomanry with loud applause. Clay waited for everyone to settle down. He innocently claimed no disrespect to squatters but impishly added that he "hardly thought they would have saved the Capitol unless they had given up their habits of squatting."

After the panic began, Senator Walker revived his preemption proposal. When he again spoke of the settlers in positive terms during a debate in early 1838, Clay "lost his temper":

He heatedly asked why it was proper for those squatters “to seize upon and rob the United States of their possessions.” When Indiana’s John Tipton objected to Clay’s defaming his constituents, Clay heedlessly characterized squatters as a “lawless rabble.”

That phrase, as the Heidlers noted, would be used against Senator Clay in later debates, during which he was depicted as an enemy of the new States and their inhabitants. Senator Clay would deny using the phrase, but it was cited in the *Globe* on January 27, 1838.

Senator Campbell summarized the budget situation, saying his colleagues were “sailing under a clear sky, with propitious breezes, over a summer sea. But do you see no speck on the political horizon?” It was not a speck, but a cloud or a dark shadow. He warned of the consequence of a national debt:

If we contract a national debt, the “compromise act of 1832,” which brought peace to a distracted country, will prove but a rope of sand to an increase of duties. Yea, more, the very next revolution of the political wheel may bring those into power who will not hesitate to direct the duties upon importations, constitutionally imposed only as a means of raising revenue to pay the legitimate expenditures of the Government, to objects of protection.

Representative Campbell, who listed his party during this Congress as a Nullifier (otherwise he was a Jacksonian or Democrat), probably meant the Compromise of 1833, which helped end the nullification crisis provoked by the 1832 tariff bill.

“The clamorous importunities of partial interests would again intrude upon our deliberations, and the American Congress be again converted into an arena for the most bitter contests.” The key was to avoid contracting a national debt. He listed bills the House had passed in the last 2 hours, including:

. . . appropriations for an exploring expedition, for the employment of naturalists, geologists, botanists, to examine the animals, soils, and plants of distant lands, subjects with which this Government has as much to do with as with the “vesperilio home,” or man-bat of the moon.

The expedition Representative Campbell cited was the United States South Seas Exploring Expedition of 1838-1842. It consisted of six vessels and 346 men, including scientists and artists, whose goal was to provide navigation charts to whalers, sealers, and China traders. His colleagues would have been familiar with the man-bat of the moon. The “Great Moon Hoax” began in New York’s *The Sun* newspaper in August 1835. According to the hoax, an astronomer had discovered life on the moon, including man-bats.

By appropriating funds for unnecessary activities such as these, they were “sowing the seeds of bitterness between the different sections of the Union.”

The House, he said, did not have to debate the constitutional issues involved in the present bill. The condition of the Treasury was “surely more than a sufficient excuse” to recommit the bill. He added:

In 1830, when General Jackson placed his veto on the Maysville road bill, it was said in this hall that he had raised to his memory a more imperishable monument than when he won the glorious victory that preserved the queen of our Southern cities from the pollution of a conquering foe, and, with her safety, the honor of the country. And yet, if he was not mistaken, he heard an honorable gentleman from Virginia [Mr. Mercer] congratulate the House a few days since that more extensive appropriations by the Government for objects of internal improvement had been made since that time than during any other equal period in our history!

Appropriations for internal improvements inevitably were “partial in their operation, tending to the benefit of particular sections at the expense of the whole, and therefore inconsistent with that equality upon which our institutions are founded”:

To remove this objection – to make appropriations sufficiently extensive to embrace every section of the country having, or claiming to have, objects worthy of Governmental patronage, would create a vortex of expenditure that would engulf the diamonds of Golconda and the gold of Peru – would require a revenue, the collection of which would produce a wide-spread ruin, and, after exhausting the resources of the country, would be insufficient to accomplish the object.

Representative Campbell also rejected the argument that appropriations for the Cumberland Road would enhance the value of public lands in the States it passed through. The same argument, he said, “will apply in favor of the construction of roads into every wilderness where the Government owns land.” Large numbers of people have migrated to the new States “with a rapidity unequalled in the annals of the world,” leaving behind good soil in the old States to “encounter the hardships and privations preparatory to converting the wilderness into a garden. Can any one, with these facts before us, contend that additional inducements to emigration are even desirable?”

He hoped his colleagues would support the motion to recommit the bill “to relieve ourselves of a work whose constitutionality is doubtful, whose benefit is partial, and appropriations for continuing which, in the present condition of the Treasury, must bring on us the reproach of reckless extravagance.” Let the States take over the road to be “sanctioned by the enlightened liberality of their citizens, and paid for by those who enjoy the advantage.”

Indiana Representative Ratliff Boon said he was surprised by the remarks of the gentleman from Kentucky, Whig Representative Underwood:

That gentleman had declared that he considered any system of internal improvement by the General Government as being now entirely defunct. This Mr. B was sorry to hear from a professed friend of the measure, as he had not expected to hear such a declaration from any member of a party in politics who

claim to be the exclusive friends and supporters of all the great interests of the country.

Representative Boon said that since coming to the House in 1825, he had been “in favor of a proper system of internal improvements by the General Government”:

But it seems that the gentleman from Kentucky has changed his views in reference to the subject, and he has very frankly stated his reasons for having done so; and I was pleased to hear him come out and avow his future objects in terms so bold and manly as he has done on this occasion.

Now, Representative Boon said, the gentleman from Kentucky favored ceding the road to the States “in its present unfinished state,” to be completed by the States, and the revenue from the sale of public lands should be distributed among the 26 States “to make their own works of internal improvement.” Representative Boon opposed any system of raising revenue for distribution:

We have recently experienced the bad effects of a distribution of the surplus revenue among the several States. It was found that before the fourth installment of the surplus revenue was deposited with the States, the Treasury of the United States was deficient in revenue over nine millions of dollars.

And yet, said Representative Boon, Representative Underwood “is in favor of withholding, or withdrawing the whole amount of revenue received from the sales of the public lands from the Treasury of the United States, to be scrambled for, and wasted by the twenty-six States of the Union.” The difference would have to be made up by an increase in tariffs. He favored a tariff that raised revenue “and the giving of reasonable and just protection to home industry.”

As for the Cumberland Road, it was being built in compliance with the compacts entered into when the States joined the union:

In Ohio, this road is completed to some twenty miles west of Columbus. In the States of Indiana and Illinois the grubbing of the road has been completed, and considerable progress has been made in grading and erecting bridges, without any portion of the road having been completed in either of those States, and now the gentleman from Kentucky proposes that the General Government shall abandon this great national improvement, and surrender it, in its present unfinished condition, to the States through which it passes.

He would simply ask his colleagues, “who have heretofore voted for appropriations for carrying on this great work of national importance, to say whether they are now prepared to abandon it to its fate”:

Sir, the construction of this road over the mountains and through the new States, has and will induce many thousands to emigrate to the West and purchase the Government lands, by which means your Treasury will be more than reimbursed for all that will be required to complete this great work. I hope, therefore, that the

friends of this road will promptly reject the proposition of the gentleman from Kentucky, and that the bill may be passed without further delay.

Representative Ewing rose to express surprise at Representative Campbell's remarks as well as the views expressed by Representative Underwood. Referring to the latter, Representative Ewing said, "It indicates a new state of feeling when this gentleman can be found, upon the subject of internal improvement, acting at this time of day in harmony with the doctrine of South Carolina." He was skeptical of their true motives:

Upon the one side discord seems to have arisen on account of the Louisville canal; and the evident desire to withhold this appropriation on account of prospective tariff views has been distinctly announced upon the other.

As for the canal, he informed the gentleman from Kentucky that it was a State project, "not constructed under a compact with the United States; and further, to tell him that he greatly overrates his sagacity and intellectual strength if he thinks he can break down the obligations entered into by solemn contracts, and acted upon for thirty years, yet still hold the new States bound by their stipulations in relation to the sovereignty of the soil."

He informed the gentleman from South Carolina, Representative Campbell, "with equal plainness, that the liberality and enlightened spirit which once characterized many of the statesmen of the South must have departed, if he thinks the people of the West will allow imposition to prevail forever, and a national treasury replenished, not by a protective tariff, but by sales of public lands, five years exempt from taxation, to be wasted in schemes of useless fortifications and injurious breakwaters."

The gentleman from Kentucky denied the validity of the compacts and would set them aside:

I must say, he thinks he has more wisdom than I believe him to possess when he thus overlooks the matured action of those who framed the compacts and their binding validity . . . .

The gentleman talks of economy and an exhausted Treasury, and appeals to his political friends to arrest all such expenditures. The gentleman says nothing of the equal rights and sovereignty of the States under the Constitution, of the amount of taxation relinquished by the new States, of the fact that the United States, although allowed to extinguish Indian titles, are prohibited from an ownership in property, except for forts, arsenals, &c. to be allowed by the several States wherein they are located, unless by compact.

He omits to tell us what, if anything, Virginia, Maryland, and Pennsylvania, though [sic] which this road passes, have paid towards its completion, and forgets that this economy would be wild extravagance, if the road west of Ohio were now permitted to go to decay for want of means.

The Cumberland Road was "not a sectional or party character, and can in no way minister to party rancor or personal ambition":

I hope it is with the gentleman's Louisville canal as it once was with my toothache. I was told not to have the tooth extracted; it was a very important tooth, and a dangerous operation. Somewhat alarmed, I had it extracted notwithstanding, and immediate relief, without inconvenience, followed; and may it not be that the consequences of completing the Cumberland road will equally disappoint his fears, and tend not only to leave all the business necessary to sustain that small excavation, but also to employ the work of much greater dimensions, and much less expense, now about to be constructed on the Jeffersonville side, where a canal should have first been constructed. But let that pass.

In short, Representative Ewing said, Representative Underwood could not take the "good faith of the government" away or repeal congressional contracts that carry with them "constitutional obligations for contracts under which this road is to be constructed":

It stands, as I have endeavored to show, upon distinct and different grounds, and no condition of the Treasury, no change of policy on the part of the gentleman, can exonerate this Government from acknowledging its obligations

Representative Ewing also discussed the specifics of the motion in debate:

I can tell this House and this country, that when this road shall be arbitrarily relinquished or ceded to the States through which it runs, without first being completed, or certain provisions made for its completion and for bridging the streams over which it may pass, it will be found that the public domain itself will be relinquished and ceded by the same arbitrary act. Then, indeed, the new States, after much trouble, and many partial exactions, will stand upon the equal footing which the Constitution of the United States contemplated, and their State rights will then be defended.

The inhabitants of the new States paid for the public domain, and their payments helped the country extinguish the national debt. "They fought for your homes before they travelled West, and in the new States they relinquished their sovereignty and ownership over the soil, to enable you to redeem the obligations thereby incurred":

Yet the gentleman from South Carolina has brought the pre-emption bill into this discussion, as though it was an extravagant appropriation, made only for the benefit of the West. The public land topic, involving as it does, the harmony, union and equality of the States, is of too much importance to be discussed upon the present occasion. If the wise system, matured by the pre-eminent statesman from Kentucky, in the other end of this building and adopted by Congress, had not been vetoed by a President who urged upon Congress to dispense altogether with the public lands as an object of revenue, then the truckling system of his successor, walking in his footsteps, whose financial views the gentleman from South Carolina now in part supports, would never have engendered heart-burnings and dissensions, with speculations and peculations and party subserviency; nor would the laboring settler of the West, seeking a home for

himself and his offspring, after improving the soil, and securing by his industry, the means of future competency, have to come here under the auspices of a specie-paying circular, asking of the Government the first right to buy the land which he himself had given value to by his own improvements. The gentleman may take my word for it, if speculations can follow a pre-emption law in Indiana, the speculators will come from other quarters of the country; the South and the East will furnish them. And speaking of Southern settlers, I only lament their numbers have not been more rapidly increased.

The two gentlemen, Representative Ewing continued, seemed to deny that the Cumberland Road was “an object of great national importance at this time.” Its military value was “now said to be of no avail.” The Ohio River, although blocked by ice for several months each year, was “now sufficient for transportation of munitions of war”:

But do we want no mail facilities? No facilities for commerce? None for social intercourse? Is every other interest to yield to military considerations? Sir, the paths of military conquest and glory lead but to the grave of our prosperity. Sir, the whole country, in all her relations, moral, social, political, agricultural, commercial, and mechanical, cries aloud for this appropriation, and will no longer be swayed by considerations of vainglory; nor can any considerations of this character be allowed to overlook this call, or trample upon and cast aside the public faith and public welfare upon which it is founded.

He would not reply to “all the oft-repeated and oft-refuted objections against appropriations for this road” or the compacts enacted for its construction:

But there is a report of the Secretary of War upon our table, in compliance with a resolution of the other branch of the Legislature, showing what reductions might be made without doing injury to such parts of the road as have already been commenced, “without violating existing contracts.” By which it appears that a bill had been reported in that body appropriating more than double the amount embraced in this bill; and with a view to effect the object which led to the call, a much larger sum is absolutely required than is embraced by the provisions of the bill before the House. The reduced estimates in the report adverted to is, for Indiana alone, \$266,000, and this sum should now be allowed.

But at this time I will not trespass upon the urbanity and good feeling of the gentlemen who argue against the smaller sum in the bill before us; our after action can remedy this defect.

I could now almost appeal to the gentleman from Kentucky in the language of Colonel Ethan Allen, at Ticonderoga, during the Revolutionary war, “In the name of Great Jehovah and the Continental Congress,” to withdraw his motion to recommit this bill.

(The quote comes from May 11, 1775, when American forces, led by Benedict Arnold and Ethan Allen, captured Fort Ticonderoga on Lake Champlain. Surprising the troops

stationed there, Allen called out to the British commander, "Come out of there, you damned old rat!" When the commander asked on whose authority, Allen replied, "in the name of Great Jehovah and the Continental Congress." The fort soon fell without a shot being fired.)

Although Representative Underwood may not withdraw his motion, Representative Ewing thought its defeat was inevitable. Nevertheless, he offered an amendment to the Underwood Amendment covering "the only equitable and legal mode of transfer" to be included in the instructions if the present bill is, as Representative Underwood proposed, recommitted to committee:

. . . that the surrender of the road to the States through which it passed, shall be accompanied by an appropriation of an equal average amount of money to each mile of said road, west of the portion thereof already ceded to the States in which it lies, to that expended upon each mile relinquished, to be paid in three annual installments, one of which shall be due upon the passage of the law.

In closing, Representative Ewing said, "The amendment to his instructions which has been read, I shall insist upon hereafter, unless his motion be, as I hope it will be, in the meantime withdrawn."

The House adjourned without acting on the bill, the amendment, or the amendment to the amendment.

On April 12, the House picked up where it ended the day before with consideration of the bill, the Underwood Amendment, and the Ewing Amendment to the amendment.

Kentucky Representative Pope took to the floor. He had been elected to the United States Senate as a Democratic Republican and served from 1807 to 1813. After leaving office, he had served in the State legislature, as Territorial Governor of Arkansas (1829-1835), and in private law practice before being elected to the House as a Whig in 1836.

He said the assault on the bill by his Kentucky colleague, Representative Underwood, "was indeed unexpected, especially at this stage of the proceeding. I was the more surprised that the opposition should come from one of those who had so long rallied under the banner of the great champion of the American System, to whom a monument has been erected on this great National road."

He had taken the seat on the Committee of Ways and Means only after consulting with his Kentucky colleagues because "I was desirous to act in harmony about the propriety and policy of participating in the labors of that committee." He differed in one respect:

I never was, since I fully explored the subject, in favor of a general diffusive system of internal improvements, such as the States were fully competent to make without the aid or agency of the National Government. Improvements of local character should be left to the local Governments; and those only of a decided national character, as declared by President Jackson, are within the legitimate

action of this Government. Neither time nor circumstance have changed my views on this and other subjects of primary importance.

Representative Pope, who had been born in 1770, had a unique perspective on the road that most of his colleagues could not share:

This Cumberland road was commenced near the Potomac river nearly thirty years ago, when I was a member of the other House. I was for that road then, as necessary and proper, and a work of great national utility in a political, commercial, and social view. When I first crossed, in the fall of 1807, the immense body of mountains between the Potomac and the Ohio, and cast my eyes from their lofty summits to the extensive region of the West, and turned them to the States bordering on the Atlantic, I was deeply impressed with the thought that this mountain barrier had been placed there for the mutual defence and security of independent nations; and that, to bind together the people of the East and West, by whose joint counsels and arms liberty and independence had been achieved, it was necessary to cut down this great wall of separation.

I could not believe that the old devious and miserable road made by Braddock and Washington, about the middle of the last century, was to remain the only medium of intercourse between the Eastern and Western waters. Pennsylvania had no interest then, nor has she now any special interest in this road. Her local views and policy led her to improvements in a different direction. The plan of making this great road from the Potomac to the Ohio had its origin with the first statesmen of Virginia; and the foundation was laid under the administration of Mr. Jefferson.

At the threshold, Mr. Speaker, permit me to say that this road does not rest on the general power or policy of making internal improvements, but is based on solemn compacts with Ohio, Indiana, Illinois, and Missouri, and the strongest implied pledges of this Government to those States to make this great National road to the Mississippi river, for which this bill now under consideration makes an appropriation.

The superintendents or engineers employed on this road, through the States of Ohio, Indiana, and Illinois, made an estimate of more than one million of dollars for the present year; but the committee, considering the present condition of the Treasury, concurred with the Secretary of War in believing this sum ought to be reduced to \$450,000, which he thought sufficient to keep the work in progress during the present year, and prevent the loss of materials which had been collected and prepared for bridges, and injury to those parts of the road which had been graded in the three States. To me, sir, was assigned the duty of reporting this bill, and to attend to its progress in the House.

It was referred to a Committee of the Whole, where it was expected to be assailed if opposition was to be encountered. It passed through the Committee of the Whole, and was reported to the House with very little or no opposition, and, when the question was about to be put on its engrossment, an unexpected assault was

made on it by one of my colleagues [Mr. Underwood,] from whom I least expected such a course. I certainly expected the cordial cooperation of the representative from Kentucky.

Regarding the objection that a general system of internal improvement was not to be undertaken, "I can only say that I cannot anticipate what Congress will do, but must be regulated in my support of this bill by the past action of the Government":

I certainly did not, Mr. Speaker, expect to be called on to explore this whole subject for the last thirty or forty years, during which this Government has been making appropriations almost every year for this great national work. My colleague lays much stress on the amount this road has cost. I have not made an estimate of the amount, but presume it is large. It is proper to observe, however, that a large portion of the sum has been expended between the Potomac and Ohio rivers, before you enter the territory of any of the States mentioned in the bill, and we should bear in mind that this road was commenced before road-making was well understood, and that the first experiment of paving the road between this [point] and Wheeling in a great measure failed, and a large amount was expended in repairing it and re-making it on the Macadamized plan. On this branch of the subject I do not intend to dwell.

It is urged, also, that the condition of our Territory [sic - Treasury] forbids this appropriation. To this I might answer that it has not prevented other appropriations. We granted \$100,000 to the heirs of Robert Fulton, about \$75,000 more than was ever claimed before either by Mr. Fulton or his representatives. We have appropriated probably a million of dollars or more to send out an exploring expedition to distant seas, which had been authorized by Congress two years ago. Why did not the poverty of our Treasury arrest these appropriations?

He had taken concerns about the Treasury into account "in making the appropriation less than half the amount desired by the representatives from the States more directly interested."

In his view, if Congress abandoned the road, "it will never be finished by the States. Their local interests will prompt them to expend their funds for different improvements." They considered the Cumberland Road a national work, "and nothing tends more to lessen the confidence in and respect for the Government than an unstable, whimsical and fickle course."

He also addressed the concern that the general government had not given Kentucky the funds it should have received. He did not consider this a valid argument. "Shall we, because we have not obtained what we desired, violate the solemn compacts and implied pledges of our Government, to the injury of our neighbors and the whole West?" He answered his question:

Certainly not. I cannot, I confess, perceive the force of this objection. Will it be seriously contended that we ought to wrong our friends and neighbors, and the whole West, because this Government has done us wrong?

. . . Kentucky is identified, in interest and policy, with this whole West. If making this road directly benefits our neighbors, it must indirectly benefit Kentucky. If it will tend to enrich and populate the Western territory, no western man, it would seem to me, ought to oppose its progress . . . .

This Government has, in numerous instances, expended money in making roads through her Western lands to promote their sale and settlement, to which no Western statesman has heretofore objected; and of her power to do so no person, the most strict constructionist, has ever doubted. Mr. Speaker, (said Mr. P.) I have said that this Government ought to prosecute this work, in compliance with her solemn compact and implied faith; and I hope to make this apparent by a retrospect of the several continued acts of this Government for nearly thirty-five years.

He began with the Enabling Act of 1802 for Ohio statehood and summarized each subsequent act, including the Act of March 2, 1831, that surrendered as much of the road as was completed to the State of Ohio to operate as a toll road, as well as later sections when they were completed. This law accepted the terms and conditions of the State law of February 4, 1831, accepting ownership of the road. Clearly, the State and Federal laws required the general Government to complete the road before Ohio would take it over:

It was never expected, nor was it in the contemplation of the parties, that the States were to make the road, but both parties clearly understood that the road was to be made by the United States. The States have faithfully fulfilled the terms of their contracts; they have paid, and are paying, five years' tax on the lands sold by this Government, which would otherwise have gone into State Treasuries . . . .

Arrangements have been made by this Government with Maryland, Pennsylvania, and Virginia, for keeping this road in repair between the Potomac and the Ohio, similar to that made with Ohio; and there is an appropriation of nine thousand dollars in this bill for completing the road in Pennsylvania, pursuant to the terms agreed on. There is now paid by the United States for carrying the mails on artificial roads, to companies and States, probably several millions of dollars; for, although first paid by contractors, it is indirectly drawn from the pockets of the people.

After concluding his survey of the road's history, he said:

Mr. Speaker, [said Mr. Pope,] steamboats and railroads answer very well for many purposes; and railroads are useful for short distances, and between cities not very distant from each other, where there is great and constant commercial intercourse; but they are not suited to the agricultural people of the interior as well

as Macadamized roads, on which every person can travel on feet, on his pony, in cart, wagon, dearborn or carriage, as fast or as slow as suits his inclination or convenience. I like a road on which every one can carry his own productions to market. I take little pleasure in being whizzed through the country with the speed of a humming bird without time ever to get a drink of water on the way. Indeed, I think our public men would do better and earn more of the good sense and public opinion of the people, if they would travel a little more through the interior in less haste, and hold converse with the plain, industrious, and farming classes of the nation, who are, at last the salt of the earth and the substratum of our Republican system.

The goal of the Underwood Amendment, he said, was to cede the road to the States. “These States would not thank us for the cession: Indiana and Illinois certainly would not, as there is little, if any, part of the [road] done in either of those States; Ohio might be willing to accept a cession, provided we would repeal the act of 1831, by which she agreed to make the tolls low and the road free to the United States.” Ohio could then impose a high toll on the United States mail and every citizen “and derive a considerable revenue from the tolls on the road finished in that State.”

Representative Pope thought that a fair option would be for Representative Underwood to withdraw his amendment and simply vote against the bill. If Congress was not going to meet its obligation to the people to finish the Cumberland Road, “I hope the question will be openly and fairly met. Let us go on with the road or abandon it.”

He did not want to get into the issue of preemption that Representative Campbell had alluded to. On the proper occasion, he would rise to vindicate “that class of settlers on the public domain from injustice, and to place their claims on the liberality of Congress fairly before the House.” For now, he could not “admit the propriety of introducing the tariff into this debate by the same gentleman from South Carolina.” That subject was settled in 1833. For now, it was premature to base congressional action on speculation in 1838 about what might happen after expiration of the 1833 Act in 1842:

In conclusion, Mr. Pope beseeched gentlemen not to recommit the bill, but to meet the questions on the engrossment and passage of the bill by open and direct vote.

Representatives Hopkins Holsey of Georgia and John Robinson of Virginia supported the motion to recommit, but their comments were not reported in the *Globe*.

Representative Charles G. Atherton, a Democrat from New Hampshire, also expressed his opposition to the bill. As a member of the Committee of Ways and Means, he wanted to clear up any misunderstanding as a result of Representative Pope’s remarks. The implication that a majority of members of the committee approved of the bill was false. Representative Atherton’s impression was that a majority “were not favorably disposed to the bill, and that they had merely suffered it to be reported because it referred to a subject in which many members of the House felt much interest, and which was proper for the consideration and decision of the House, and which they would hardly expect the

committee to retain from them, or to reject.” That, at least, was his view when he voted in committee to report a bill that he “decidedly opposed.”

In his view, the system of internal improvement by the General Government was “intimately connected with a high protecting tariff,” both part of the Whig’s American System. If such a system were undertaken, he asked, “what limit can be fixed to the expenditures to be made in pursuance of it? – what limit to the revenue to be raised for the purpose of being wastefully lavished in those expenditures?”

Despite “the ingenuity and ability” put into previous speeches, he had yet to hear any “arguments to show that the system which the bill proposed to continue was either just and expedient, or constitutional.” Instead, the primary argument in support of the bill was that “the Government is bound by the obligation of a contract to do this, and that not to do it would be a breach of faith.” When he heard men of proven ability, such as Representative Pope, support the bill based on “an argument utterly and entirely destitute of any foundation – an argument which had long since been abandoned by the leading advocates of the measure, he was induced, at once, to conclude that reasons, with them, were not as ‘plenty as blackberries,’ and that the measure was, by this very circumstance, rendered liable to just suspicion.”

Referring to but not naming Whig leader Henry Clay, Representative Atherton said the founder of this system of internal improvements and the most distinguished advocate for what he called the American System, “has, long ago, dismissed this argument as unjustifiable and untenable. He had abandoned this position. He has rebuked and repudiated this pretence as having no foundation.” Representative Atherton, to prove his point, quoted from the Senate debate in 1835 on a similar bill for continuation of the Cumberland Road in the western States. Senator Clay had said:

Now he did not concur with the gentleman [Mr. Ewing] that Ohio could, as a matter of strict right, demand of the Government to keep this road in repair, and why so? Because, by the terms of the compact under the operation of which the road was made, there was a restricted and refined fund set apart, in order to accomplish that object; and THAT FUND MEASURED THE OBLIGATION OF THE GOVERNMENT. It had been, however, LONG SINCE EXHAUSTED. There was NO OBLIGATION then on the part of the Government to keep the road in repair. [Emphasis in original.]

If the chief proponent of a system of internal improvement had declared the chief argument untenable, “the friends of the system must be hard pressed for arguments.”

He congratulated Representative Underwood, formerly a friend of such a system, for coming out “frankly and openly against its continuance”:

The gentleman from Kentucky acknowledges that he has become convinced that the system is partial in its operation, and properly says that he wishes to treat all sections alike; and if any system is to be adopted, he calls for a system of equal justice. Sir, these arguments have again and again been urged against the

adoption and the continuance of this system, and he was happy to know that some of those formerly its friends, have become convinced of their truth.

Why, Representative Atherton asked, should “this system of inequality, partiality, and injustice, be continued?” He went on:

Are we about to lavish hundreds of thousands on this unjust and unequal system, because our Treasury is full to overflowing? No, sir. The time has passed when those in favor of a strict construction of the Constitution need strain a point for the purpose of getting rid of an accumulating revenue, which they fear may lead to the dangerous principle of distribution. The *present* is the time for stopping this vast and wasteful expenditure on this unjust system. If any excuse were needed for such a determination, the present situation of the country would fully afford it. Not only so; it demands so imperatively such a result as to leave no excuse for a contrary determination.

Rejection of the bill would, as its advocates claimed, rob the States through which the Cumberland Road passed, “but he did think that to pass the bill would approach much nearer to such a consummation.” The bill proposed “to ‘rob’ one section of the Union for the benefit of another.”

Representative Atherton also rejected another common argument, namely that the Cumberland Road was the best way to cement the Union. The best way, he said, was “for the General Government to keep itself within its constitutional sphere, and not to exercise powers which did not belong to it, in pursuing a partial and oppressive system, the effect, if not the object of which is to build one section of the Union at the expense of another.” He considered the proposed system as “not only oppressive and partial, but as unconstitutional also.”

Because of its injustice and unequal operation, Representative Atherton was convinced that “the wise men who framed the Constitution, never intended to confer such a power on the Federal Government, unless, indeed, the clause of the Constitution can be pointed out, which explicitly and unequivocally confers it.” He wished that all those who spoke in support of the bill by naming those “who have sustained or have seemed to sustain this system” had instead “pointed to the clause in the Constitution where the power is conferred”:

It can surely do no harm to go to the Constitution itself; for “a frequent recurrence to fundamental principles,” is necessary as a safeguard to our liberties, and to prevent the Constitution itself from being overwhelmed by glosses and constructions, and the opinions of those who not only were not its framers, but who have no sentiments in common with those distinguished patriots.

(Virginia’s George Mason included the phrase “a frequent recurrence to fundamental principles” in Virginia’s Declaration of Rights, ratified on June 12, 1776. Mason was an active and influential member of the Constitutional Convention, but he refused to sign the document because it lacked a Bill of Rights.)

Representative Atherton said the consequences, if the general government possessed such power, “go very far to show how cautious we should be about hastily admitting its existence.” To demonstrate this point, he referred to President Monroe, who was often cited as one of the Presidents who signed appropriation bills for the Cumberland Road:

Mr. A. believed it was in 1822 that Mr. Monroe returned with his veto a bill, establishing toll-houses and toll-gates on the Cumberland road, on the principle, that if Congress possess the power to enter a State, interfere in their domestic concerns, to erect toll-gates upon their roads, to establish a system of police over them, and inflict penalties for its violations, and create tribunals, before which such offenses might be tried, every barrier between Federal and State authority would at once be prostrated; and so far as entire jurisdiction over the post roads of the country, for the purpose of levying tolls to keep them in repair, could extend, that this principle would lead to perfect consolidation.

Yet the distinguished Senator from Kentucky, to whom he had alluded, contended, certainly with great plausibility, that the *power to make the road admitted*, the rest all followed as incidental to it, and as a necessary consequence. And he [Mr. A.] would again say, that it would give him great pleasure if the advocates of this power would point out that particular clause in the Constitution, from whence they deduce it.

The legislature of his home State, New Hampshire, had long opposed the concept of a general system of internal improvement by the general government:

They have ever been uniform in this opinion. They feel and know its injustice and inequality and oppressiveness. They have made their own roads, unaided by the General Government; they are willing to do it. Why, then, shall they be taxed to make roads in the flourishing, fertile, and rich States of the West? Sir, it is monstrous and wicked injustice.

He stressed that this belief of the State legislators did not reflect hostile feeling towards the western States. “Far from this. No longer ago than the last year they instructed their Senators, and requested their Representatives, in Congress to use their exertions to procure ‘such graduation of the prices and limitation of the sales of the public lands as will best promote the settlement and actual occupancy of the same’”:

They are actuated by the strongest feelings of attachment towards the inhabitants of the Western States, who, on account of the continued stream of emigration which has poured thitherward from New England, may literally be called their brethren. But justice to themselves requires that they should protest against any further continuance of this system, so fraught with evil and injustice.

Following statements by Representatives Mercer of Virginia and Patrick G. Goode of Ohio, both members of the Whig party, in support of the bill (not reported in the *Globe*), the House adjourned without acting on the measures.

The House returned to the subject on April 18, with the initial question being “on concurring with the Committee of the Whole on the amendment making an appropriation for guard fences east of the Ohio, and the improvement of the Laurel Hill descent,” as well as Representative Underwood’s motion to recommit the bill with instructions to report a bill calling for the road to be turned over to the States through which it passed.

Representative Underwood indicated he wanted to postpone the bill “on the ground of getting a response to a call for certain information respecting it.” Ohio Representative Mason opposed the delay “as an indirect mode of killing the bill,” adding, “There could be nothing wanting in the way of information.” When Representative Underwood said he was seeking information on cost-per-mile, Representative Mason replied that “the gentleman . . . would find that information in a document printed at the first session of the last Congress.”

After some parliamentary maneuvering, the House voted, 96 to 99, to reject engrossment of the bill.

Representative Everett moved reconsideration of the vote, leading to a call for the full House, with 203 members responding. The House then considered a motion to lay the motion to reconsider the previous vote on the table. By a vote of 85 to 112, the House rejected the motion, but voted 110 to 87 to reconsider the bill.

Representative McKennan moved the previous question on engrossment of the bill, but the House refused to second the motion, 70 to 79.

With the parliamentary moves out of the way, several Representatives addressed the House, starting with Representative Charles E. Haynes of Georgia. He opposed the bill, citing initially the “bankrupt condition of the Treasury”:

We have heard repeatedly of the extravagance and profusion of the late and present Administrations, of the pledge of their supporters to bring back the Government to an economical expenditure; and on no occasion, since the commencement of the present session, has so fair an opportunity been offered of acting out the professions of both sides of the House than is furnished by the bill under consideration. For his part he should place little reliance upon professions of retrenchment and economy, let them come from what quarter they may, so long as gentlemen continue to vote for appropriations which the public exigencies may not require. We have heard much declamation against profusion and extravagance in the gross, but unfortunately, when brought to the details of appropriation and expenditure, every item is earnestly and energetically supported.

He blamed the budget problem on “redundant revenue,” that is “the policy of piling one increase of duty upon another by your tariff acts from 1816 to 1828.” This resulted in increased revenue, but he said that it “may be stated as a general principle, both in public and private affairs, that revenue and expenditure will be proportioned to each other.” When revenue creates a surplus, expenditures should be increased “if proper and legal

objects can be found upon which to make such expenditures.” The government had “no legitimate power” to hoard surplus revenue or waste it “upon any system of corruption or favoritism whatever”:

The dictate of a wise and considerate economy would require that we confine ourselves to such appropriations as are indispensable to the public service, and go no further. Surely the continuation of the Cumberland road is not embraced in the class of objects to which he had adverted.

He pointed out that under the Deposit-Distribution Act of 1836, about \$28 million of public money had been deposited in State-chartered banks around the country:

At the extra session in September last, indulgence was given to the deposite banks and importing merchants for tea or twelve millions more. But this was not all. When the Bank of the United States, the great regulator, ceased to have a legal existence in 1836, it was unable to refund the six or seven millions of stock owned in it by the Government. Thus has an aggregate amount of public money been placed beyond our reach, but little short of fifty millions of dollars; and now, forsooth, because it has become necessary to borrow money, or employ the credit of the Government by the issue of ten millions of Treasury notes, we are met with the cry of “A bankrupt Treasury!”

In addition to those funds, he mentioned that “we must not forget our obligation under an act passed at the late extra session of Congress, to deposite nine millions of dollars more with the States on the first day of January next.” He concluded:

Sir, the amount still due from the late deposite banks, and the Bank of the United States, exceeds the whole amount of Treasury notes, issued by authority of the act of October last. In the distribution of public money by the deposite act of June 1836, about three millions three hundred thousand dollars have been received by the States of Ohio, Indiana, and Illinois, the States interested in the passage of the bill under consideration. But this is not all the public money in possession of those States and the deposite banks situated within them. The deposite banks in Ohio, Indiana, and Illinois, yet retain, under the act of October last, granting indulgences to the public depositories, more than eight hundred thousand dollars of the public money, making in all a total of more than four millions of dollars. Under this state of things, borrowing money to defray the necessary expenses of the Government, more than four millions of the public money in possession of the States, and deposite banks of Ohio, Indiana, and Illinois, is there any one who has pledged himself to an economical expenditure, who can permit himself to vote for the bill?

Several other Representatives spoke in opposition to the bill, including Representative Underwood. He said he had not introduced his amendment because he doubted the general government’s authority to build roads, without State consent, under the Constitution. His objection was that the authority should not be exercised in only a few

States; all should benefit from it. He granted some exceptions for works of great advantage to the country as a whole, such as the contemplated ship canal around Niagara Falls and extension of the Chesapeake and Ohio Canal to Pittsburgh. "While, therefore, (said Mr. U.) I reserve the right to make exceptions, I am ready now to declare ceaseless hostility to all further appropriations for works which, being destitute of great national importance, are chiefly beneficial to the States in which they are located." He would continue his war "until favoritism and partiality receive their death blow, or justice is compelled to retreat before political intrigues, to give up the unavailing contest, and to seek a melancholy safety in obscurity and retirement."

The extension of the Cumberland Road through Ohio, Indiana, and Illinois "presents, to my mind, no objects of transcendental importance which should give it the preference over all other roads in the country, and make it a national bantling to be taken to our bosoms, and nourished from the general Treasury, while we treat with cold indifference and neglect the roads of Tennessee, Kentucky, and other States." It will never be used extensively for military operations, given that river transportation would be far more efficient. Moreover, the rivers, lakes and canals were "the great national avenues of commerce." He added:

The road, in a national point of view, will be valuable mostly on account of its facilitating and cheapening the transportation of the mails. But in that respect there are hundreds of other roads in the United States having at least equal claims to the attention of Congress . . . . The contemplated railroads from Boston to the Hudson, from New York City to Lake Erie, from Baltimore to the Ohio, from Charleston to Cincinnati, from New Orleans to Nashville, do, in my opinion, far transcend in importance the extension of the Cumberland road; and yet we hear not a whisper in behalf of the appropriations to these, while, year after year, a deafening clamor is raised of, Give, give, give, to the latter.

He said he did not hesitate to compare the Cumberland Road and its extension to Alton or St. Louis to the Maysville Road and its extension through Kentucky to Nashville. Although Congress thought highly enough of the Maysville Road to appropriate funds for it, a "chilling veto arrested the Maysville road appropriation, and struck down all hope of executing any general system; and, from that time to this, immense sums have been appropriated for internal improvements, not with the view to execute any general plan, but under a partial, contracted, unintelligible system, the creature of Executive dictation and misrule, by which thousands upon thousands have been lavished upon rivers and roads in some parts of the country, and not a dollar allowed to other rivers and roads equally deserving in every respect."

Recalling the plan Secretary of War Calhoun submitted after the War of 1812, he called it a "magnificent scheme, broad enough to comprehend all the States." It held out the prospect of funding to aid the States "in the construction of those works most deeply interesting to them":

But, sir, the arm of the late President was put forth, and the system upon which the people had placed their hearts, and their fondly cherished expectations, were

prostrated by this power. Instead of indignant resistance to his mandates, the interests of party and the selfishness of politicians brought about a tame submission to his will; and men might be pointed at who *glorified* General Jackson for the appropriation to the Maysville road, before the veto; and who, as soon as the veto was promulgated, faced to the right about, and *glorified* louder and longer than ever! The general system by these means was destroyed. It is now defunct.

In its place we have a partial and unintelligible system, if system it can be called, dependant upon the existence or nonexistence of ports of entry, and other considerations equally learned and wise; executed greatly to the benefit of the people and politicians of some sections, while those of other quarters are left to comfort themselves by reflecting how much Nature has blessed them, as the best set-off to the stepdame policy of the Government. Kentucky has felt all this deeply.

Therefore, he was in favor of abandoning the partial system “altogether.” He cited reasons why the general system could not be resurrected:

The States, many of them at least, perceiving, after the elevation of General Jackson to the Presidency, and his veto of the Maysville road appropriation, that the execution of a general system of internal improvement by this Government could not be expected as soon as desired, if ever, adopted systems for themselves, and commenced their execution with such means as they could command. The plans of the States now occupy the grounds which the General Government might and ought to have occupied before the States were forced to take up the business, by your neglect.

If the general government resumed work on a national system, it would interfere with and mar the States’ plans:

Under this condition of things, the only sensible course, it seems to me, which we ought now to take is, to aid the States in the completion of their plans and works . . . . It is the first duty of every statesman, having the superintendence of any part of our complex political system, to be extremely careful in preserving and maintaining the harmonious action of the whole. It is better to abstain from doing that which you may rightfully do, and which, when done, would be productive of good, than to force your measures upon an unwilling, dissatisfied people. For one, I cannot consent, strongly attached as I have been to a general system of internal improvement, and its execution by the nation, to commence operations at this late period which shall, in the least, interfere with those of the States.

Legislative wisdom would blend public and private interests, as Kentucky had done “by uniting with her citizens in making roads, while she has reserved to herself, exclusively, the more important work of improving her rivers”:

And we have the natural fruits of such a policy in the vast expenditure, the waste of money upon the Cumberland road. I have taken some pains to look into this matter. I find that Captain Ogden, the superintendent, reported to the last Congress, that \$570,363.61 had been expended on one hundred and forty-eight miles of the road in Indiana, and that it would require \$1,779,266.53 to complete these one hundred and forty-eight miles. It thus appears that each mile will cost a fraction more than \$15,675. The same officer reports upon ninety miles of the road in Illinois, showing that \$277,591.83 had been expended, and that \$939,407.30 would be required to finish, so that these ninety miles will cost upwards of \$19,300 per mile. I have not put myself to the trouble of searching documents to prove the cost, per mile, of that part of the road which passes through the mountains. But, judging from the expenditure in Indiana and Illinois, where the labor in grading is inconsiderable, the expense per mile, across the mountains, exceeds \$20,000. Does any member believe that the road would have cost as much if individual interests had been combined with those of the Government?

He stated that much of the problem stemmed from President Jackson:

The great lever by which he uprooted the foundations of the settled institutions of the country, wisely and beneficently conducted by his predecessors consisted of the increase and unscrupulous exercise of the patronage which appertained to his station. To accomplish his purpose, and to bend every thing to his will, he did not hesitate to make vacancies by his power of removal from office, and then to fill them by those who made his dictation, instead of the laws of the land, their rule of action.

Alarmed at these high handed proceedings, the Whig flag of the Revolution was raised, and the friends of Liberty invited to rally around it. I obeyed the summons. From the hour I volunteered, to this moment, I have, on all suitable occasions, pointed to the enormous power and patronage of the Executive as the fortification of an enemy, which must be levelled. It is the despot's strong hold, the world over.

Now, sir, with these opinions firmly fixed, I surrender, without regret, the general system of internal improvement, because it takes from the National Executive one of his sources of patronage. We shall have fewer Government agents controlling and spending their hundreds of thousands, fewer jobs to let, and less ability to reward partisans with political "spoils." If I have not been misinformed, your Government agents and contractors on the Cumberland road have attempted, and succeeded in exercising, a political influence over the laborers in their employment. It has been an object as dear to their hearts to carry an election, as to construct a road; and they have so managed it as to connect the road with politics, and politics will filling their pockets, in a manner equally degrading and corrupt.

As a result, abandoning the idea of the general government building roads will not result in bad roads. "The States are now able to make roads and canals for themselves."

Some of his colleagues said they had been surprised by his position, but if they had checked the journals of the previous Congress they would have found that he was entirely consistent. He had voted against the exploring expedition, funds for the Fulton heirs, and "the grant of \$350,000 to the Cumberland road in the present exhausted condition of the Treasury":

In setting on foot the Exploring Expedition, the conduct of Congress resembled that of a young spendthrift, who wasted his estate, rambling abroad in pursuit of pleasures and fancied good, to the neglect of his more important and more profitable business at home; and as to the Fulton appropriation, it was in my judgment a donation, which Congress refused to call by its proper name, and passed it through under the delusive idea of settling a debt.

He also addressed the "important argument" against his proposition, namely the compact with the States to build the road to the Mississippi River. "Gentlemen have asserted this with as much seriousness as if it was founded in truth; and were it not that the gravity of their countenances rather forbids it, one might be disposed to smile at their errors and credulity on this point." He would instantly withdraw his motion if it could be shown that it violates any compact or pledged faith. He cited the enabling acts for Ohio, Indiana, and Illinois, with their restriction of public lands revenue for roads to and through the States:

The foregoing acts of Congress constitute the basis upon which the obligation of continuing the Cumberland road to the Mississippi must rest, if there be any . . . .

It is perfectly clear, from the foregoing acts, that there was not the shadow of an obligation imposed upon Congress to make a road in either of the three States. I admit, however, there was an obligation imposed to make a road, or roads, leading to each of said States, so far as the two per cent. fund would accomplish it. In the case of Ohio, the stipulation is to connect the Atlantic and Western waters; but no such provision is made in relation to Indiana and Illinois. It would be a compliance with the contract to construct roads leading to their borders from Michigan and Missouri, or any other quarter. Congress has, however, undertaken to fulfil its obligation by making the Cumberland road, and thus not only to fulfil it to the letter, by making roads leading to these States, but to give each a greater advantage by likewise making the road in their respective territories. Of this I will not complain, although three per cent. has been allowed two of these States to make roads within their limits whenever they pleased.

He referred to the Act of March 25, 1806, signed by President Jefferson, for laying out and making the road:

This was the commencement of satisfying the obligation to Ohio, and, in this act of 1806, a provision, making the sum appropriated "chargeable upon, and

reimbursable at, the Treasury, by said fund of two per cent. as the same shall accrue.”

Then came the Act of May 15, 1820, for laying out and continuing the Cumberland Road to the Mississippi River:

But, as if endowed with the spirit of prophecy, and foreseeing the unfounded pretensions that might be set up, of a “moral and legal obligation” to complete the road after having laid it out and begun it, and intending beforehand to denounce any such claim upon the Government, the Congress of 1820 inserted in the second section of their act the following proviso: “Provided always, and it is hereby enacted and declared, that nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to make, or to defray the expense of making, the road hereby authorized to be laid out, or of any part thereof.”

With the road laid out, Congress passed the Act of March 3, 1825, providing for a superintendent to oversee the work, including a survey and laying out of the road to Missouri’s State capital. The Act appropriated \$150,000 from the general Treasury to begin the work. “But the act expressly declares that the money shall be ‘replaced out of the fund reserved for laying out and making roads under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on an equal footing with the original States.’”

Representative Underwood continued:

It is impossible for the unbiased mind to read the foregoing acts of Congress without clearly perceiving that the extent of obligation imposed by them requires the faithful appropriation and expenditure of the two per cent. fund in making roads leading to the States mentioned, and nothing more. Now, if it can be shown that we have done that, the obligation is discharged. If we have expended more, the excess is a gratuity.

With that thought in mind, he had information from the Secretary of the Treasury about expenditures on the Cumberland Road. Total combined expenditures thus far equaled \$6,365,083.46, east and west of the Ohio River. He also had information on how much the three States between the Ohio and Mississippi Rivers received from the 3-percent fund for in-State roads as of December 29, 1836: \$1,259,727.28. Based on the collective total of the 3 percent fund, Representative Underwood calculated the size of the two-percent fund for roads leading to the States as “\$839,818.18, which, being deducted from \$6,365,083.46 shows we have, as a gratuity, expended \$5,525,265.28 more than we were bound to.”

He did not, he said, gather these figures to justify any envy on behalf of his State of Kentucky. In fact, he said, he rejoiced because the citizens of those States were his countrymen:

But I am not so blind as not to perceive that Government has more than discharged all its obligations to them and their States; and that, if you could double the quantity of lands yet to be sold in their boundaries, and treble the price, two per cent. on the money arising would never reimburse us the half of the expenditure already made, over and above what any compact required us to expend. Under these circumstances, the people of those States have no just claim to ask from an empty Treasury the additional sum of \$339,000 to go on with the work. My motion to recommit, with instructions, is made in order that the road shall be surrendered to them; and, if hereafter the two percent. fund should ever augment so as to overpay us, which is scarcely a possible event, no one will more cheerfully surrender the surplus than I. Indeed, sir, it may now be provided for, if my motion prevails. In giving up the road so far as it may have been finished, the States should come under the same terms and stipulations in regard to the passage of the mail, troops, munitions of war, &c. as have been heretofore made in relation to that part of the road already finished and ceded to the States. In regard to the parts of the road partially done, I am willing to ask no equivalent in return.

Thus, according to Representative Underwood, the Congress would not violate any compact by adopting his amendment.

He went on to explain that the Cumberland Road “and its extension never constituted a part of any general plan or system of internal improvement; but that it had its origin in compacts with the States to and through which it goes, and the enhancement of the value of the public domain.” The basis for the road, namely the compacts, demonstrated that it was not part of a general system of internal improvements. “On the contrary, by placing this road for support upon the compacts and the proprietary interest of the Government, the argument in favor of a general system is thereby weakened. It is as much as to say, but for these peculiar considerations the road could not have been constitutionally made by us.”

Representative Underwood was “for fulfilling all obligations, not literally, but liberally; and in this instance we have done it, by giving heaping measure.”

Referring to language used by Representative Ewing, Representative Underwood said:

I will only retort . . . by using his own language, and tell him, “that he greatly overstates his sagacity and intellectual strength, if he thinks he can break down the obligations entered into and acted upon for thirty years,” and excite rebellion in the State which has honored him, even if my motion should prevail.

He concluded:

Mr. Speaker, several of my Whig friends who differ with me on the present occasion, have ventured, in the course of their remarks, to express their regret that the proposition I have submitted should come from a Whig. What, sir, regret that a Whig should propose to stay the hand of extravagance; to stop expenditures partial and unjust; to claim common funds as common property, and to insist that

they shall be used for the benefit of all, and not for a few! Sir, I ought to have received the thanks of every true-hearted Whig, rather than the cold expressions which have been bestowed. There is something *wonderful* in the amalgamating influences of this Cumberland road. It operates like magic. The Whigs of Ohio, Indiana, and Illinois walk as lovingly with their political adversaries on this particular question as if they had always, on all questions, been perfectly agreed! How happens it that even where this road touches the territory of the Old Dominion, it makes the representative a good internal improvement man, and seems to silence all constitutional scruples in vowing money for that purpose?

I dare not say, when our constituents are getting money, and we, in consequence, are getting their votes, that all so situated have irresistible motives to support appropriations to continue this road. But I will say, there is a wonderful unanimity of sentiment on this particular matter among the representatives of the States through which the road is to be carried northwest of the Ohio river!

Sir, I will take leave of my Whig friends in these States, and of the subject, by saying to them, go home, tell your constituents that they have had millions more than they were entitled to under any compact; that Congress has given them the road as it is, and asked nothing in return where it is not already finished, and that they, like a favored son of a kind father, who finds it necessary and just to withhold further donations, ought to return blessings for past favors, instead of curses for the change in the father's conduct. You may tell them all this with truth, if my motion prevails, and they will approve what Congress has done, for you represent a sensible, reflecting, and honest people.

On his motion, the House adjourned.

In the end, the House did not adopt Representative Underwood's amendment. Instead, on April 20, the House first approved a motion, 100 to 95, for engrossment of the bill for a third reading. Opponents made multiple votes on motions to adjourn but they were voted in the negative. Attempts to secure agreement on the date of the third reading were unsuccessful. Finally, Representative Henry W. Connor of North Carolina called for a vote on passage of the bill. With that, the House approved the bill, 96 to 80, making appropriations for continuing the Cumberland Road in Ohio, Indiana, and Illinois. The House sent the bill to the Senate, which received it on April 23.

Senator Tipton, on behalf of the Committee on Roads and Canals, reported the House bill to the Senate on April 27, without amendment, and indicated he would call the bill up soon. He did so on May 22, "but after a debate, the motion was lost," according to the *Globe*, which did not detail the discussion.

The following day, however, the Senate took up the House bill. Senator Tipton reminded his colleagues that the Senate had considered a similar bill early in the session, with the sums to be appropriated suggested by the skilled engineers most familiar with the work. However, the bill had been tabled "and a call made on the Engineer Department for an

estimate of the sum required to comply with existing contracts and to preserve the road from dilapidation.”

The reduced estimate had been received and it “differed but little from the sum in the House bill.” Therefore, “seeing the embarrassment of the Treasury, and the delay that would be produced in the passage of the bill through the House, if amended,” the committee decided to introduce the House bill without amendment. He “would not detain the Senate by a speech in favor of the bill” because everyone understood its provisions.

Senator Benton favored the bill, but moved to amend it “by a proviso that the appropriations made should be subject to all the conditions, restrictions, and limitations, as are contained in the act for the continuation of the Cumberland road of the 3d of March, 1837.”

Senator Norvell objected that the amendment was “very artfully drawn” to restore the provision that the funds should be reimbursed from the two-percent fund. “He thought that this was a body which ought not annually to announce to the world that which was a fraud, and wholly untrue, for it was notorious that this two per cent. fund had long ago been exhausted, and that there was not the remotest possibility of any reimbursement out of it.”

Senator Benton acknowledged that the language on reimbursement from the two percent fund had not been in every Cumberland Road appropriation act. In fact, he said, “Bills for this road had been signed by Jefferson, Madison, and Monroe, before any such clause was put in it.” He had voted for bills that did and did not have the clause, but was for retaining it. “The gentleman from Michigan thought there was no chance for reimbursement, but that was a question for time to decide.”

To bring the matter to a direct test, Senator Norvell moved to amend the amendment to exclude the clause for reimbursement.

Senator Thomas Morris of Ohio “doubted the power to make an unconditional appropriation,” and would like to have heard arguments asserting that power. He was fully interested in the Cumberland Road, but “he would sacrifice it rather than not preserve the Constitution in its purity; and the people he represented would also sacrifice everything to the preservation of the spirit of the Constitution”:

The Constitution appeared a dead letter, a nose of wax moulded at pleasure to suit particular interests. He found it suited all appropriations made on the seaboard, but would never reconcile itself to the western border. Did the Alleghany divide the Constitution? Was it to be made applicable on this side and inapplicable on that? He could not understand. If the Senator persisted he would defeat the bill.

Senator Oliver H. Smith of Indiana hoped Senator Benton would withdraw his amendment. Senator Benton had warm feelings for this road, as did Senator Smith, but he would vote against the bill if the amendment or any amendment were approved “as it

was doubtful whether the bill would pass at all during this session, if it had to undergo another ordeal in the other House, where it had been passed by a very close vote.”

If Senator Benton would withdraw his amendment, Senator Norvell said he would withdraw his. “Why, at this late day, were we endeavoring to sent [sic] an example pernicious in itself, and bearing a fraud upon its very face.”

Senator William D. Merrick of Maryland hoped the clause would remain:

The Government ceded this road to the States, and if there was no special contract, there certainly was an understanding that the General Government should first put it in full and complete repair. Mr. M. said he was a member of the Legislature of Maryland at the time, and well recollected the universal understanding; so much so said Mr. M. that good faith ought to induce us to fulfil the pledge.

Senator Merrick had been in the Maryland House of Delegates from 1832 to 1838.

After that, according to the *Globe*, the voting began.

First was a vote on Senator Norvell’s amendment, which was defeated, 12 to 29.

Senator Benton’s amendment was next. The Senate carried the amendment, 27 to 15.

Connecticut Senator Niles objected to the \$9,000 contained in the bill for the Dunlap’s Creek bridge. He thought the road had been ceded to Pennsylvania, which was responsible for keeping it in shape.

Senator Buchanan explained why the appropriation for the bridge was in the bill:

He was himself one of those most anxious to have this road ceded to the States through which it passed, in order to relieve Congress from any further trouble respecting it. The act was passed for this session, and the State of Pennsylvania, by an act passed April, 1825, agreed to receive it. At that time there was an appropriation in the bill for this very bridge. When the commissioners appointed under the act of the State of Pennsylvania accepted this road, there was a distinct understanding by both parties that it was to be completed and the question, therefore, now was, not whether this Government should make the road, but whether it should comply with a solemn contract.

Local officials had built the bridge over Dunlap’s Creek in Brownsville, Pennsylvania, that was incorporated into the Cumberland Road. However, Albert C. Rose, in *Historic American Roads*, reported:

There had been a succession of bridges at this location. One of these was a chain bridge of the type patented by James Finley. This structure suspended partially over the stream and abutting shores, at a height of 25 to 30 feet, collapsed with a

thunderous crash early in the year 1820 because of eight inches of snow exceeding its bearing capacity.

The city replaced it with a wood structure, built in 1825, that was in bad shape by the 1830s. In 1832, the Department of War considered replacing the bridge but decided not to do so. General Gratiot, in a letter on August 14, 1834, to Captain Delafield, explained that the decision was based “on the ground that it was a county bridge, which should be repaired or rebuilt by the county authorities, as the United States, in adopting a system of repairs, had undertaken to repair only that which they had originally constructed.”

On “the other side,” General Gratiot continued, “notwithstanding the United States had not built this bridge, yet, as they had enjoyed the free benefit of it, and as it lay on the tacitly acknowledged line of the road, they were bound, under the act of Congress authorizing the repairs of the road to work on every part of it without reference to original constructors or proprietors.” The question had been discussed with Attorney General Taney, who had decided in favor of replacing the bridge.

The next question was whether to cross Dunlap’s Creek at the same location as the existing bridge or to build a bridge at a new location. The War Department decided that the new bridge should replace the existing bridge at the same location:

It would seem there is no evidence on record that any location was ever finally fixed upon by the commissioners, and reported by them to the President, for the part of the road in the immediate vicinity of this creek; but the fact that the road was actually made in its present location, and used ever since its original construction, without any opposition, is strong proof that this route was adopted by the Government; at all events, in the absence of all other evidence, the department feels constrained to act upon this. Now, the appropriations having been made for the repairs of the road, and not for constructing any part of it, except the new section to turn Wills hill, it is not perceived how any part of the funds can be applied to the new location proposed by you. These views having been submitted to the acting Secretary of War, he concurs in them. Your operations will, therefore, be confined to the old road on which the bridge must be located.

Captain Delafield proceeded to build the country’s first cast-iron bridge. According to Rose, he “conceived the idea of an iron bridge because of the proximity of the foundries at Brownsville.” Delafield oversaw every detail of design and construction while he was in position.

Senator Buchanan explained that the funds in the bill were to supplement the amount already expended for the new bridge as part of the effort to put the road in good repair prior to its transfer to State ownership:

An estimate was made for putting it in repair, and in this estimate was included the sum necessary for the bridge over Dunlap’s creek. The contract was made to build this bridge, and that contract was partially complied with. But it appeared

that the estimate has not held out, because civil engineers were employed instead of military engineers. In addition to that, the commissioners of Pennsylvania were so scrupulous, that they expressly stipulated this bridge should be completed before they agreed to receive the road.

The Senate voted not to adopt the Niles Amendment, with only 11 ayes and the nays not counted.

Senator Henry Hubbard of New Hampshire introduced an amendment to reduce the appropriation for the road in Ohio from \$150,000 to \$100,000, with Senator Tipton in opposition. The amendment was lost, 17 to 23.

The bill as concurred in by the Committee of the Whole was put to the Senate to determine if it would receive a third reading. The Senate agreed, 26 to 17.

The third reading occurred the following day, May 24. The bill passed, 23 to 18.

The Senate transmitted the completed bill to the House.

Later on May 24, Representative Pope moved that the House concur in the bill as revised by the Senate. Several opponents introduced motions to adjourn, but they were “decided in the negative, without a division.” Representative Samuel T. Sawyer of North Carolina moved to refer the bill to the Committee of Ways and Means, “which motion was rejected – ayes 50, noes 80.” Representative Franklin H. Elmore of South Carolina moved to lay the bill on the table; “the yeas and nays . . . were ordered, and were yeas 69, nays 84; so the House refused to lay the bill on the table.” Representative Francis Mallory of Virginia moved to adjourn, “which motion was carried in the negative without a count.” The *Globe* did not report on any discussion that may have occurred on the motions.

Finally, the “House then concurred in the amendment of the Senate,” without a recorded vote.

The next day, May 25, 1838, President Martin Van Buren signed what turned out to be the final main appropriation bill for the Cumberland Road.

For continuation of the road west of the Ohio River, the act appropriated \$150,000 for each of the three States for continuation of the road. The act also appropriated the final funds for the Cumberland Road east of the Ohio River: \$9,000 for completion of the bridge over Dunlap’s Creek in Pennsylvania. The appropriations were “made upon the same terms, and shall be subject to all the provisions, conditions, restrictions, and limitations, touching appropriations for the Cumberland road, contained in the act entitled ‘An act to provide for continuing the construction, and for the repair of certain roads, and for other purposes, during the year eighteen hundred and thirty-seven,’ approved on the third day of March, one thousand eight hundred and thirty-seven.”

As noted, Captain Delafield oversaw construction of the Dunlap’s Creek bridge. In August 1838, however, he was appointed superintendent of the U.S. Military Academy at

West Point. After Captain Delafield left the Cumberland Road, Captain George Dutton assumed supervision of the bridge project, which was completed in October 1839 at a cost under \$40,000.

The Dunlap's Creek bridge, although no longer on the main traveled route, remains in service today on Market Street. In 1978, it was added to the National Register of Historic Places.

In all, according to Searight's compilation of bills, the general government appropriated \$6,824,919.33 for the Cumberland Road. A slightly different total for the Cumberland Road was presented in *A Statement of Appropriations and Expenditures for Public Buildings, Rivers and Harbors, Forts, Arsenals, Armories, and Other Public Works* (from March 4, 1789, to June 30, 1882), compiled by the Department of the Treasury, came up with a different total for the Cumberland Road: \$6,759,257.30.

### **The Fight for Funds in 1839**

When 25<sup>th</sup> Congress returned for a third session in December 3, 1838, President Martin Van Buren submitted his second annual message on that same day. He did not address internal improvements except to note:

Internal improvement, the fruit of individual enterprise, fostered by the protection of the States, has added new links to the Confederation and fresh rewards to provident industry.

The documents accompanying his message included General Gratiot's report on the activities of the Engineer Department. He discussed the Cumberland Road east of the Ohio River in his summary report on the department's road work:

*Cumberland road, east of the Ohio.* – The only work remaining to be done upon this part of the Cumberland road is the completion of the cast-iron bridge over Dunlap's creek, at Brownsville, Pennsylvania. The arches, spandrels, and flooring are put together in place, and the whole superstructure will be completed within the month of November. The bridge, it is expected, will be finished in every [sic] part next spring. In consequence of the loss of half the season before the work of completion could be commenced, the small amount of money to be applied, and the consequent want of inducement to workmen, and the difficulty of procuring them under such circumstances, except at the highest wages, it is possible the amount appropriated at the last session may not be sufficient for completion; the additional amount that may be required, however, in any event, be small.

His report included letters from the Cumberland Road Offices covering Ohio, Indiana, and Illinois. Captain Dutton, who had been promoted on July 7, 1838, wrote his annual report on October 29, 1838, from his office in Springfield, Ohio:

Since the 30th September, 1837, the operations on this work have been continued, and the various contracts entered into during that year, were completed and brought to a satisfactory close during the past winter and early part of the spring, when a suspension of further operations was rendered necessary by the exhaustion of the appropriation.

After the Act of May 25, 1838 appropriated \$150,000 for work in Ohio, "the requisite public notices were issued, inviting proposals for the completion of the unfinished part of the road between Columbus and Springfield, being the 18 miles included between the towns of Jefferson and Vienna . . . and for the grading of four miles west of Springfield, across the valleys of Mad river and Bartlett's run, and the adjacent hills, to the 48th mile, requiring much deep cutting and heavy embankments . . . and also for the continuation of the grubbing beyond the Miami and Stillwater rivers." Operations commenced in July, including contracts for the remaining masonry work on the bridges over Mad River and Buck Creek as well as the culverts required to the 48<sup>th</sup> mile.

In August, Captain Dutton let contracts for building the wooden superstructure of the bridges in the Mad River valley as well as a stone bridge over Bartlett's rocky run. "The wooden superstructures are framed upon the lattice principle, and the lumber is to be the best yellow poplar."

He reported:

The part of the road in Ohio now under the control of the United States, commences at the town of Jefferson, 14 miles west of Columbus, and is 82 miles in length to its termination at the State line.

The twenty-nine miles east of Springfield will shortly be completed, and relinquished to the States, leaving 53 miles which will then be under construction.

. . . It is still believed that the estimate rendered two years since, for the entire completion of the road through this State, will be sufficient for that purpose; but this depends so much upon the amount of the annual appropriations, and the season at which they become available, as to render it uncertain that the ultimate cost will not, in the end, exceed the amount heretofore estimated as necessary . . . .

It is proposed for the next year to complete the grubbing and bridging through the State, and to grade the road past the Miami and Stillwater rivers, to the 70th mile, inclusive, west of Columbus . . . .

For grubbing 20 miles (\$10,500), wooden bridges and abutments (\$76,600), small arches stone bridges and culverts (\$32,500), grading 23 miles (\$116,000), and contingencies (\$6,400), Dutton estimated he would need an appropriation of \$242,000 in 1839.

Captain Ogden reported on progress in Indiana and Illinois. In the eastern division of Indiana, contracts provided for completion of the road from Richmond east for 2¾ miles, and for preparing the unfinished parts between Richmond and Centreville "for the

reception of the metal. "They are all progressing rapidly, and, with some slight exceptions, quite favorably."

In the middle division, contracts "provided for the entire completion of the mile west, the mile through town, and the mile and a half immediately east of Indianapolis." Contracts for this work had been let on July 2 to Messrs. Williams and Flint. "From the exalted character of this firm as contractors on the Madison and Indianapolis railroad, and from their known and supposed resources, the superintendent felt assured that this part of the road would have been completed," even though the contract was at 16 percent above the engineer's estimate. Despite the high price, Williams and Flint relinquished the contract on September 6, "under the plea that the works were taken too low." Captain Ogden decided that re-letting the contract "would prove injurious." Instead, he decided to use hired labor for the mile west of the city, through the city, and a short distance east. "The work is now progressing, and it is believed that, notwithstanding the lateness of the season, it will be prepared to receive the travel by the first of December."

Contracts on the western division had been let "for the entire completion of about 1¼ mile of the road east of Terre Haute; for bridging Middle Lost and Dewees' creeks, and for grading about half a mile in the vicinity of the former; Middle Lost creek being about five, and Dewees' creek about twenty-five miles east of Terre Haute." These contracts were let at 20 percent above estimate:

The two contracts for bridging have been relinquished, under the plea that the work could not be done for the contract prices; whilst those for metaling east of town are progressing rapidly and favorably, and no doubt is entertained of their final completing according to contract.

A problem had occurred on the 1837 contract for delivery of building stone for the Wabash bridge. After arrangements were made for delivering the stone by water, "the contractor, finding that to procure stone of a suitable quality was more difficult than he had anticipated, abandoned his contract about the first of June":

During the remainder of the boating season, the boat and scows were employed in delivering building and prepared metaling stone to the crossing of the road at Terre Haute. These stone were quarried, prepared, and delivered by day labor.

Lieutenant George L. Welcker, on orders from the Department of War, had inspected the Cumberland Road in Indiana. Captain Dutton included Welcker's September 7 report of the August inspection. It began:

It is believed that more than four-fifths of the grade of the whole line of the road has at one time been considered as finished; but the soil, in many places, being light and porous, the water is absorbed and retained by it, which makes it unfavorable to the construction of a road, and renders it difficult to keep the grade in proper repair. At other points where the road is located on the sides of hills, it is difficult to prevent the water falling upon the hill-sides from flowing upon the road and washing it to pieces. The grade, too, in the earlier construction of the

work, was badly made; it was not raised to a sufficient height above the adjacent ground; the ditches were not made of sufficient width, nor were they so constructed as to carry the water into the natural ravines and channels which would drain it away from the road. From the above causes, the grade, in many places, has been washed and cut to pieces, and is in an almost ruinous condition.

. . . The road at the present time is perfectly dry throughout its whole extent, and, so far as the grade is concerned, may be passed without difficulty; as soon as a rainy season comes on, the ruts and holes remaining in the grade will be filled up with water; and the road, in many places, will become (as it has been) almost impassable . . . .

Of the many permanent bridges built during the earlier stages of the work, there are few, indeed, which will not in a short time require to be rebuilt, or to undergo extensive repairs. The same may be said of the old culverts, and of the temporary bridges generally, along the line of the road.

On the eastern division, Welcker found that on the road east of Richmond, grading had been completed, "and nearly the whole distance is now under contract for metaling":

This work is progressing with considerable dispatch; but the manner in which it is executed is not free from objection. The metal is badly broken; and, in preparing the metal bed, the whole of the hard crust was removed from the top of the grade, and the stone was thrown upon it. Should the season continue dry, and should the travel be well regulated upon the first stratum, (which is now laid on,) it is possible that the metal bed will become consolidated, at the same time with the layer of stone which covers it. But if, on the contrary, the season should prove wet, the travel must either be excluded from the road, or managed with extreme caution; otherwise, there is great danger that the metal will be buried and lost.

He had brought his concern about this and other points to the attention of the assistant engineer:

The travel has also been excluded from the grade on the greater portion of the distance between Richmond and Centreville; in consequence of which, the road is unconsolidated, and is in bad condition to stand the travel, and the rains and frosts of winter. Directions were left to admit the travel on this part of the road immediately, and to have it well regulated with barriers, &c.

Work in the middle division was progressing slowly because the contractor employed an insufficient force of workers. "It is true that domestic afflictions have prevented the contractor from devoting his personal attention to the work; and it is also true that the almost unparalleled sickness of the country has rendered it difficult to procure a sufficient force; but it is not believed that all had been done which might have been done." If the contractor did not bring sufficient workers to the job "immediately . . . to prosecute the work with energy, it is respectfully recommended that his contracts be considered as forfeited; and, should such a course be deemed admissible; under existing laws and

regulations, it is further recommended that the work now under contract at Indianapolis be pushed to a speedy completion under the day-labor system.”

He found better conditions on the western division:

On the western division, at Terre Haute, the remaining contracts of 1837 have just been completed; and the contracts of 1838, for metaling east of the town, are progressing favorably, both as regards the time and manner of their execution. The first course of metal has been well broken; it has been partly laid on, on both sections under contract; and the remainder of the course will doubtless be completed in advance of the time specified in the contracts.

Captain Ogden acknowledged that during June, he had found similar conditions as Lieutenant Welcker 2 months later with a few exceptions, mainly due to “heavy and continuous rains.” In addition to the causes Lieutenant Welcker noted, Captain Ogden added “the want of a proper care in protecting the grade that had been finished up to the winter of 1835”:

The greater part of this was finished late in the fall, and was much injured by the winter’s travel; still, it could have been repaired and kept in order at a comparatively small expense, had not the superintendent been restricted in his operations by the act making appropriations for 1836.

It could been put in good traveling order in the spring of 1837, but at the expense of the entire appropriation for the year. The same could be said for 1838:

Such being the case, combined with the difficulty of making disbursement at points remote from the banks, (to whose agency he was indebted for the performance of this duty,) the superintendent determined in the spring of 1837, as a settled policy, to make no expenditures between the points of active operations at Richmond, Indianapolis, and Terre Haute, after completing some unfinished culverts and securing the materials, &c. on the road. He has, however, recently found it necessary to repair some of the permanent and temporary bridges, lest the travel should be turned entirely from the road.

He recommended a sum of \$500,000 for work in 1839.

For Illinois, Captain Ogden reported that all operations during the year had been conducted under the contract system, and had not been entirely suspended at any time since his last annual report. The work consisted mainly of:

Grading – on the eastern and western divisions of the road.  
Masonry – quarrying, hauling, cutting and laying stone in bridges and culverts.  
Carpentry – getting out and preparing timber, framing superstructures of bridges, &c.

The rainy season, which commenced in the middle of November 1837, had suspended grading, but other branches of the work “were continued with but partial success

throughout the remainder of the fall, and during the following winter and spring.” Work resumed on suspended activities in May 1838 “and have generally been conducted with as much activity, and have been attended with as much success, as the many causes tending to retard and embarrass them would seem to permit”:

The weather continued wet and cold throughout the whole of the spring. In June, from heavy and continued rains, the rivers and small streams became unusually high, the country was partially inundated by water, the sites of many of the bridges and culverts were overflowed, and the works much disturbed and retarded.

In July and August, the swarms of flies which infest the prairies were exceedingly numerous, and rendered the employment of horses and cattle, for the purposes of grading and hauling, almost impracticable. During the months of August and September, and up to the present time, the whole country has been visited by sickness to an unusual and alarming extent, and has rendered it impossible to employ a sufficient force upon the works. Most of the above causes have been more seriously felt upon the western than upon the eastern division of the road.

By the time he received word on June 10 of the appropriation of \$150,000 for Illinois, he had surveys, drawings, estimates, and specifications ready to be let following sufficient notice. The contracts were let at about 20 percent above the engineer’s estimate. “They have, thus far, progressed favorably, and hopes are entertained that the works put under contract this year, as well as those under existing contracts of the previous year, will all be completed according to agreement.”

He summarized the progress:

With the exception of a few miles on the eastern division of the road, the operations have extended from the State line to a distance of about 15 miles west. On this division one mile has been completed and accepted within the year, and several others are nearly finished. Four culverts have been completed, and four others nearly finished. The foundations for the abutments of four bridges have all been secured, and four of the abutments nearly completed.

On the western division of the road the operations have extended from Vandalia (its present termination) to a distance of about 17 miles east. On this division two miles have been completed and accepted within the year, and the grade of five additional miles has been nearly finished. One culvert has been completed, and four others nearly finished. The foundations for the abutments of the Kaskaskia bridge have been secured, one of the abutments has been raised above the lower *askew back*, and the other above high-water mark. The grade of the Kaskaskia bottom has been raised to such a height that the travel may pass over it, at all seasons of the year, with ease and safety. The timber for the superstructure of the Kaskaskia bridge has been delivered, and the framing completed. A great portion of the timber for large bridges in the Kaskaskia bottom has been delivered, and the framing partly done.

Lieutenant Welcker, based in the Cumberland Road Office in Terre Haute, had inspected the road in Illinois. He began his report with an observation:

The country through which the road passes is one which offers little inducement to the agriculturist; but the soil, in general, is one which is admirably adapted to the construction of roads.

The first 25 miles beyond Indiana, “the country is hilly and broken, and is covered by a growth of timber in which the different species of oak largely predominate.” The land was the same in the vicinity of the forks of the Embarras as well as a few miles on either side of the Little Wabash River:

Of the remaining country through which the road passes, by far the greater portion consists of level prairies, many of which are flat, and are liable to become wet and extremely muddy. Such is not, however, the case at present; for as the road is now travelled, a carriage wheel would be soiled by mud, or moistened by water, from Big creek to the Kaskaskia river – a distance of more than eighty miles . . . .

The road has been cleared and grubbed throughout its whole extent; but in the hilly and broken sections of country there are several places where (for want of either bridges, culverts, or grading) the travel does not pursue the immediate line of the road, but follows by-ways, which leave the road, and intersect it again at short intervals. These portions of the road, on which there is no travel, have generally grown up with a dense growth of small oak and hickory, varying in height from a few inches to 12 or 15 feet, and which must be removed as the road advances towards its completion . . . . In nearly all cases, however, where bridges or culverts have been constructed, the grade has been so far finished as to admit the travel to pass freely over them.

On many such sections, travel had worn the road, which was “cut by heavy and washing rains to such a degree that it is passed with difficulty, if not with danger.”

Where the terrain was level, the road was “nearly as good where no grading has been done as where the grade has been made”:

The whole country is perfectly dry, and in these level districts the whole of the road is firm and smooth.

In most seasons of the year, however, the case is entirely different. The water, falling upon the level ground where no grading has been done, finds no drain or other means of escape, and must remain upon the surface until it passes away by evaporation, or is absorbed by the earth; during the whole of which time the road is exceedingly muddy, and almost impassable. But where the grade has been made, the water is drained into the ditches and flows away; the earth, thrown into the road, raises it above the level of the adjacent ground and water, consolidates readily, and presents a firm surface, over which the travel passes with comparative ease.

Although there are still many tedious and difficult places, yet the road, taken altogether, has never been in better, nor even in as good order as at the present. The mail is transported upon it tri-weekly, in two-horse post-coaches, between this place and Vandalia; and the number of emigrants now travelling upon it is believed to be considerably greater than at any former period.

Contracts on the eastern section of the road from the State line near Marshall to a point about 15 miles west provided for grading, draining, and bridging. "The operations under the contracts on this division of the road have generally progressed favorably and with considerable dispatch." Two contractors for masonry were guilty of departing from contracts and specifications, but measures were taken to ensure compliance, with constructors "subjected to the forfeiture, and the masons to the penalty, provided for in the contracts.

The western division of the road began in Vandalia and extended about 17 miles east. Contracts, one of which had been abandoned, covered grading, draining, and bridging:

Owing to the slight population in the vicinity of the road, and to the general and almost unparalleled sickness of the country, the contractors have not been able to employ a sufficient force; the operations have progressed slowly, but the work has generally been well executed.

One exception was a contractor who "attempted to practice a fraud" while laying the masonry for a culvert. The assistant engineer detected the problem. "The masonry was relaid according to the specifications, and the contractors have already been subjected to the forfeiture provided for in their contract":

The portion of the road on the western division now under contract, is generally level and easily graded; but the country being open and smooth for miles in extent, it is almost impossible to confine the travel upon it; and there is danger that the new grade will not be well consolidated before the commencement of winter.

He completed his report by noting that Congress had not appropriated funds for building the road according to the McAdam system. When current contracts were completed, the road "will be as far completed as authorized by law, from the State line to a distance of fifteen miles west, and from Vandalia to a distance of seventeen miles east.

For 1839, Captain Ogden planned contracts to complete 25 miles of the eastern division, and 13 miles of the western division, for a total estimated cost of \$300,000, subject to appropriation. Speaking of both States, he explained:

Should the appropriations requested for 1839 be granted, they will, together with the parts finished, and those under contract, complete about forty-three miles of the road in Indiana, and about sixty-seven miles in Illinois; and the propriety of making arrangements with these States, by which the road, as finished, may be turned over in ten-mile sections, is respectfully suggested.

The appropriations recommended are such as are deemed essential to the proper progress of the works, and it is hoped that they will be granted without abatement or delay.

Work thus far demonstrated the importance of the Cumberland Road:

The travel upon it, which has heretofore been immense, has been almost doubled within a single season. Emigrants are thronging the road by hundreds, and almost thousands, in a body; and the vast portions of travel and emigration which have heretofore diverged from it, and pursued the different Northwestern routes, are constantly diminishing, and are now following this road, even to the end of its location . . . .

With timely and liberal appropriations, contractors of capital and experience could be induced upon the road; laborers and mechanics, seeing a prospect of constant employment, could be brought from a distance; and, instead of uncertain and tardy operations, the work could be pushed forward with regularity and vigor.

. . . If this work is to be finished, the sooner it can be done the better. This is true, whether considered in regard to its public and general utility, to the benefits that will result from its construction to the General Government, to the immense advantages that will flow from it to the immediate country through which it passes, or, finally, whether considered in regard to the cheapness and economy of its construction. [*Message from the President of the United States to the Two House of Congress, Ho. of Reps. Executive, 25th Congress, 3d Session, Doc. No. 2*]

Members of Congress, of course, did not know that the funds appropriated in 1838 would be the final funds for the Cumberland Road (except minor amounts to pay for completed work). Therefore, on December 12, 1838, Senator Tipton of the Committee on Roads and Canals reported a bill making appropriations for the continuation of the Cumberland Road in Ohio, Indiana, and Illinois. Appropriations totaled \$450,000, with \$150,000 (spelled out “one hundred and fifty thousand dollars”) for each of the three States. The bill was read and ordered to a second reading.

When the bill was again considered on January 18, 1839, Senator Henry Hubbard of New Hampshire moved to strike out the word “fifty” wherever it appeared in the bill to reduce the appropriation for each State by \$50,000. After some discussion that the *Globe* did not summarize, the Senate voted 27 to 17 to adopt the motion.

The Senate then approved, 23 to 22, Alabama Senator King’s motion to strike out the enabling clause.

Because several Senators had been absent for the vote, Senator Garret D. Wall of New Jersey, who had voted with the majority, proposed reconsideration to allow those absent to vote. After some debate, pro and con, Senator King moved to lay the motion on the table; he intended to call it up on January 21 when he expected a full Senate to be present. His motion was lost, 23 to 26.

The Senate then voted, without a division, to take up Senator Wall's motion for reconsideration of the vote to take out the enacting clause. The motion on striking out the enacting clause was decided in the negative, 23 to 26.

Mississippi Senator Walker moved to strike out the provision calling for the funds from the Treasury to be repaid from the two-percent fund. The motion lost, 22 to 24.

The bill, as amended, was ordered, 25 to 23, to be engrossed for a third reading. Following the third reading, the Senate approved the bill, 24 to 22, on January 21. The *Globe* referred to discussion about these votes, but did not report the details.

On January 25, 1839, Senator Young from the Committee on Roads and Canals reported the following resolution:

*Resolved*, That the Secretary of War be instructed to cause an estimate to be made of the sums that will be necessary to complete the construction of the Cumberland road through the States of Ohio, Indiana, and Illinois, to the Mississippi river, and of the additional amount that will be required to extend the same to the city of Jefferson, in the State of Missouri – designating the cost of the same in each State respectively, and the aggregate sum that will be necessary to cover the whole expense – showing, as far as practicable, the separate cost of locating and grading said road in each State, for the construction of bridges, and Macadamizing the same, with the relative amounts that will probably be expended in the original construction of said work, and in making necessary repairs during the progress of the same, and before its completion, for the purpose of enabling the Senate to judge whether it will not be advisable, both as it regards the interest of the United States and the several States more immediately interested in the construction of said road, to make an appropriation sufficient to complete the same, payable in annual installments to the several States respectively within the limits of which the unfinished parts of said road is situate; upon the condition that the said States will agree to accept and apply the money thus appropriated to the objects intended, and thereafter discharge the United States from any further appropriations; and upon the further condition that the said States shall have authority, and it shall be their duty, to keep the same in good repair after its completion, and shall allow the arms and munitions of war of the General Government to pass toll free, and that he report said estimate, when made, at the next session of Congress.

The Senate approved the resolution on January 30.

In the House, Representative Pope of the Committee of Ways and Means reported a bill on January 8, 1839, making appropriations to continue the Cumberland Road in Ohio, Indiana, and Illinois.

Representative Francis W. Pickens of South Carolina asked if a majority of the committee had supported reporting the bill. Representative Pope explained that “a majority of a quorum of the committee” had authorized reporting it. Representative

Pickens moved to recommit the bill to the committee, explaining that his goal was “to call the attention of the House to the dangerous system now coming into practice, of reporting bills to the House with the understanding that they had received the sanction of a majority of the committee, when such was not the case.” He cited several bills that had reached the floor under those circumstances:

It was obvious that such a system was calculated to lead to unsound legislation, as it was well known that the House was greatly influenced on any measure by the fact of the majority of a standing committee having recommended it. It was not this bill in particular to which he objected, but the principle, which applied to all other cases of the same nature.

Representative Ewing said he was surprised by the motion:

It had been stated that the bill had been reported by the direction of a majority of a quorum of the committee; and what could he wish more? If the gentleman had any thing to say against the committee, why did not he arraign them, and not impede the progress of measures of such importance to the country. He would have the gentleman to know that at this session the will of the people, and not that of the Executive, would rule the action of the House. At all events, if he did not learn the lesson at the present session, he would soon learn it.

Representative Pickens emphasized that he was objecting to the principle, not the committee or the bill. And he did not understand the point about the people ruling. “He [Mr. P.] had always been of opinion that it was the people who ruled.”

Representative Mark H. Sibley of New York opposed the motion to recommit. Because several bills from the previous session had been cited, he asked Representative Pickens “to consider the history of those bills”:

He would then find, that although a majority of the committee declared themselves adverse to them, yet they passed the House by a large vote, and also the other branch of Congress. He argued at some length against the policy of making no reports in favor of measures, without the concurrence of a majority, as when the propositions came before the House, independent action could be had thereon, without any reference to what had been done by the committee.

Representative Pickens stated his view that bills must be reported to the House only with majority support in committee. Otherwise, “the House would be in danger of receiving a false impression.”

Representative Cambreleng, a former chairman of the committee (1835-1839), said the “gentleman from South Carolina was partly right and partly wrong.” In some cases, the committee was required to report the bill by law, meaning House rules, even if the majority did not support the bill:

He adduced the bill making appropriation for the support of the Military Academy as an instance. Some of the committee were opposed to the institution, although

they considered themselves bound by law to report the appropriation. But on other occasions, it became the duty of the committee to take into consideration the state of the finances, before they made the appropriations. Mr. C. explained, that recently three members had been absent from the committee, two of whom were sick, but that the committee had been bound by the rule of the House to report the four large bills within thirty days from the commencement of the session. The bills reported that morning, had been reported by the majority of a quorum, but not until after the appropriation had been cut down to the smallest amount.

Representative Millard Fillmore of New York, a future chairman of the committee (1841-1843) and President of the United States, opposed the motion to recommit, saying:

As there was no law for the House to fill the committee after the manner of a jury, it was bound to take the word of a member, when he said that a bill had been reported from the majority of a quorum.

Representative Pope clarified that when the committee considered the Cumberland Road appropriation bill, five members of the committee were present, and the majority voted in favor of reporting the bill to the House.

Representative Pickens said his motion to recommit, with instructions, was based on his understanding that only three members of the committee had been present. Because that was not the case, he would move to recommit the bill without instructions. The House took up the motion and rejected it, then agreed to a motion to refer the bill to a Committee of the Whole.

On January 22, the House took up the Senate bill making appropriations for continuation of the Cumberland Road east of the Ohio River. Representative Walter Coles of Virginia moved to lay the bill on the table. Before a vote could be taken on the motion, the House adjourned. The following day, the House voted in the negative, 77 to 105, on the motion. "So the House," as the *Globe* explained, "refused to lay the bill on the table; and it was committed to a Committee of the Whole."

The Committee of the Whole voted 70 to 55 on February 28 to consider the bill for continuance of the road "through the States of Indiana, Illinois, and Missouri." Representative McKennan moved to amend the bill to appropriate \$20,000 "for the erection of guard fences on that portion of the road lying east of the Ohio, and \$500 for widening a certain turn in the road on the side of Laurel Hill." The committee rejected the motion without a recorded vote.

The House also rejected, 54 to 70, Virginia Representative John Robertson's motion to strike the enacting clause of the bill.

Representative Archibald Yell of Arkansas moved to amend the bill by adding \$65,000 for a road from Memphis to Little Rock. And Representative Franklin H. Elmore of South Carolina moved to strike the clause calling for reimbursement from the two-percent fund. According to the *Globe*:

On this motion a highly animated debate arose, in which Messrs. ELMORE, MASON of Ohio, THOMPSON, THOMAS, DAWSON, ROBERTSON, GARLAND of Louisiana, and HEROD participated; when, at about 10 o'clock, the committee rose (ayes 63, noes 60) and reported progress.

The House adjourned, to return to the Cumberland Road bill on the last day of the Congress, March 3, 1839. On the motion to go into the Committee of the Whole for consideration of the bill, the House voted 74 to 77, against doing so.

The House adjourned without considering the Cumberland Road bill again, thus ending any prospect for continuing appropriations during the 25<sup>th</sup> Congress.

### **The 1839 National Road Convention**

This failure of Congress to appropriate funds for the project prompted officials in Indiana and Illinois to hold a convention in July to develop a formal appeal to Congress for more funds. On July 8, 1839, delegates met in the Vigo County Courthouse in Terre Haute for the National Road Convention. Every county along the road in Indiana, except Henry County, sent delegates, with 26 delegates from Illinois. Only one county in Ohio, Miami, sent a delegate.

On the second day, the delegates approved a memorial that journalist Mike McCormick summarized in a 2013 newspaper retrospective:

The memorial presented to the convention on the second day traced the history of the road from the passage of the 1802 statute admitting Ohio to the union and describing the compact made by Congress with the State of Indiana on April 10, 1816 and Illinois on April 18, 1818. It concluded:

The Cumberland Road was originally designed as a National Work and, in that light, has been viewed . . . for more than a quarter century. It was completed through the old States east of the Ohio River in reference to its decidedly National character, out of the National Treasury . . . and is destined to confer National benefits upon the Union . . .”

The delegates did not have the benefit of the precise construction estimates for unfinished work . . . Nevertheless, the memorial identified ways Congress could improve and streamline construction, suggesting increases in appropriations early in the Congressional session. [McCormick, Mike, “Historical Perspective: “Cumberland Road Convention in Terre Haute in 1839,” *Tribune-Star*, September 14 (Part I), September 22 (Part II), Part III (September 29), 2013]

Governor David Wallace (1837-1840) forwarded the proceedings of the National Road Convention to the Indiana General Assembly for consideration, observing:

The defeat of the Cumberland road bill in Congress, at the last session, caused great dissatisfaction among the people both of Indiana and Illinois. For the purpose of expressing their chagrin and disappointment at this result, and of

adopting measures in relation to the further prosecution of the road, a convention of delegates from these states and Ohio, assembled at Terre Haute on the eighth and ninth of July. A copy of the proceedings of this body has been furnished me by the president, and most cheerfully comply with the request contained on one of the resolutions, and submit the same to the consideration of the legislature.

The result was the following memorial from the General Assembly to the U.S. House of Representatives, read on January 18, 1840:

To the honorable the House of Representatives

Your memorialists, the General Assembly of the State of Indiana, claim the right as a sovereign State, to call the attention of your honorable body to any object of National concern. That the Cumberland road is of that character would appear without doubt or controversy. It originated in Congress as essential for the national good. It has been sustained through every administration for more than thirty years. It was originally projected as a great western mail route or post road, when not a voice from the west was to be heard in its favor.

When all that fertile region composing Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin and Iowa, was yet a wilderness, yet, such was the importance attached to this great National object, as early as 1802, that the Alleghany mountains, so called was no longer to obstruct the free intercourse with the west. The Cumberland road was commenced in Maryland and completed through Pennsylvania and Virginia to the Ohio river, out of the National Treasury.

Since its location through the western States, the two per cent. fund has been applied as a moiety on their part, and as a member of the confederacy Indiana holds a general interest in this road, and in her sovereign capacity, she claims that interest in behalf of her citizens. That enlightened and liberal policy which has hitherto been extended to the west, has not been without its reward. Many millions have flowed into the National Treasury from the public domain. States have been added to the Union, Territories organized and population extended; while other bright stars are rising in the far west, which will soon add other States to the Union all looking to the Cumberland road as a great National highway to the seat of the National Government.

In full confidence that those just and reasonable views will meet the favorable consideration of your honorable body, your memorialists would respectfully call the attention of Congress to the present dilapidated condition of the Cumberland road, and to urge an early and ample appropriation for its further prosecution and final completion, and in making this request we would be unmindful of our duty to the State and Nation if we did not at the same time, solicit an inquiry into the causes of delay so strikingly manifest in the progress of the work, and to ask of your honorable body an entire reform in the mode and manner of operations. This, your memorialists conceive to be indispensable.

Congress may continue to make appropriations from year to year for an indefinite period, but without a more effectual and less expensive mode of operation, millions may be wasted in paying officers and a numerous train of subalterns, building up towns at favorite points, and enriching individuals, while the road will still remain unfinished, to the great injury of the Nation, the States through which it passes, and to individuals whose property is occupied as places of deposit for materials.

Your memorialists would further suggest the importance of a more efficient and energetic operation of this work on the ground of economy. The sooner it is completed the less it will cost. Each year's unnecessary delay, is not only a loss of the use of the road to all, but the additional expense of keeping up what has been left in an unfinished state the preceding year. That a change, in the management of this work, is necessary will appear manifest, when your honorable body will reflect that the Cumberland road was the first public improvement of the kind in the Union. That it has been in progress of construction for more than thirty years under the war and engineer department. That during its unprecedented slow progress, many thousand miles of roads and canals have been completed under the auspices of the several States.

These facts prove most conclusively that there is a radical defect in the system which requires the wise interposition of Congress to reform. The lively interest which is felt throughout the west upon this important subject, will appear manifest from the proceedings of a Convention held at Terre Haute in July last, a copy of which accompanies this memorial. The completion of this road having been anticipated in the adoption of a general system of internal improvements renders its speedy completion of the first importance to Indiana.

Your memorialists, therefore under all the foregoing considerations respectfully submit their claims in full confidence that they will receive that attention which is due to their merits. [*Journal of the House of Representatives at the Twenty-Fourth Session of the General Assembly of the State of Indiana commenced at Indianapolis, on Monday, the Second Day of December, 1839*]

On February 20, 1840, the General Assembly of Indiana approved a memorial to Congress:

That the failure to obtain an appropriation on the Cumberland road at the last session of Congress has produced great dissatisfaction with a large portion of our industrious and enterprising citizens.

Without stopping to inquire into the cause of the failure of the last winter's appropriation, which so much disappointed our just expectations; and believing that you are aware of the utility and great importance of this national thoroughfare, on which the immense travel and unparalleled emigration from the eastern and middle States to the west are continually passing, and on which the principal mails of four of the western States are daily dependent: and the road,

lamentable to tell, through this State is almost impassable for a part of the year, in consequence of its partially constructed situation: and, what add more to our mortification and regret, in viewing this road in its unfinished condition, is, that a large quantity of rock is hauled to different points, preparatory to Macadamizing, which are now lying useless and getting wasted, for the want of an additional appropriation sufficient to place them on the road in the manner intended; and they would be of immense importance to the travelling community.

There is likewise timber prepared to build bridges substantially, in lieu of those heretofore temporarily built, and which are now going to decay.

Every consideration of economy, and a just regard to the interest of the country through which it passes, require that this road should be graded and metalled, especially when the rock is ready; and that bridges should be built, when the timber is nearly prepared, as speedily as possible.

Conscious as the General Assembly members were “of the rectitude of our demand in requesting and urging the early completion of this work” and of the national importance of the road, they suggested that Congress appropriate enough funds, at once, to complete the road “and pay it over, from time to time, as it may be needed by the State of Indiana, to prosecute the work, under the direction of her board of internal improvement, it would greatly facilitate the work, and abridge the expenses thereof”:

All experience proves that public agents, stationed far from responsibility, are not so faithful and efficient as those who have to discharge their duties under the immediate inspection of those who have a control over their actions; and, in saying this, we do not mean to cast the slightest reflection on any of the former agents employed on the Cumberland road, but would most respectfully suggest the propriety of a change in the agency, believing it to be the better way.

The requested appropriation would have to be “specific” that funds were to be placed “under the control of the State within whose limits the expenditures are to be made, cannot be doubted by any one, as it is evident that, in such a case, there is no resort to novel power, for the direction of the appropriation would remain unchanged, and no other consequence follow than the change of one agency for another.”

The memorial concluded:

Therefore,

*Be it resolved by the General Assembly of the State of Indiana, That our Senators and Representatives in Congress be requested to urge a speedy and liberal appropriation, sufficient to complete the Cumberland road in this State, and that they cause to be laid before each branch of Congress a copy of this memorial and joint resolution. [Memorial of The General Assembly of Indiana, Praying an appropriation for the completion of the Cumberland road within that State, United States Senate, 26th congress, 1st Session, Doc. No. 310]*

## The Final Cost Estimate

As Congress returned in December, President Van Buren submitted his third annual message on December 2, 1839. He began:

I regret that I can not on this occasion congratulate you that the past year has been one of unalloyed prosperity. The ravages of fire and disease have painfully afflicted otherwise flourishing portions of our country, and serious embarrassments yet derange the trade of many of our cities. But notwithstanding these adverse circumstances, that general prosperity which has been heretofore so bountifully bestowed upon us by the Author of All Good still continues to call for our warmest gratitude. Especially have we reason to rejoice in the exuberant harvests which have lavishly recompensed well-directed industry and given to it that sure reward which is vainly sought in visionary speculations. I cannot, indeed, view without peculiar satisfaction the evidences afforded by the past season of the benefits that spring from the steady devotion of the husbandman to his honorable pursuit. No means of individual comfort is more certain and no source of national prosperity is so sure. Nothing can compensate a people for a dependence upon others for the bread they eat, and that cheerful abundance on which the happiness of everyone so much depends is to be looked for nowhere with such sure reliance as in the industry of the agriculturist and the bounties of the earth.

After discussing foreign affairs, he turned to the state of the Treasury. Appropriations before he took office resulted in expenditure of “the very large amount of thirty-three millions.” In 1838 and 1839, appropriations decreased “somewhat, with total expenditures in 1839 likely to stay under \$26 million, “or six millions less than it was last year”:

With a determination, so far as depends on me, to continue this reduction, I have directed the estimates for 1840 to be subjected to the severest scrutiny and to be limited to the absolute requirements of the public service. They will be found less than the expenditures of 1839 by over \$5,000,000.

He did not discuss internal improvements directly, but did discuss the transfer of the U.S. mail from delivery on roads to transport by railroads:

Some difficulties have arisen in relation to contracts for the transportation of the mails by railroad and steamboat companies. It appears that the maximum of compensation provided by Congress for the transportation of the mails upon railroads is not sufficient to induce some of the companies to convey them at such hours as are required for the accommodation of the public. It is one of the most important duties of the General Government to provide and maintain for the use of the people of the States the best practicable mail establishment. To arrive at that end it is indispensable that the Post-Office Department shall be enabled to control the hours at which the mails shall be carried over railroads, as it now does over all other roads. Should serious inconveniences arise from the

inadequacy of the compensation now provided by law, or from unreasonable demands by any of the railroad companies, the subject is of such general importance as to require the prompt attention of Congress.

The documents accompanying the message included a report, dated November 29, 1839, from the Chief Engineer, Colonel Totten, the former member of the Board of Engineers for Internal Improvements. He reported that what he referred to as the National Road, had been completed east of the Ohio River on July 4, 1838, “and a small surplus of funds, has been, or will be, returned to the Treasury.” He continued:

That part lying in the State of Ohio has been entirely completed and turned over to the State, as far as Springfield, affording an unbroken line of road for 300 miles westward from Cumberland, Maryland; to within 54 feet of the western boundary of the State of Ohio; and considerable progress has been made in the remainder of the Ohio Road . . . .”

Colonel Totten, in addition to appending reports on the western segments of the road, explained:

It is designed, in future, to complete the road continuously from one point only in each State, thus avoiding the very heavy repairs involved in throwing open to public use a road that has been graded merely. And in order that the road may be maintained in good condition, when once completed, it is recommended that timely provision be made for turning it over to the respective States, in finished sections of such extent as the appropriations of Congress, from year to year, may allow.

He included Captain Dutton’s report, dated October 15, 1839, from Springfield, Ohio, regarding the work east of the Ohio River. He recalled that at the time of his last report, the Dunlap’s Creek bridge at Brownsville was the only remaining work on the original segment of the Cumberland Road:

The whole of the above work was finished, and the bridge completed in all its parts on the 4th of July of the present year, and the balance of funds remaining on account of this work, \$112.92, the disbursing agent has been requested to turn over to the credit of the Treasurer of the United States . . . .

The bridge now presents a handsome and substantial appearance; it has been open to, and used by the travel very nearly one year, and the heaviest loads pass it with the slightest perceptible jar.

Captain Dutton also reported on work in Ohio:

No appropriation having been made at the last session of Congress for continuing the road, the operations during the past year have been confined to the completion of the contracts entered into in 1838, several of them having, from the nature of the work to be done, and the terms of the original agreement, until this fall to run.

He reported that since his last report, all contracts “for the completion of portions of the road between Columbus and Springfield, have since been satisfactorily closed, as well as those entered into for grading, stoning, and grubbing, west of Springfield, and there now remains to be completed the contracts for building bridges and culverts west of Springfield, and one entered into during the past summer for 6 miles additional grubbing and clearing.”

The 43-mile section of between Columbus and Springfield “has been entirely completed during the past year, and given over to the State of Ohio, which has received and erected toll-gates thereon; 29 miles of the same were turned over during the past season. He explained his plan of operation:

The operations on the road in Ohio have been uniformly projected and carried on, with a view to its continuous completion and surrender to the State in sections, the advantages of this mode of operation being sufficiently obvious. The same plan is contemplated in the further prosecution of the work, until the whole shall have been finally completed.

In addition, Captain Dutton the work planned through 1842 and estimated its cost:

1840: \$292,000.00  
1841: \$232,000.00  
1842: \$114,166.26  
Total: \$638,166.26

He concluded his report with a summary of how the road affected transportation:

From the rate of speed at which the mail is now carried over this road, it has been estimated that, in the event of its completion to St. Louis, three days will be sufficient for the transportation of the mail from Wheeling to that point, and four days for the transportation of passengers in the ordinary coaches. The gentle grades adopted west of Zanesville, together with the hard and smooth surface of the road, by diminishing the traction, allows the space and burden of the four-horse coaches customarily employed to be very considerably enlarged beyond their usual magnitude. For the same reason, the transportation, in wagons, of heavy loads of merchandise or produce may be effected with fewer horses, and greater ease and safety, on the finished Macadamized road.

On October 10, 1839, Major Ogden reported from his Terre Haute office on work in Indiana and Illinois. He described the condition of the road in Indiana:

The road has been opened, and is now travelled on, throughout its whole extent. About four fifths of the road has been considered as graded; but, owing to heavy rains, incessant travel, and other causes, it has been much injured, and must be regraded before the stone covering can be laid on. Those portions of the road upon which no grading has been done, are generally such as require the construction of bridges or culverts before the grade can be completed. Most of the bridges and culverts required on the road have already been constructed; but many of those constructed in the earlier progress of the work, will require to be

rebuilt, or must undergo extensive repairs. About 4,000 perches of building stone have been quarried for the Wabash bridge, and about 850 perches have been delivered at the crossing of the stream. Large quantities of building and Macadamizing stone have been collected, at different points, along the line of the road, and may, at any time, be applied to its construction. The road has been completed through the towns of Richmond, Centreville, and Indianapolis. About nine miles of road have been Macadamized, and are now complete.

He outlined a plan for operations in 1840 for completing the road between Richmond and Knightstown. Completing the grade of 34 miles of road, constructing culverts and bridges, and macadamizing 34 miles of road would cost \$606,431.76.

He also described the condition of the road in Illinois:

The road in Illinois has been opened to Vandalia, its present termination – and, with a few exceptions, (where by-roads are followed,) is travelled on throughout its whole extent. The grading of numerous points on the road has been so far advanced as greatly to facilitate the travel; but there are few of those intermediate points, where the grade can be reported as complete. Most of the bridges and culverts, required on the road, have been constructed; and many of those built in the earlier stages of the work, have already been removed and replaced by others of a more permanent character.

When the present contracts are finished, the grading and masonry of 31 miles will be finished in Illinois; viz: from the State line to near the west end of mile 14, with the exception of mile 3, (the culverts on which remain to be built,) mile 18, and from the 74th to the 90th mile, inclusive.

Major Ogden concluded his report with remarks applicable to both States, beginning:

No appropriation having been made during the last session of Congress, for the continuation of the road in these States, the operations have, necessarily, been limited in extent, and confined to those portions of the road, the completion of which was provided for under previous appropriations.

The Superintendent having been called upon to furnish estimates, and a plan of operations for commencing at the eastern boundaries of the States of Indiana and Illinois, and for prosecuting the work in a continuous manner, and that project having already met the approval of the department, he now submits a plan in conformity therewith, and bases his estimates for future appropriations upon the same.

Whether the proposed plan of prosecuting the work in a continuous manner from a single point in each State be adopted; or whether the plan now in operation of prosecuting it from several points, be continued, it is not proposed to do any thing in the nature of repairs, or to construct any works of a temporary character; but to expend the whole appropriation in completing the road, in a continuous

and permanent manner, from the point or points of commencement, with a view of immediately turning it over to the States.

Nine miles of the road are now Macadamized and completed in the State of Indiana, and upon the supposition that the road is not to be Macadamized in Illinois, thirty-one miles of the road will have been completed in that State before the date of the next annual report. Under these circumstances, the propriety of making arrangements with these States, by which the road as finished, may be turned over, in ten-mile sections, is respectfully suggested.

What was needed was “a large and timely appropriation.” With work suspended, labor was plentiful and could be had at reduced prices, “and the General Government may now proceed with this work, without coming in competition with the States.” If Congress agreed on an appropriation early in the year, “the superintendent will be able to let out contracts, and to commence operations with the opening of the spring.” If an appropriation came later in the year, “the laborers of the country will have been engaged in other public works, or will have embarked in agricultural pursuits, the works cannot be put under contract till late in the season, and, then, the contractors will not be able to procure labor in sufficient abundance.”

He concluded his report with a discussion of the importance of the Cumberland Road:

The importance of this work, its general utility, and its purely national character, are now no longer, if indeed they were, questions of doubtful import. The United States mail is transported over this road, in four-horse post-coaches, daily in Indiana, and tri-weekly in Illinois. Travellers and emigrants are thronging this road, literally in thousands. Already it passed through portions of no less than six States of this confederacy. It united the Atlantic with the Ohio, approaches near the banks of the Mississippi, and seems destined, ere long, to embrace, in its ample span, the half of a mighty continent. And will it still be insisted, that this is a work of a local character, and that it is unworthy of a national construction?

This work was projected while some of the States, through which it now passes, were mere territories, and while others were yet in their infancy: States which have since grown to an importance, second only to the first of the Union. Some of these States have since undertaken, and are now executing, works surpassing in magnificence and grandeur the public improvements of many of the old States of Europe. They have intersected this road, and have united with it, making it only a single link in the vast chain of public improvements. And now, it may be asked, will the General Government abandon this work in its unfinished state? Will she stand idly by, while the States are thus executing their works, and behold hers the only unfinished link in the chain? [*Message From the President of the United States, to the Two Houses of Congress, 26th Congress, 1st Session, Doc. No. 1*]

On January 24, 1840, Secretary of War Joel R. Poinsett submitted a letter to Vice President Richard M. Johnson, president of the Senate, in response to Senator Young's

resolution, adopted January 30, 1839, seeking an estimate of the cost of completing the Cumberland Road. In addition to forwarding the report to the Senate, Secretary Poinsett begged leave “respectfully to call the attention of the Senate to the expense incurred by the department in obeying its instructions.” When Congress asks the Department to execute surveys “which cannot be done without the expenditure of public money, it is very desirable that an appropriation should be made for that purpose, at the same time that the call is made.”

The report was compiled by Chief Engineer Totten. He included a report by Captain Dutton on the Cumberland Road in Ohio and a report by Major Ogden on the road in Indiana and Illinois as well as its extension into Missouri. Colonel Totten pointed out that conducting a new survey of the route between Vandalia, Illinois, and Jefferson City, Missouri, had cost \$1,359.81. He added, “as there is no fund out of which this sum can be drawn, the accounts cannot be paid without a special appropriation of the amount by Congress.”

In a letter dated October 21, 1839, Captain Dutton summarized the road’s status in the State:

The road is now complete, and in the hands of the State, to the forty-third mile west of Columbus, the seat of Government. From that city to the State line, the distance is  $96\frac{3}{4}$  miles, leaving  $53\frac{3}{4}$  miles to be finished. The line is located through the State, and no further expense under this head will be incurred. The grading to the 48th mile is complete; the bridging to the Miami river on the 62d mile, and the clearing and grubbing to the 82d mile west of Columbus, are in the course of completion with the means now in hand. There remain  $14\frac{3}{4}$  miles to grub and clear,  $49\frac{3}{4}$  miles to grade, 35 miles to be bridged, and 53 miles to be Macadamized.

He outlined his plans for the next 3 years “to ensure its completion and surrender to the State early in 1843”:

This plan contemplated carrying on the work, so that ten miles might be given up in the spring of 1841, twenty miles in 1842, and twenty-three and three-fourths miles, being the remainder, in 1843. The amount of the annual appropriations required for the purpose being as follows:

For 1840, \$292,000;  
For 1841, \$232,000; and  
For 1842, \$114,166.26.

He added that the remainder of the work was in “a fertile and populous part of the State of Ohio, furnishing facilities for its construction superior to what has been met with on the seventy miles last completed”:

But the most important of all are timely and adequate appropriations, which will enable competent contractors, and workmen who have embarked in the business,

to continue upon the work, and also offer inducements for competition among the inhabitants of the country through which it passes, and in every respect contribute to the facility and economy with which the work may be conducted.

Major Ogden's letter, dated December 28, 1839, focused mainly on the section from Vandalia to Jefferson City, but included data on the cost of remaining work in Indiana and Illinois. He estimated that the cost to complete the road from the Ohio State line to Indianapolis was \$1,232,195 (to include grubbing: \$197,097; culvert and bridge masonry: \$156,751; and macadamizing: \$856,330). He indicated that miles 69 and 70 were finished, while miles 63 through 68 were complete except for the macadam surface.

The estimated cost of completing the road from Indianapolis to the Illinois State line, was \$1,912,955 (to include clearing, grubbing, and grading: \$245,717; bridge masonry and superstructure construction: \$634,718; culvert masonry: \$48,424; and macadamizing: \$809,373). He indicated that west of Indianapolis, only the first 3 miles were finished.

Of the 90 miles from the Indiana-Illinois State line to Vandalia, Major Ogden considered 31 miles to be complete except for a macadam surface. The estimated cost of completing the road to Vandalia was \$1,432,139 (to include clearing, grubbing, and grading: \$178,254; bridgework and culvert masonry: \$195,056; and macadam treatment for the entire 90 miles: \$928,633).

For the section from Vandalia to Jefferson City, Major Ogden reported that he began his review by studying Joseph Shriver's 1828 analysis of the routing. From Shriver's report, Major Ogden concluded that "even an approximate estimate made from them would be far beyond the amount required for the completion of the road to Jefferson City":

I was led to this conclusion by the following facts, viz: Mr. Shriver was directed to make his survey and location "on a straight line," or as nearly so as the "nature of the ground should admit." His variations from this straight line were limited by the maximum grade of four degrees, and with this limitation he frequently found it necessary to make deep cuts and high embankments on from 15 to 20 miles of the route, and so much broken was this portion of it that a reduction of the grade to correspond with that of Ohio, Indiana, and Illinois, viz: two degrees, would have required an amount more than sufficient to have completed the road under a more favorable location.

I was not furnished with the data which governed Mr. Shriver's estimate of the cost of construction, but from my knowledge of the cost of such work was convinced that he had underestimated almost every item. Under these circumstances, I believed it necessary to make an examination of the entire route from Vandalia to Jefferson City, to obtain the information required to arrive at even an "approximate estimate."

He assembled a corps to survey and measure the route between the two cities via St. Louis. The goal was to find a route that “would combine the least variation of grade, with the least masonry, and consequently the cheapest route, without regard to any given straight line.” He was aware of the dispute between advocates for Alton and those for St. Louis as the crossing point along the Mississippi River, but explained that because the Shriver survey had made St. Louis “a point on the route, and considering it an important one, it was adopted” for the new survey.

The route was “through a slightly undulating country, the water courses easily approached and presenting no difficulty in crossing them.” In identifying a permanent route, the distance could be “advantageously shortened” to reduce the cost of culverts and drainage. “The present estimate is made on a line crossing the Mississippi at Illinois town, on the lower ferry, though it is believed the best crossing could be obtained at the upper ferry.”

West of St. Louis, Major Ogden’s route varied little from the Shriver alignment “until it strikes the dividing ridge of the Missouri and Merrimack rivers near the head waters of the Cuire Couse.” From there, it took a “somewhat circuitous ridge to the southeast corner of Jefferson City, making the distance 147.4 miles . . . .”

Major Ogden knew the route Shriver had identified west of St. Louis was shorter at 113.69 miles:

But when we reflect that a line run through a country so much broken, with a maximum grade of four degrees, would, in reducing it to two degrees, increase the distance nearly as much and then leave upward of 50 miles of extreme grade, when this gives but about 20, we naturally draw the conclusion that a road upon the dividing ridge can be travelled in less time and with a heavier load than one that crosses the hills and valleys in nearly a direct line; another and perhaps more weighty reason may be found in preferring the ridge route in the cheapness of construction and keeping in repair.

In view of the dispute between Alton and St. Louis, Major Ogden thought it “but right to reconnoiter a route on the north of the Missouri river, (in doing which I regret I had not more time at my disposal.)”:

Knowing the difficulty Mr. Shriver had in getting to the table land, I selected the present travelled road from Jefferson City to St. Charles for a particular examination, because I could hear of no other that had been longer in use; by way of explanation I would remark that the old and frequently abandoned roads, both in Illinois and Missouri, have decidedly a better location than those more recently constructed.

The distance between Vandalia and either crossing point would “not materially vary.”

His letter concluded:

The result of my observations on both sides of the river, leads me to the conclusion that if the road is to be made in a straight line, or as nearly so as possible, it should be on the north of the Missouri; if latitude is allowed for a good location it should be on the south side.

Colonel Totten summarized the results in a table:



[*Report from the Secretary of War, Transmitting in compliance with a resolution of the Senate, estimates showing the cost of the extension and completion of the Cumberland road to Jefferson City, in the State of Missouri, 26th Congress, 1st Session, Doc. No. 122*]

### **Seeking Funds in 1840**

Although the short third session of the 25<sup>th</sup> Congress had considered funding for continuation of funding for the Cumberland in Ohio, Indiana, Illinois, and Missouri, the efforts had failed in the House. As the 26<sup>th</sup> Congress began, those bills were dead, but, members from those States renewed their effort.

On December 24, 1839, Indiana Senator Smith offered a resolution for consideration:

*Resolved*, That the Committee on Roads and Canals be instructed to inquire into the expediency of making an appropriation to continue the construction of the Cumberland road in the States of Ohio, Indiana, and Illinois the ensuing year; and that said committee also inquire into the expediency of appropriating a sum of money sufficient to complete said road to Jefferson City, Missouri, to be paid over to the several States within whose limits the road is to be constructed, in annual installments, as the same may be required to insure an economical, energetic, and speedy completion of the work: *Provided*, The States will agree to accept the appropriation and apply it to the object intended and discharge the General Government from any further appropriations: *And provided, also*, That the States have authority to lay and collect toll on said road sufficient to keep it in repair after its construction; and shall allow the arms and munitions of war of the General Government to pass on the same toll free.

Illinois Senator Young of the Committee on Roads and Canals reported a bill on January 13, 1840, to appropriate \$150,000 for each of Ohio, Indiana, and Illinois, to continue construction of the Cumberland Road. It was read and ordered to a second reading. On January 29, on instruction of the committee, Senator Young asked that the Senate take up the bill as a special order. The Senate voted 25 to 12 to make the bill the special order of the day for February 12.

In the House on February 6, Representative John W. Davis introduced several memorials from his home State of Indiana including:

Also, the memorial of the National Road Convention, held at Terre Haute, Indiana, in July 1839. Mr. DAVIS moved that it be referred to the Committee of Ways and Means.

Representative Zadok Casey of Illinois offered a motion to amend the referral:

And that said committee be instructed to report a bill, making an appropriation of one hundred and fifty thousand dollars for each of the States of Ohio, Indiana, and Illinois, to be expended on the national road in said States, in the year 1840, under the direction of the War Department; said appropriation to be subject to all restrictions and conditions of former appropriations on said road.

When a question was raised about whether the motion was out of order, Representative Casey argued that “it was perfectly competent at any time to move instructions to a committee on any subject committed to its charge.” The *Globe* summarized the result:

This motion having elicited debate, under the rule, lies over one day. The petition, however, was ordered to be printed.

The first order of business on February 8 was Representative Davis’s motion to refer the memorial of the National Road Convention to the Ways and Means Committee and the Casey Amendment on instructing the committee to report a bill. Representative James Rariden of Indiana pointed out that the committee had omitted the Cumberland Road from its estimates and that the Secretary of the Treasury had not included it among objects that should claim the attention of Congress. These omissions “placed this matter in a very unfavorable position”:

It was important to the people of the West to know the cause why it was omitted from the estimates. Whether it was a temporary abandonment, or was only because of the embarrassments of the Treasury at this time. It would be remembered by the House that no appropriation was made last year to carry on this road, and the consequence is, that the materials already purchased are being wasted and going to decay; and even parts of the road, which were partially completed, are in a condition to incur a total waste of the moneys expended, if something be not done to arrest the decay. It was important to know whether it was to progress; and it was for that reason that the friends of the measure took this course to bring the matter before the Committee of Ways and Means, inasmuch as there was no recommendatory to Congress by the Executive, to show the importance of taking some action on the subject. He did not consider it proper, then, to go into the merits of the question, or discuss the subject, unless something more tangible should be presented.

Representative Pickens said he thought the purpose of the Casey Amendment was to get the House to vote to let the committee know of support for an appropriation for the

Cumberland Road. He asked, "was the House prepared to march up to this question at this early period of the session?" Instead of bringing up the subject in this roundabout way, he recommended waiting until the Cumberland Road came up "in the regular way." He also thought it was "fit and proper to let the Committee of Ways and Means pursue the regular routine of the high and responsible duties committed to them, without being embarrassed by instructions like these." Moreover, if the resolution were adopted, other members would introduce motions for their own favorite measures:

Let us wait until we know what are the resources of the country, before we commit ourselves to an appropriation for this or that particular measure. Was this Cumberland road of more importance than the civil and diplomatic appropriations, or the appropriations for the army and navy? Why, then, should this matter be discussed in advance? It was unwise, impolitic, and unjust, thus to override the important business of the country. He looked upon the resolution as inexpedient and unnecessary, and plunging the House into embarrassment and difficulty, and as nothing less than prematurely voting on the passage of the Cumberland road bill. Mr. P. concluded by moving to lay the resolution on the table.

Representative Casey asked for a call of the House. He wanted "a decisive expression of the opinion of the House on a question of this importance." The call of the roll resulted in 170 members answering the call, but before a vote could be taken, Representative William W. Wick of Indiana asked Representative Pickens to withdraw his motion. Representative Wick, who wanted "to make an explanation personally interesting himself," promised that after doing so, he would introduce the motion to lay the motion on the table.

Representative Pickens withdrew his motion, prompting a debate on whether he had the authority to do so in exchange for the agreement with Representative Wick; when Representative Pickens reintroduced his motion, the House debated whether he could do so. In the end, Speaker of the House Robert M. T. Hunter, a Whig from Virginia, ruled that Representative Pickens had the right to withdraw his motion but could not reintroduce it; the reasons for the withdrawal were of no concern.

This ruling gave Representative Wick, an attorney serving his first term in Congress, the opportunity he had sought. He did not want anyone to think he agreed with his colleague, Representative Rariden, who said the purpose of the motion was to determine if the Executive had abandoned the Cumberland Road. That was not the case:

But, sir, I find in the estimate coming here from the Topographical bureau, that a large sum for the Cumberland road is included. Will my colleague say that the Topographical bureau is no part of the Executive branch of this Government? Again: this estimate of the Topographical bureau is sent to this House, sanctioned by the Secretary of War, and accompanying a communication from the Department over which he presides, and to which the Topographical bureau is an appendage.

He was referring to a Message from the President of the United States to the Senate on January 8, 1840, describing the operations of the Topographical Bureau during 1839. He began:

I transmit, herewith, for your consideration and action, a communication from the Secretary of War, which is accompanied by the documents from the Military and Topographical Engineer Bureaus . . . .

It estimated the cost of completion for the Cumberland Road in Ohio, Indiana, and Illinois, along with a proposed appropriation for 1840:

	<u>Estimate</u>	<u>Appropriation</u>
Ohio	\$ 638,166.26	\$100,000.00
Indiana	3,144,250.20	150,000.00
Illinois	1,432,138.49	150,000.00

The report did not discuss the basis for these figures; they appeared in a table estimating the funds required to complete civil works under charge of the Engineer Department, and an estimate of funds required for operation during 1840. [*Message from the President of the United States, Showing the operations of the Topographical Bureau during the year 1839, United States Senate, 26th Congress 1st Session, Doc No. 58*]

Even if the Executive had abandoned the Cumberland Road, it was of no importance. Whether to appropriate funds for the project was a legislative question:

At the last session of the last Congress, the appropriation for this road was vetoed, not by the Executive, but by Congress . . . . The Executive could find a reason for passing the road by, in the refusal of Congress to make appropriations for it. He might have inferred, from the action of Congress, that public opinion would no longer sustain appropriations upon the Cumberland road. But I infer very differently from my colleague upon this subject. I repeat that I see nothing from which to infer that the Executive intended to defeat appropriations upon the Cumberland road.

He regretted if anyone put a political cast on the issue. He was expressing his personal views as much as “to state the grounds upon which the subject, in my opinion, stands, as it is to disclaim sympathy with those who incline to give a political aspect to the action of the House upon the matter.” Referring to the two-percent fund, he said it was dispensed in accordance with the compact between the General Government and the new States, but was now all expended:

Suppose this to be true, is it inequitable for the Western States to expect a small advance in return, out of a fund which will soon indemnify the Treasury?

Again, the people of the Western States have been taught, by more than thirty years’ legislation, to expect appropriations for, and the final completion of, the

Cumberland road. They have seen engineers passing along through Ohio, Indiana, Illinois, and at least a part of Missouri. They have seen large sums expended year after year, and, finally, they have seen, during the past year, an estimate of the probable cost of the road, taken by engineers appointed by the Government, and acting under its authority. Think you, sir, they will now see the work abandoned, and not hold responsible those who contribute to the defeat of this their great measure.

Sir, a monarch, a despot, would not first instruct, by a course of action kept up for thirty years, a portion of subjects, to expect a particular object to meet his favor, and then all at once abandon it.

The Congress and the Executive Branch had “produced the expectations which I have stated”:

Will not a jealous people, think you, mark those who defeat this measure? It is their all absorbing interest. Even general politics (I mean party politics) are absorbed by it. They will not deem that man, or that party, orthodox, who or which may contribute to disappoint hopes raised by your predecessors, the great and the good of past years, (they think they were wise, too,) who have covenanted, by implied contracts, stronger than mere party considerations – ay, strong as national faith – to continue appropriations, reasonably apportioned to the condition of the state of the Treasury, upon the Cumberland road, or make some equitable, friendly, and final disposition of the subject, far different from ceasing to appropriate, without reason given.

As promised, he then renewed Representative Pickens’ motion to lay the matter on the table, but in hopes it would be defeated.

The motion was defeated, 86 to 111.

Representative Richard Biddle of Pennsylvania, who listed his party as Anti-Masonic, was the next speaker. (The Anti-Masonic Party, founded in the 1820, condemned the Masons for their secrecy, exclusivity, and undemocratic character, but had gradually broadened its principles to support internal improvements and protective tariffs. By 1840, the party was moribund, with many of its members having shifted to the Whig Party.) He summarized Representative Wick’s personal observations as proving in regards to the budget, “that the President, in the mode in which he has presented the subject, has acted fairly.” Representative Biddle disagreed:

The President, he thought, had presented it in such a way as would best promote electioneering purposes. He had done it in such a way as would place the legislative branch of the Government in a wrong position before the country – as to throw the odium of extravagance on Congress – of going beyond the estimates.

He quoted President Van Buren’s message to Congress on budget reductions:

With a determination so far as depends on me to continue this reduction, I have directed the estimates for 1840 to be subjected to severest scrutiny, and to be limited to the absolute requirements of the public service. They will be found less than the expenditures of 1839 by over five millions of dollars.

This claim, in Representative Biddle's opinion, "was prepared with the consummate skill of a veteran politician – it was something compendious, which would do to carry to the mill or the market, for electioneering purposes." He wondered if Representative Wick could identify "a single abuse" that President Van Buren had corrected or "where a single retrenchment had been made in the expenses of Government." He added, "Not a clerk, whose services were unnecessary, had been dispensed with." To further illustrate his point, Representative Biddle referred to the war in Florida, known to history as the Second Seminole War (1835–1842), to force the remaining Seminole Indians to migrate to Indian Territory in modern Oklahoma:

He then adverted to the waste of the public money in Florida by the mismanagement of the operations there – denounced the Executive because he had presented no estimates to carry on future operations there, where military forces were as much needed now as heretofore – and attributed the change in that policy to a desire to prepare for the coming election, by presenting a seeming reduction of the expenditures. But he believed that all which would be saved from that source would in the end be wasted on something else which should claim less of the attention of the Government.

He referred to the "imbecile management" of the war, although the phrase was left out of the *Globe* report, as would be indicated later in the session.

The estimates were, he believed, phony:

He has called for but eighteen millions in the estimates, when, in fact, the appropriation by Congress will not be less than twenty-five millions. This will be the issue presented to the people – that Congress would be chargeable with all the extravagance – and that it would be used as an argument to prove that if the Executive had sole control of the purse, seven millions would have been saved of the people's money.

The President and heads of departments were shrinking from introducing certain items into the estimates, "and after these estimates had gone abroad, they would be found sneaking before the committee to prevail upon them to insert those items in the bills to be reported":

He charged the President with lending his countenance to extravagance, and with skulking from the responsibility of recommending the measure which led to it. He contended that if the regular estimates for the continuance of the Cumberland road were omitted on account of the embarrassed condition of the Treasury, that the Executive should have told the House and the country so.

Illinois Representative Reynolds said this subject was important to the West, and he urged his colleagues to “discard politics and discuss it with reference to its merits alone.” For his western colleagues, no political capital could be gained by either party:

In fact, it would be good policy on my part to avoid a political discussion, for I am well aware that my remarks would appear light in comparison with the sound and eloquent stirring speech you just heard from the gentleman from Pennsylvania [Mr. Biddle.]

Representative Biddle interrupted to say that he would not have spoken at all “if it had not been for the remarks made by the gentleman from Indiana, who obtained the floor for the purpose of making a personal explanation, and then went on to a defense of the Administration.”

Representative Reynolds resumed, again emphasizing the importance of keeping politics out of the debate. He was, however, not adverse to asking the President or department heads for “proper and legitimate information.” But turning to the subject at hand, he said:

But suppose, Mr. Speaker, that the appropriate Departments of Government did not make the estimate for an appropriation to carry on the Cumberland road; are we, in that event, to fold our arms and sit still? Are we not bound still to do our duty, and press this measure on the consideration of Congress on its own merits?

In the case of the Cumberland Road, all he asked was for “an impartial investigation, and a discussion of its merits”:

I am friendly to the doctrine that the National Government ought not to embark in a general system of internal improvements. I am clearly satisfied, in the main, that is the correct doctrine. But the improvement now under consideration manifestly forms an exception: all general rules have their exceptions, and the Cumberland road is one in this case.

The road, he pointed out, was “the work of the most wise and talented men that our country has ever produced.” In 1806, President Jefferson gave “life and existence to this great and useful work”:

The individuals who established this great improvement in the country exercised those enlightened and enlarged views of public policy that will do honor to them to the latest posterity. This public highway across the mountains, and through the valley of the Mississippi, will never cease to exist. It will last *forever*, I hope, as it is *now*, a monument to the honor and glory of the country. I presume, at its creation, the rancor of party politics did not figure large or strong; but the public utility of the measure guided the councils of those sages that produced this great work; and in the same spirit of meekness and forbearance to each other must we expect to continue it.

This measure was a Democratic measure, as even “the most scrupulous Democrat cannot doubt.” President Jefferson “and the Democratic party were its parents”:

It is a pure, legitimate child, both conceived and brought forth in Democracy. There is no excuse that it is a mongrel or mule breed, and I hope no one will oppose it on this ground.

This work, with its “constitutional parentage” had been continued for more than 30 years:

It had been the favorite of the Government through the administrations of the successive presidents, Jefferson, Madison, Monroe, Adams, Jackson, and Van Buren, and it had in the successive events of peace and war, through this long course of time, the necessary appropriations to continue its construction.

To continue that support, the friends of the road must “give to it that importance of character which will have great influence with the people,” while opponents must provide “strong and cogent” reasons to “justify that abandonment of this improvement *at this time.*”

No one doubts its public utility. “It connects and cements together remote parts of the Union, and brings together the East and the West. It affords to all travelers, of every grade and description, an easy and commodious passage over the vast and stupendous Alleghany mountains.” Before this road, “it would appear to be almost impossible for any animal except the birds of the air to cross them”:

These high mountains, precipices, and deep ravines, have yielded to the art and power of man, and at this time, there is a good road constructed over them, so that a team can convey across them seventy or eighty hundred weight in a wagon. This improvement is suited to the convenience and capacity of all to use it. There is no monopoly in it. It is not confined to a company; but free and open to all mankind, on payment of a very small toll to keep it in repair.

It would be unseemly, after more than 30 years, for Congress to abandon it. “Can it be justified by saving a few dollars?” Doing so would injure substantial interests in the country, “but also tarnish that character for wisdom and consistency, which this nation ought, and I hope will, sustain.”

No one could claim a lack of resources to carry on this work. “The people of this Government have more wealth among them at this time, than they had at any former period,” even though bank notes were not as plentiful. Even during the 1812-1814 war against Great Britain, the work continued:

During the war with one of the most powerful nations on earth, we heard of no such excuse as the want of money to carry on this *same* work. The money and other means of the nation were exerted to the utmost in the vigorous prosecution of this war, yet the work on this road was not permitted to stop; and, therefore, let

it not be said, at this day of prosperity of our country, that we have not the means to finish this road, as we contemplated.

The country pledged its “faith and character” on finishing the road. The people who settled along its location did so in good faith that the country would finish the road, thus increasing the sale, and the price, of public land:

I ask any candid man, under this view of the case, if the completion of the Cumberland road would not form an exception to the general rule, that the Government ought not to embark in a general system of internal improvements?

He offered another reason for continued support of the road, namely the fact that the new States it passed through “have not the power to tax the public lands within their limits”:

If you will give us the public lands within our borders, we will never again solicit an appropriation to continue the Cumberland road.

Representative David Hubbard of Alabama, a Democrat, interjected that he, “for one, would give his right of the public lands to Illinois, if she will make the road.”

Representative Reynolds appreciated the thought but pointed out that both States, Illinois and Alabama, were laboring “under the same vassalage . . . and therefore we have a fellow feeling for each other; but I can hear no such expression from gentlemen representing any of the old States,”

Before the States can build their own projects to the fullest extent, they must all be on an equal standing:

The new States through which this road passes, are debarred the right to tax a great portion of the soil within their limits, and thereby are deprived of the resources which appertain to the old States. If we were placed in the same condition with the old States, and had an equal standing with them, we would join them heart and hand in excluding all these things from the action of Congress. We would be foremost with the first to confine the action of the General Government to subjects purely national, and expressly recognized by the Constitution. It is the pure and legitimate doctrine to exclude from the halls of Congress all matters that can be transacted by the State authorities, and circumscribe the patronage of the President within the legitimate pale of the Constitution. I am free to grant and subscribe to all this doctrine; yet the national road, for various reasons which I have, and will present to this House, forms a marked and decided exception to this rule.

He was extremely pleased that the doctrine of restricting Congress to national action “is so well recognized and established at this time.” The new States were “heartily tired of our vassalage to the General Government in respect to the public domain.” They were “crippled in our operations, deprived of the high and equal stand in the Union with the other States,” and the situation was “becoming *intolerable*” for the new States at the

same time “the Government itself is tired of legislating for us in relation to the public lands.” The day when the General Government’s “undue influence” over the public lands comes to an end “will be hailed as a fortunate epoch in the history of the new States.”

Until then, the friends of the appropriation bill also base their arguments “on the solid basis of a compact between the General Government and the new States through which the road passes”:

This compact being made between the two Governments with that spirit of equity and justice that always has characterized the transactions between the State governments and that of the United States, it remains to be consummated on the part of the General Government in the same spirit.

Representative Reynolds said the general government “ought, and I hope will, execute the contract according to the common sense meaning of the same.”

He pointed out that much of the two-percent funding expended on the Cumberland Road occurred on the original section before the western States entered into a compact. Referring to the two-percent fund collected from the new States, he said that he understood that “the sum arising from the sales has not yet been expended on the work.” He did not have the figures, but was confiding in the information given me by gentlemen in whom I have the utmost confidence”:

The money that was expended on the construction of this road before the contract was made cannot be taking into consideration under the contract. The amount alone that was expended on the work since the contact was made is the sum that comes under the provisions of the contract.

As a result, this view “is so manifestly just and right that to mention it is sufficient to convince all of its truth; and therefore I will urge it no further on the House.”

He observed that the general government had appropriated and expended upwards of \$30 million in the past year, with all revenue from the sale of public lands in the State going to the general government, but “not one dollar was appropriated in or for the State of Illinois, or in the western country.” He was not complaining that the amount overall was too large in view of the general government’s many responsibilities. “But it seems extraordinary that the State of Illinois, or as far as I am informed, none of the western States, received one cent of these appropriations.” It would be “idle and foolish” to expect expenditures in Illinois for unimportant objects:

But I would ask this House if the national road be not a legitimate object? It is of such character and importance, that the General Government ought to be bound to notice it. If there be a national improvement in the Union, it stands foremost in their front ranks. The Cumberland road is, therefore, a fit subject on which to equalize the expenditures and disbursements of the public money.

He referred to Representative Pickens, who was usually “a very liberal and accommodating gentlemen,” but in this matter had formed an exception:

He thinks the measure is brought forward a great deal too soon. The objections of the gentleman remind me of those of a certain man in the West, who was very lazy, and therefore disliked to plant his corn. When urged by his neighbors to do so necessary and important a work, he would first cry, “It’s too soon, it’s too soon;” and afterwards, when the season was so far advanced that he could not say this with any face, he would cry, “It’s too late, it’s too late;” so his corn was never planted.

This will be the case with many of these *too soon* gentlemen; they will not at any time, early or late, vote for this measure.

In that regard, some objected to giving instructions to the Committee on Roads and Canals to report a bill, arguing that the committee ought to be asked to look “into the expediency” of reporting a bill. “This mode of proceeding had in it no efficiency or force, and would amount to nothing at all”:

If it goes at all to the committee, it would have with it the voice of the House, which will give to it respectability

After a bill is reported to the House, time will be given for examination and discussion. It cannot be hurried through the House into a law, without the due and necessary time for deliberation and reflection. In every point of view in which I am capable of examining this measure, I am satisfied I ought to receive the favorable action of this Government, as it has done for the last thirty years. I hope and trust it will.

With that closing, he completed his remarks.

Ohio Representative Mason agreed about keeping politics out of the debate. The country’s two great political parties were not divided on the Cumberland Road, although some members of the parties may differ on the subject:

He believed if the gentlemen from the West – the section of country so much interested in the measure – should fall out among themselves as to expediency, the enemies to this road would look on and say, let them fight it out; because they know that that would be the most effectual way to defeat it. Therefore, the gentlemen from the West, of both parties, should act with some concert. For one, he disclaimed any intention or desire to make political capital out of the question, as had been attributed to some by the gentleman from Indiana. That gentleman had said it was not a party measure in the Western country.

Representative Wick interrupted to explain that what he had said was “that it was in the West an all absorbing question, more so than any question of general politics.

Before Representative Mason could continue his remarks, the House adjourned.

On February 10, Senator Smith, on behalf of the Committee on Roads and Canals, reported a bill consistent with the resolution he had introduced earlier. It called for appropriations, by installments, to the States to complete the Cumberland Road in Ohio, Indiana, Illinois, and Missouri, and transferring the road to the States with certain restrictions. The *Globe* reported:

The bill was accompanied by a long report, in which it is maintained that the Cumberland road was conceived and commenced in the wise and statesmanlike policy of the times, with an eye to the payment of the Revolutionary debt, by making the Western lands tributary to that object; that the Cumberland road is a great national work, to the final completion of which the national faith is pledged; that the contract between the General Government and the States of Ohio, Indiana, Illinois, and Missouri, under what is termed the compacts, was for the construction of the road; and the two per cent. was not *granted* to the States to make the road, but *reserved* by the General Government to make one, and that she is bound to construct it under the compacts at all events; that if the General Government could be viewed in the light of a trustee to the States, still she was bound for a judicious and economical application of the whole fund committed to her charge to the object intended, and she could not discharge herself by saying that the fund was reduced by grants, donations, the payment of military bounties, reductions of price, and pre-emptions, authorized by herself; nor could she escape from her responsibility by saying that she had laid out her work on a scale too expensive for the fund reserved by her to complete; that a transfer to the States of the funds, annually, with the future charge of the road, would insure a continuous and energetic prosecution of the work, upon the most economical principles. Each position, and others, are examined at length.

Senator Smith appended the letters from Captain Dutton and Major Ogden on cost and timing that had been included in Secretary Poinsett's report of January 24, 1840. [In *Senate of the United States*, February 10, 1840, Mr. Smith, of Indiana, made the following report: To accompany Senate Bill No. 215, 26th Congress, 1st Session, Doc. No. 160]

The bill was read a first and second time.

On February 11, Speaker Hunter again directed his colleagues to the Casey Motion referring the National Road Convention petition to the Ways and Means Committee with instructions. As the Speaker noted, Representative Mason still had the floor.

Representative Mason resumed his discussion "at great length" in support of the motion. Continuation of the Cumberland Road, he said, was a subject of greater interest to the people of the new States than any subject before Congress. It had received the support of President Jefferson and every President since then, as well as distinguished gentlemen of both political parties, including Representative Cambreleng, chairman of the Committee of Ways and Means in the previous Congress. This support across the political spectrum

was behind his “sincere desire to disembarass this subject of party considerations, and adverted to the criminations and recriminations which would result from mixing up party politics with this question.” Those who supported the party, of whichever party, would not lose “any political standing.”

He denied that the motion had been suddenly sprung on the House. The fact that the Treasury Secretary’s omission of an appropriation for the project in his estimates “was an ample justification of the motion made by the gentleman from Illinois.” He also referenced the “strong memorials on this subject, which had already been presented to the House.”

He disagreed with Representative Pickens that the committee would see the instructions in the referral as mandatory regardless of the resources available to the general Treasury:

Mr. M. went on to show that this was not the case, and hoped that no gentleman would vote against these instructions, under such a misapprehension.

He then spoke “at length” to explain the grounds for the motion. He began by discussing the compacts with the States involved and “the solemn acts” of Maryland, Pennsylvania, and Virginia:

After an argument to show that it was the duty of the Federal Government to carry out the terms of the compact, he contended that the Cumberland road was no part of the internal improvement and tariff system which was such a bugbear to Southern politicians, and the death knell of which they congratulated themselves with having sounded. He invited Southern gentlemen to enter into an argument with him on this point, telling them that neither they nor their constituents understood the true merits of the question.

He discussed President Jackson’s veto of the Maysville road bill “to show that there was no necessary connection between the Cumberland road and the tariff and internal improvement system; and in connection with this part of his argument, quoted also the opinions of Mr. Calhoun.”

He regretted the prejudices against the Cumberland Road and “the lamentable want of information on the subject.” In closing, “he earnestly appealed to members to examine deeply into it, assuring himself that on being possessed of the requisite information, they would not fail to give to it their hearty support.”

Representative Virgil D. Parris, a Democrat from Maine, said that judging from Representative Mason’s remarks, “I should infer that all his batteries were directed toward the members from the South for interposing their objections to the constitutionality of appropriations for the Cumberland road.” Representative Parris said that although he was from the North, he had “objections on constitutional grounds, as well as against the injustice and inexpediency of this measure.”

Referring to Representative Mason, he said:

The gentleman from Ohio, in a long and able speech, at last succeeded in proving, what all are willing to admit and that no one has ever denied, that the States of Ohio, Indiana, Illinois, and Missouri, were entitled, under the compact made with them by the General Government at the time they were admitted into the Union, to five per cent. or one twentieth part of the net proceed of the sales of the public lands within their limits, to be applied to the making of roads leading to and through them. No one, I apprehend, will attempt to deny that such obligations were imposed upon this Government, to be observed in good faith when they became sovereign States of this Union.

The question, he said, was whether the general government had performed its part of the compact. This was “the great question to be answered; and upon the issue rests the fate of this bill.” He planned to demonstrate, by documentary evidence, “that millions upon millions from the Treasury have been expended for this measure, after every obligation on the part of the Government had been fulfilled.” After he does so, he expected “the coöperation of every advocate for economy and reform, here or elsewhere, in arresting the progress of a system of internal improvements which I believe to be unconstitutional, inexpedient, and unjust.”

He cited the Enabling Act of April 30, 1802, for the admission of Ohio, and the Act of March 3, 1803, which, together, set aside five percent of land sale proceeds for roads within and leading to the State. The Enabling Acts for Indiana and Illinois had similar provisions. Those acts are the sole basis for the compact between the general government and the States:

I am now prepared to spread before this House and the country evidence which cannot be battered down to prove the General Government has more than complied with the terms of the compact.

The evidence was a report from the Secretary of the Treasury, transmitted during the 25th Congress, discussing the proceeds from land sales and the amounts appropriated for the Cumberland Road. To that point, the general government had expended \$6,318,739 on the Cumberland Road. Deducting the 5 percent in land sales revenue the States were entitled to under the compact, left expenditures of \$5,471,907 beyond land sales proceeds:

Here, then, we have presented a fact as incontrovertible as it will be astounding to the country, that the Treasury has been robbed . . . of the people’s money, and squandered in the States of Ohio, Indiana, and Illinois, to make them roads at an average expense of fifteen or twenty thousand dollars per mile. If the authority I have here introduced be correct – and I challenge contradiction – then it is sufficiently shown that these compacts have been more than fulfilled by the Federal Government, and that these States, now asking an annuity of about half a million dollars, to be expended on this road, are indebted to the Government, upon every principal of equity, \$5,500,000.

But amid this profuse expenditure of the public money the country naturally

inquires where and when it is to terminate.

He laid a document on the table containing the engineers' estimate of the cost of completing this work, namely "about eight million dollars additional to the amount already expended":

I find, also, that one single mile of this road is estimated to cost \$211,000, and another mile the enormous sum of \$460,000. The expense in paving and macadamizing this road for a distance of more than six hundred miles, through parts of the country yet an unbroken wilderness, exceeds per mile the cost of any street in any city of this Union.

These figures, which came from Major Ogden's report of December 28, 1839, covered the bridge across the Wabash River. He estimated that mile 71 west of Indianapolis would cost \$464,401.40:

Grading:	\$ 22,679.40
Culvert Masonry:	\$ 252.00
Bridge Masonry:	\$394,200.00
Superstructure:	\$ 37,000.00
Macadamizing:	\$ 8,880.00

Mile 72 would cost \$211,551.00:

Grading:	\$ 87,226.50
Culvert Masonry:	\$ 0
Bridge Masonry:	\$ 73,445.00
Superstructure:	\$ 42,000.00
Macadamizing:	\$ 8,880.00

Without explaining the high cost but with that high cost in mind, Representative Parris asked if any of his colleagues who felt bound by the compact, want "to enter into such a splendid system of internal improvements?" He added:

Was it originally contemplated by Mr. Jefferson, whose authority the gentleman from Ohio invoked, that this road should be a magnificent structure, or that a visionary project should grow out of it, affording any portion of the people a pretense for plundering the Government? No, sir.

The original motive was to build a road to link the Atlantic States with the pioneers in Ohio. That road has been built and "the Alleghanies, that once presented insuperable obstacle to internal intercourse, have been surmounted." In short, the concerns that prompted construction of the road "have long since ceased to exist."

Nevertheless, the road continued beyond the Ohio River:

But when and where, sir, is this road to terminate? On the banks of the Mississippi, or at the base of the Rocky mountains? No. These are barriers, say the friends of this visionary project, which the national Treasury must subdue; it can be limited only by the shore of the Pacific. The cost in passing the Alleghanies, the most difficult and expensive part of the road, was originally estimated at \$6,000 per mile. You have extended it about six hundred miles into the level prairies of the West, and now a single mile is computed by engineers to cost the enormous sum of \$460,000. Let the work go on under the sanction of this Government, and its expense increase in the same progressive ratio, and the wealth of this continent would be exhausted in its completion.

If any of his colleagues were to try to leave the impression that the general government was under obligation for “any acts of disinterested benevolence . . . such an inference would be most erroneous and deceptive.” To illustrate, he cited two acts that granted public land to the State of Ohio for internal improvements:

- Act of February 28, 1823, for a road commencing at the Miami rapids and ending at the western boundary of the Connecticut Western Reserve.
- An Act of March 3, 1827, for a turnpike road from Columbus to Sandusky.

(The Connecticut Western Reserve, in northeastern Ohio south of Lake Erie, was a portion of the Northwest Territory that the State of Connecticut retained a claim to when it ceded its colonial claims to the area. The State sold its claim to land speculators.)

His understanding was that Georgia, North Carolina, and Virginia, which had claims to western lands dating to the colonial era, had ceded those claims to the general government “not for the purposes of education or internal improvements, nor to be appropriated for any State or local object, but for the purpose of liquidating the public debt that accrued to the country in our revolutionary struggle.” The sales of the public land had not come close to meeting that end, with costs to the general government exceeding income by about \$103 million:

Who, then, can doubt the injustice of diverting that source of the revenues of this Government – the proceeds of the sales of public lands – to works of internal improvement? Every dollar of the vast amount of money abstracted from the Treasury and expended on the Cumberland road was paid in by the customs. And who have paid this customs? The people of Maine and other States, who have no interest in this work, and who have contributed most largely to complete it, and not those of the States of Ohio, Indiana, and Illinois, that are receiving its exclusive benefits.

The public documents on file show that, in the ten years ending January 1, 1837, Maine alone paid into the Treasury, by imposts and duties, \$3,260,418; while Ohio, Indiana, and Illinois paid but \$13,586. The people of Maine have paid into the Treasury an annual average amount of \$326,000; while Ohio, Indiana, and Illinois have paid but \$1,300.

He estimated that Maine had paid \$300 to defray government expenses for every dollar the three States had contributed, while building roads at its own expense. He indicated that the new States he had mentioned had paid \$1 for every \$400 received:

In what part of the Constitution do gentlemen recognize the power to subject the people of the North or South to make roads for the West? Do they find it in the clause “to provide for the common defense and general welfare?” Sir, the old Federal doctrine, once advocated, that this clause of the Constitution gave Congress the power to work every species of injustice and rascality, under some plausible pretext of the public good, has been long since exploded. Is it found where power is given “to establish post roads,” or “to regulate commerce?” I am aware that the power to appropriate money for the Cumberland road has been claimed at different periods under all these clauses of the Constitution. But now all are abandoned, and its advocates rely solely on the stipulations of the compact. But whether you look to the compact or the Constitution itself for a foundation on which to rest this claim, it will be found as baseless as an inverted pyramid . . . .

If the power had been claimed under the Constitution, by its framers, to enter into a splendid system of internal improvements, and thereby recognize the gross injustice of robbing one portion of the country to benefit another, not a State of the Confederacy would have ratified it. I contend that Congress has no power to make appropriations for improving territory over which this Government cannot exercise exclusive jurisdiction.

By contrast, the framers had given the general government “exclusive” authority over only territories, including the District of Columbia, and over land acquired by State consent for construction of forts, dockyards, and other needed buildings:

If we had power to construct roads and exercise jurisdiction over them, the strong arm of Government could then be extended over any portion of this Union and, with its might, prostrate not only sovereignty of the States but the liberties of this people.

He then discussed more general grievances against the western States along the Cumberland Road. Was it not enough, he asked, that these States enjoyed a better climate and fertility of the soil than the North, “without asking us to make their roads at an expense of fifteen or twenty thousand dollars per mile?” He continued:

Is it not enough that those who have taken possession of our public lands, in open defiance of law, have demanded and received at our hands preemption acts, graduation laws, and laws confirming their titles? Sir, if I could but take these gentlemen to my district, and there let them witness the enormous expense and toil that an industrious and enterprising population are subjected to in making their roads passable through a mountain region, I could not fail to satisfy them of the gross injustice of plundering them of their hard earnings to make roads for squatters and pillagers upon our public domain. Such an outrage upon our rights

and our property is not only making infractions and innovations upon the most sacred obligations of the Constitution, but it is tearing out its very vitals.

If the people of the West want roads, we are very willing they should make them at their own expense, as the people of the North have done, without asking aid of the General Government. But if gentlemen will point out to me a constitutional power for repaying to the people of Maine what they have expended for making roads the last fifty years I shall be better prepared to reconcile an appropriation for the Cumberland road to the principles of equity and the constitutional powers and obligations of this Government.

He also cited the debt other States had incurred for internal improvements before the Panic of 1837— he cited Louisiana, Maryland, and Pennsylvania. They had “loaded their people with a debt of seventy-five millions,” an amount that should serve as a warning to the general government about incurring debt for internal improvements:

I opposed the introduction of a system of internal improvements in my own State at a time when this mania was sweeping through the country with such fearful rapidity, and I can now congratulate the people on escaping the vortex.

He had rejoiced in 1825 when President Monroe issued his veto of toll-gate bill; he read extracts from the message.

He also questioned the claim that the Cumberland Road had increased the value of the public land:

In 1802 the public lands sold in Ohio for two dollars per acre; but now they are sold for one dollar and a quarter. Besides, sir, I am told that there is not a foot of the Government lands within fifty miles of the Cumberland road.

He disagreed that the road was needed to “bind this Union together by the strongest ties”:

Is this Union, I ask, only kept together by the money that is robbed from the pockets of the people of one section to be expended in another? Is that the only ligament that binds the western country to this Union? I cannot, I will not believe it.

No, he said, it was held together by the blood of the Revolutionary War patriots, “and it cannot be dissolved until the deeds of a Washington, a Warren, and a Montgomery, are lost to the knowledge of mankind.”

He concluded his remarks by saying that if the principles behind this measure are accepted, “you might as well trample your Constitution at once under foot, and commit the destinies of the country to the unrestrained discretion of the central power”:

A splendid consolidation will tread upon the heels of a splendid system of internal improvements. This central power, with its hundred arms, and in every

hand a bribe, will penetrate every State of this Union. You may, awhile, indeed, wear the mere forms and trappings of a free State; but the canker will be at the heart. A gorgeous despotism, crushing beneath its iron heel the liberties of the people or the scattered fragments of the Union, wasting their blood and treasure in mutual strife, will tell the sad story of this last great experiment of free institutions.

Representative Joseph O. Hoffman, a Whig from New York, indicated he would like to address the House on the same subject, but on his motion, the House adjourned.

When the House returned to Representative Casey's motion on February 12. Representative Hoffman had the floor. He favored appropriations for the road, but opposed "the manner in which the measure was now brought before the House." In a lengthy speech not recorded in the *Globe*, he also objected to acting on the subject before the House "obtained some information with regard to the views of the Executive."

One of those speaking on the matter was Indiana Representative Tilghman A. Howard, a Democrat. He had been born and raised in Pickensville, South Carolina, opened a law practice in Nashville, Tennessee, and moved to Indiana in 1830. As a result, he was familiar with the part of South Carolina represented by Representative Pickens. (Representative Howard would resign from the House on July 1, 1840, to run unsuccessfully for Governor of Indiana.)

He regretted that Representative Mason's advice on leaving party out of the debate had not been followed. He cited the references to the Seminole war in Florida as an example, asking, "What has the Florida war to do with this great national highway?" He continued, "We are told that this has been an 'imbecile war,' conducted disgracefully," and discussed the impact of such words on the injured veterans of the war, but such, he said, "is the language implied by the course of those who call this subject into requisition for the purpose of converting it into political capital."

He also questioned why Representative Hoffman of New York had raised questions about the Indiana delegation to the House (not reported in the *Globe*). Where, he wanted to know, did the Representative from New York get such an intimate knowledge of Indiana's choice of Representatives. (Representative George H. Proffitt of Indiana acknowledged he had provided the information to Representative Hoffman.)

Representative Howard continued regarding the elections in Indiana:

But the honorable gentleman from New York had kindly informed us that it was the Cumberland road on which the election of that State turned; and that his friends failed on the ground of their supposed hostility to the measure, or their inefficiency in pressing the subject on the notice of Congress.

That was true in one district. In his own, he had a tough election battle, but the Cumberland Road was mentioned only rarely.

Citing another example, Representative Howard recalled that Representative Biddle had suggested that President Van Buren had sought “to bring public odium” on Congress by submitting low estimates of need. President Van Buren had frequently been criticized for extravagance and profligacy, but had Representative Biddle not heard of the “officeholders’ party,” the “spoils party,” and other similar expressions? These terms were applied to any group that was favorable to the Van Buren Administration. He took consolation in knowing that “denunciation from any quarter does not pass with the people for truth.” Anyone who seeks public favor, “unless armed with truth, although he may have a temporary triumph, must ultimately fail”:

The honorable gentleman from New York seems, in his remarks on the subject, to have resembled a mariner whose bark has been thrown between the counter currents of two contending areas. He would be pleased to favor this road, and yet he is unwilling to vote on this subject unless he can “hear from the palace” – until he can learn the views of the President.

Sir, suppose this argument had come from some friend of this Administration – what would we hear? That its author was a “palace slave.” It would be said that there was an effort to make this House subservient to the President, upon the great subject of expenditure.

Representative Howard next turned to Representative Parris’s remarks. “I am pleased to find,” Representative Howard began, “that he has had the good taste not to include in his published speech all the remarks which were delivered by him on the floor.”

Representative Parris interrupted to say “he did not write out his remarks, nor correct them, and had no wish to be answerable for his speech in any other form than that in which it was delivered.”

Representative Howard regretted “that some of the offensive remarks by that gentleman on yesterday had been left out of the printed report by his direction.” He asked Representative Howard if he knew that the western people he assailed were his own countrymen? If his reference to “squatters and pillagers of the public lands” had been confined to these walls, Representative Howard would not feel a need to answer them, “but when I remember that epithets habitually applied to individuals or nations give character, I feel bound at once to meet the injurious imputations implied in the language of the gentleman.” He wondered what potential immigrants to the west would think:

I should conclude that an eastern gentleman desirous of emigrating westward would esteem it necessary to provide himself with traps, snares, and the like, and when he should get there to use what in the western part of North Carolina they call a dead-fall, in order to catch and clear the country of squatters and render it habitable for civilized man.

For the information of that gentleman, I will tell him that the squatters of the West walk erect, are possessed of humanity, governed and influenced by the like

motives, principles, and feelings as ourselves, fearing but little else than the God that made them.

After a lengthy discussion of the pioneers in the west, he said:

I have made these observations for the benefit of those who do not understand the western people. If gentlemen would travel on this western road, stop at Wheeling, now a city but lately grown into importance, cross the State of Ohio, and see on the line of this great thoroughfare the cities, towns, and villages, the farms, schools, and all the variety of improvements that distinguish the age, they would cease to apply offensive epithets to us, and be proud to become one of us . . . .

I have thus, Mr. Speaker, felt myself called on to notice several topics which have been introduced into this discussion, though not involved in the question before the House. I now proceed to briefly discuss that question.

He began with the question of constitutionality, which Representative Parris suggested was an insurmountable obstacle. He did not think he should be expected to address constitutionality, a topic that “has been performed by the ablest of our statesmen”:

The doctrine of strict construction has come, at times, from every part of the Union. In 1807 it was a fashionable doctrine in the East, about the time of the embargo. Yes, sir, it was then thought that Congress had power to *regulate commerce*, which implied its *continued existence*, and that it was unconstitutional to destroy commerce, as it was said the embargo did. So we have had it from other quarters, at various periods, usually attended with circumstances which rendered the extreme of strict construction *expedient*, in promoting the interests, for the time being, of the particular section from whence it has been urged. So of the doctrines of *consolidation*, and of *latitudinous construction*. Those, too, are convenient doctrines at times, not for any one particular section, but for every section of the country whose interests may render it necessary to resort to them.

He always tried to avoid extremes, preferring the “golden medium of truth.” When it came to the Constitution, he consulted the most “able expositor,” namely, “*the practice of the Government from its commencement to this time.*” Rather than consult abstract ideas such as strict construction, he would leave the theorists “to the enjoyment of their theories and content myself with the Constitution as practically expounded by the current and concurrent action of the several coördinate branches of the Government.” How, he asked, can government be administered, or certainty and stability given to its measures, “if mere abstract questions of power are never to be regarded as settled?” Saying that nothing is settled, “so far as the mere abstract question of power is concerned, would be to make the action of the Government as variable as the shade and as uncertain as the winds.”

That said, he asked if the general government had displayed any “concurrent actions of the different departments of the Government” with respect to the Cumberland Road:

I find that its action has been uniform for thirty-four years. It has gradually progressed from 1806 down to the present time. More than this; we have had the sanction of Jefferson, that distinguished expositor of the Constitution, to whose opinions many of us are prone to bow with the most unqualified deference. We have had the sanction of Madison, Monroe, the distinguished individual who succeeded him, now a member of this House, of Jackson, and our Chief Magistrate. And, here, sir, I would remark, in deference to the opinions of the President on this subject, without knowing anything more than may be known to any of the gentleman on this floor, that should a bill be passed granting an appropriation to the Cumberland road, I have no doubt it would receive his sanction.

Representative Howard thought Representative Parris had mentioned President Monroe's veto message as an authority on the subject:

I think he has misapprehended the meaning. It was not a simple appropriation of money to be applied to the construction of the Cumberland road that was vetoed by Mr. Monroe. It was a bill establishing toll gates on the road, with certain other provisions that would have given to the United States jurisdiction within the States through which it passed, incompatible with sovereignty.

He quoted the veto message, with emphasis on certain phrases:

A power to establish turnpikes with gates and tolls, and to enforce the collection of tolls by penalties, implies a power to adopt and execute a complete system of internal improvement. A right to impose duties to be paid by all persons passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take the land from the proprietor, on a valuation, and to pass laws for the protection of the road from injuries; and if it exist as to one road it exists as to any other, and to as many roads as Congress may think proper to establish. A right to legislate for one of these purposes is a right to legislate for the other. It is a complete right of jurisdiction and sovereignty for all the purposes of internal improvement, and not *merely the right of applying money under the power vested in Congress to make appropriations*, under which *power*, with the consent of the States through which the road passes, the work was originally commenced, and has been so far executed.

He asked if Representative Parris would let President Monroe's view settle the matter. Representative Parris replied, "he would go with Mr. Monroe when he was right."

Representative Howard summarized that response as relying "on these authorities when they are right, not when they are wrong." If he can tell the difference, Representative Howard asked, why take up the House's time reading from the authorities?

President Jackson also had been mentioned:

It is not for me to speak in censure or praise of that extraordinary man. His actions are now in the hands of the historian, and I only refer to him for the benefit of his authority upon this question. In his veto on the Maysville road bill, he cites, evidently with approbation, the opinion of Mr. Monroe, “that Congress have an unlimited power to raise money, and that, in its appropriation, they have a discretionary power, restricted by the duty to appropriate for purposes of common defense and of *general*, not local, *national*, not State, benefit.

Many other presidential actions could be added to these two examples, “for more than the third of a century, all in our favor, and yet we are now met with the argument that Congress has no power to continue this great national work.” These examples reflect the practice of the past, and to substitute theory over practice was to be like the doctor who abandons a medicine that cured thousands because “it was opposed to some preconceived theory.” To the “ultras” on either side, he said, “my ground is that whereon the Government itself must rest – its current, practical exposition of the Constitution by its legislative, executive, and judicial action.”

He had a question for Representative Parris. Why had the general government built a 75-mile macadamized road in Maine? Representative Parris replied it was a military road.

(They were referring to a military road from Matanawcook, where it enters the Penobscot River, to Mars Hill near the northeastern boundary line of Maine with Canada. The initial appropriation for it, \$15,000, was in an Act of May 24, 1828, which directed the President to employ troops as he may think proper to survey and construct the military road. The final appropriation for the road was in a bill for support of the Military Academy at West Point, which President Van Buren signed on July 7, 1838. It included \$364.03 to close out the accounts of Charles Thomas, “being part of an amount heretofore appropriated to the surplus fund.” That amount brought total appropriations for the road to \$137,747.75)

Representative Howard continued:

The answer is quite satisfactory, sir; it is a military road, or rather it is called a military road, and that makes it constitutional. A name is sufficient to dispel all the apprehensions of Federal encroachments! Sir, is there a member in the Hall that doubts as to the true reason why the gentleman is for this “military road?” Shall we voluntarily surrender our common sense, our experience, with respect to the motives and incentives to human conduct?

Representative Parris responded, “I never voted for that road; it is a military road leading to the British, not from them.” Representative Howard retorted:

We are now told that the gentleman never voted for it. And why, sir? Because the question was never submitted to him.

Representative Parris had become a member of the House on May 29, 1838, to fill a seat vacated by the death of the incumbent, after the appropriations for construction were over, except for the small amount mentioned earlier to close an account.

Maine had its military road, but Representative Howard wondered what would happen if the British invaded Maine, and “the chivalry of Indiana should desire to go to her relief, would we stand in no need of a military road?”

Leaving the topic of Maine, Representative Howard pointed out the many harbor, lighthouses, and other activities for which Congress had approved appropriations. He said “it would gratify me to hear from several gentlemen how it is they prove the constitutionality of these works”:

One thing, sir, seems a little remarkable, and that is, that local interests seem to have a wonderful effect in neutralizing these constitutional scruples. How is it, then, that these things come about that gentlemen can vote away millions of treasure on light-houses and harbors, and for constitutional reasons not a dollar to the Cumberland road? Is it the salt water that makes it constitutional to make harbors?

Referring to Representative Hubbard’s “arguments with great force in opposition to this measure,” he asked why it was constitutional for the general government to give his State of Alabama “four or five hundred thousand acres of land to make a canal around the Muscle shoals?”

Representative Hubbard said “he had not voted for that measure, and would be willing now to give the land back to the Government.”

Representative Howard said that he hoped Representative Hubbard would remain in the House for many years, if he wished to do so, “but I can tell him it will be for some other reason that they will send him here than for his opinions on this subject.” (Representative Hubbard remained in Congress through the 31<sup>st</sup> Congress ending in March 1851.)

Representative Reuben Chapman, a Democrat from Alabama, asked if Indiana had received similar grants of land.

“Certainly,” replied Representative Howard. He did not object to liberal grants to the new States; had he been in Congress at the time, he would have voted for them, “whether for Indiana or Alabama, and I should not now mention them if it were not to show how the *locality* of a measure may sometimes influence the conduct of a gentleman here.”

He summed up the reason for his look at projects around the country:

Now, sir, in all seriousness, look at your line of sea-coast, your harbors, light-houses, upon which millions upon millions have been expended. Look at your roads, too, in various sections of the country, some finished and others in

progress, and tell me what becomes of the argument against the power to prosecute this greatest of all our national works – a thoroughfare which, let politicians talk as they may, and resist it as they will, is destined to be carried to the foot of the Rocky mountains, and *through them*, if it cannot be constructed over them, and to terminate at some great mart on the Pacific, from whence our trade will be carried on with the West Indies, not Cuba, Jamaica, &c., but the *West Indies*. We hear the Cumberland road spoken of as a *local* measure. Sir, it is the commencement not of an Appian or Æmilian way, but of a prouder monument; one that is to connect two oceans; that even now embraces “in its ample span” almost half a continent. Yes, sir, oppose it as you please, but American money, American genius, and American enterprise, will carry it forward, and it will be traveled by the Representatives from the States of the Oregon, if the spirits of disorder and disunion shall not rend us asunder, and defeat that destiny which, as a united people, awaits us. It will not be a canal, frozen up in winter, nor a railway . . . but a paved highway, over which our armies may march, our munitions of war be transported from one side of this vast continent to the other.

(The Roman consul, M. Aemilius Lepidus, built Æmilian Way during the war against the Gauls in 187 B.C. It stretched about 180 miles from Rimini to Piacenza. Built as straight as could be, the road was completed by the time the war ended. [Von Hagen, Victor W., *Roman Roads*, The World Publishing Company, 1966])

Nearing the end of his speech, Representative Howard spoke of the value of the Cumberland Road:

Sir, our children will look with pride upon this work, and boast that it was the work of their fathers. I, sir, would be among the last to do violence to the Constitution; but both the instrument and its construction have been given to us by the statesmen who have passed away; and shall we now cease to make it that beneficial instrument which, for an age, the action of the Government has made it?

Indiana residents had expended some \$200,000 “in the purchase of quarter and half quarter sections, in order to provide themselves farms upon and near the National road.” They did so because they “all believed, it was on every man’s lips, that the United States were to make a great national highway there.” Based on their faith in this promise, they had bought the land and thereby “poured the proceeds of their hard earnings into the Treasury”:

They looked to it as a thoroughfare for emigration, for commerce; and hence population has crowded upon it, cities have sprung up along its line, some of ten thousand, some of fifteen thousand inhabitants, on the finished parts of the work. Will you now, sir, check it, and leave the people in Ohio, Indiana, Illinois, and Missouri, to charge the Government with bad faith?

Sir, the road is worse in some parts of Indiana than if there had never been a

stroke struck upon it; patches of the graduation completed; a few miles of paving done in the vicinity of three towns; and the rest left worse than when it was in a forest. What will the people *say*, what will they *think*, of the policy of a Government, of its wisdom, and its *faith*, if this work shall be abandoned.

He had, indeed, told his constituents that Congress would provide an appropriation to continue the work. He did so because he thought Whigs and Democrats “would unite in preserving the national faith.” He did not look to political parties, but to friends of the road, of all parties. “I would appeal to the gentleman from South Carolina, especially to one now in my eye, a native of the same neighborhood with myself, whether they think there is nothing in the just expectations of the western people on this subject.”

He concluded:

Mr. Speaker, it has been asked whether we were to be bought by this appropriation? Sir, it implies an injurious imputation. It is true we have our price; but it does not consist of political or party considerations, nor is it dollar and cents. It is the price of patriotism; of virtue . . . . Contemplate the progress of empire westward – the millions that are to fill up that vast region, possessing facilities unequalled on the globe. Sir, the scepter will depart from Judah. Is it not better for you to do us justice than to allow us to redress our own grievances, smarting under the sense of the illiberal, narrow policy of the old States toward us. Do gentlemen suppose we will be unmindful of our friends?

Representative Pickens presented substitute language asking the committee to inquire into the propriety and expediency of making an appropriation for the continuation of the Cumberland road.” At his request, the House adjourned before he could explain his motion.

The first order of business on February 13 was Representative Casey’s motion regarding the memorial of the National Road Convention. Referring to Whig Representative Hoffman, Representative Pickens – a former Nullifier who was now a Democrat – said he had listened “with great pleasure, to the eloquent gentleman from New York – an ornament to his great and noble city.” However, he regretted “some of the partisan remarks in which the gentleman thought proper to indulge.” He would not stoop to party discussion, “not even stop to pluck the barbed arrow from the sides of the Executive, even though it should be shot from the ‘loud-twanging bow’ of Achilles himself.” He had a higher object in view, namely that the Constitution would “be raised from the dust and ashes, where it has been too long trampled upon, and made the sport of party and party interests.”

This moment in history was unique because “we have a fair opportunity of placing the Government of our country on a true republican tack.” Until this moment, the country had been involved in “great interests, which rendered it next to impossible that we could place the Government where the framers of the Constitution intended it to be; and in the present juncture of our affairs – *with no national debt* – with a system of taxation approaching to free trade, and a reasonable hope of peace, there can be no reason, no

pretext, why we should not set upon this great work at once, and start the Government upon those just and forbearing principles, compatible with the genius of our institutions, and which alone can give quiet and *permanent union* to a turbulent and excitable people.”

He wasn’t opposed to the Cumberland Road or the interests of the four States involved, but said “it involves great and vital principles; vital to the Constitution; vital to the purity of this Government and the union of these States.”

He also opposed Representative Casey’s motion because it might serve as a precedent “which is hereafter held up and quoted, as it was quoted yesterday by the gentleman from Indiana, [Mr. Howard,] in his eloquent speech, as a precedent for future Congresses – a precedent which, in my judgment, rides over the Constitution, and transfers to the majority on this floor the power to make the Constitution what they may suppose that their interests call upon them to make it.”

Before turning to constitutional issues, he wanted to address comments by Representative Mason “who placed the obligation to make this appropriation on the ground of a specific contract”:

He placed the matter on a special contract, and, with great parliamentary courtesy, proclaimed that those who differed from him upon this subject were “ignorant, narrow, contracted . . . .”

Representative Pickens wanted to examine whether “there is a special trust . . . and that we are made a trustee under those acts.” If the funds specified by the trust are exhausted, then “I humbly submit to the gentleman that his special contract, must of necessity, fall to the ground.”

He went through the legislative history, dating to the Enabling Act of 1802 for Ohio statehood, to track the trust fund of two-percent revenue – which he said “had been *exhausted more than five times over.*” The 5-percent road trust fund totaled \$2,432,445.48, while the 2-percent portion for roads “to” the four States came to \$972,978.20. “This, then, is the whole of the *trust fund*, so far as the land is sold.” As of December 1837, the aggregate amount appropriated for the Cumberland Road came to \$6,318,739.82. The difference between the total of the 2-percent fund and total appropriations was \$5,345,761.62. Meanwhile, the latest estimate was that completing the work would raise the total cost to \$7,896,045.44:

With what face, then, can gentlemen now call upon us to appropriate again at this time, \$450,000, and claim it as due from the trust fund? It cannot be maintained.

Next he attempted to calculate the income from the remaining 62,399,899.38 acres to be sold in the four States. He estimated that the 5-percent road trust fund from the sale of this acreage would come to less than \$3,100,000, “which, taken from the \$5,245,761.62 [sic] already in excess, will still leave a balance in favor of this Government of \$2,245,761.62:

Judging from the past, however, it may be safely calculated that the public lands to be sold, will not yield half the sum estimated above, which, of course, would reduce the five per cent. estimate in like manner. Thus, I trust, I have forever put to rest this flimsy pretext, as to the famous *two per cent. fund*; and that no one will ever again urge upon us this appropriation from the obligations of a special contract.

He asked:

Do you suppose that the men who, in the years 1802, 1803, and 1806, passed the first acts to which I have referred, could have contemplated that \$6,000,000 were to be drawn from the Treasury in the short space of thirty-three years for this object? They would have hesitated long before they would have set a precedent which is now appealed to as having the authority of law.

He also commented on the estimate he had cited:

And it is to be remembered that the sum of \$7,800,000 here mentioned, is only the estimate. We all know the character of these estimates – that they are the mere theoretical estimates of gentlemen in their bureaus; but come to the actual amount and you will find it to be nearer sixteen millions than eight; for, in every such estimate, the amounts actually called for exceed almost double the amount first estimated.

As for himself, Representative Pickens said that “rather than to be harassed, here year after year,” for appropriations for the Cumberland Road, he would prefer “if we are to be compelled to carry on the work,” to give each of the States “five out of every one hundred and five sections of land unsold for their own disposal, provided we were never to be asked for an appropriation again on this subject.”

Representative Pickens continued:

Well may the gentleman from Indiana [Mr. Howard] speak of this as a magnificent enterprise. Well may the gentleman from New York [Mr. Hoffman] call it the Appian way. It may be the Appian way; it may be a magnificent enterprise – *but who is to pay for it?* Is it an enterprise within the provisions of the Constitution? Is it an enterprise within the limits of a republican and economical Government, involving, as it does, in all human probability, appropriations to the amount of twenty or thirty millions of dollars? And if the gentleman from Indiana is right in the bright prospects which he drew of the future; if that road is finally to lead, as he says, to the shores of the Pacific, then *two hundred millions* of dollars will not cover the expenditures. And this is the species of argument which is employed to induce a republican Government to adopt measures that are to involve the country in such enormous extravagance!

It may be an Appian way, as the gentleman from New York says, but I would remind him that the Appian way which led from Rome to Brundisium, became

the great highway of emperors who marched along it, waving *imperial eagles over prostrate slaves and an oppressed and ruined country*. Is the Appian way to be cited here as an example to us? First go and make your Government as splendid and despotic as that of imperial Rome became in the progress of time. What was it that broke down republican Rome? It was this very system of partial, unjust, and corrupting legislation; a system in which conquering generals brought back spoils from sacked cities and devastated provinces, to be divided among “*Roman citizens*,” and to pamper an *arrogant and agrarian people*.

You may make this Appian way – you may make this great Government road, but it will be a road that will pass through the very vitals of the Constitution. I say, you may make such a road; you may make another in the South, and another in the North, and you may call them by what names you choose; but rest assured that the principle upon which you act strikes at that equal justice which should ever be the basis of a republic.

The only way to preserve a republic of 26 independent States was to dispense “equal burdens and equal favors.” If his colleagues thought the opposition to the measure was based on sectional prejudice, they do an injustice “to the people of that persecuted region which stretches from the Patapsco to the Mississippi, and which has been denounced as particularly sectional in its views of public policy”:

In taking the ground which they have taken in opposition to such measures, they have planted themselves on the great principle of the Constitution, and sound national policy. They ask that your Government shall be equal. They do not come and ask at your hands favor or bounty; they ask for a Government that may be *just and forbearing* in peace, so that it may be strong in war, because strong in the affections of a devoted and loyal people . . . . Yet we are denounced as sectional because southern interests are spoken of. But let us reflect what those southern interests are. All that we ask is a strict construction of the Constitution as it regards all portions of the Union, and that the local interests of all may remain untouched by Federal legislation.

He hoped that view was not unique to the southern States, but was shared by all the States:

. . . but I tell the gentleman from Indiana, that the speech which he has made on this occasion will hereafter be held up to him as containing doctrines by which it is proposed to set up precedents as law; and, in his own language, the mere “beaten track of legislation” as the Constitution of the land . . . . To say the least of it, sir, the gentleman can never again lay claim to the title of a strict constructionist.

Representative Pickens wanted to know what Representative Howard meant when he spoke of making this a National Government:

If by the term he means that discretion which would give a majority in Congress

the right and power, under the broad shield of “the general welfare,” to which he had alluded, to make *appropriations of money* for any and every object that a majority may decide to be within the scope of the general welfare, then it is precisely the doctrine of Alexander Hamilton, and comes within the range of those vast constructive powers advanced by Chief Justice Marshall – a man whose name is never to be mentioned save in profound respect and veneration for the purity of his character, and the simple dignity and power of his intellect.

Representative Pickens discussed the meaning of the term “general welfare,” which was mentioned twice in the Constitution. He quoted the preamble:

“We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare,” &c.

He also quoted the reference that was usually the subject of debate:

“Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States.”

He explained his interpretation of the phrase:

It is very clear that the term . . . was designed as a mere declaration of extreme caution, and that the true intent and meaning of those who use it was, that it should be a limitation to the apparently absolute and uncontrolled power given in the same clause “to lay and collect taxes;” that they should not use this power wantonly or in caprice, but should strictly consult the “general welfare,” and carry out the same only by confining its full exercise to objects specially enumerated in that instrument, which are thereby declared to be *national*; that it was not intended to apply to sectional objects or local interests in any particular State, but to those great national objects which were specially declared by grants of power to be within the jurisdiction of the Government.

He also addressed the claim of power to make internal improvements from the phrase “to regulate commerce with foreign nations, and among the several States, and with Indian tribes.” He conceded that on first glance, the phrase “would seem to be a general and absolute grant of power; but when we reflect as to its nature, we find it is not such.” It actually was a limitation upon the government’s power to interfere with the “free and unrestricted commerce between the States”:

It does not say that Congress shall have power to regulate commerce, but “commerce *with foreign nations*.”

Similarly, the phrase “and among the several States” might seem “absolute and uncontrolled”:

. . . but that is not the fact; for I will demonstrate that the instrument itself has two express limitations upon this very power. First, in section 9, it is said, “no tax or duty shall be laid on articles exported from any State,” and “no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.”

In short, this language, that implied unlimited power is the opposite, “a restricted and limited power.” The “wisdom of the instrument” can be understood only by reading all the parts. It limited the power of the general government, “in favor of perfect freedom in trade, and running in the same spirit with that clause which declares that ‘the citizens of each State be entitled to all the privileges and immunities of citizens in the several States.’”

As an example, he explained:

If a State were to monopolize, as a State, any branch of trade, so as to appropriate it to herself under restrictions operating upon others, then Congress would have power to regulate such “commerce.” For instance, if Virginia were to monopolize for herself the tobacco trade, or if Pennsylvania were to monopolize coal mines, and control their exportations, then the power of Congress would attach.

Commerce, as a public matter between State and State, might be regulated, but trade private, between individual and individual, was to be beyond the interference of Congress. Yet, under this general power, having a plain and palpable object, it is claimed to create works of internal improvement . . . . Under the power to “*regulate*” one thing, you claim the power to *create* another . . . .

To demand that Government shall create internal improvements, and force commerce upon them, under the power to regulate commerce, is the same thing as to claim that Government shall build our steamboats and ships to transport our produce across the Atlantic. If you can do the thing in one case, you can in the other.

Representative Pickens thought the day had passed when such an argument had weight, as illustrated by the Cumberland Road. Those who projected the Cumberland Road had two reasons: “The first was, to promote commerce between the States – to promote union and intercourse; the second was, national defense, and the protection of our remote and frontier settlements, which were subject to imminent danger”:

Now, I submit to gentlemen, whether the circumstances of the country are not so entirely changed as to render these great intentions no longer of weight.

The western territories and States were surrounded by hostile Indians and “imminent danger of invasion from Great Britain.” The new western States looked to the old eastern States for help. That was, however, no longer the case. The western country had

“now sprung up into national existence,” with the Indian threat neutralized and Great Britain no longer a threat:

And for them now to come and claim an appropriation, under the original objects of the first grant, reminds me of a full-grown boy, just stepping into manhood, with ruddy cheeks and joyous eye, asking to be dandled on his mother’s knee, and whining to draw milk from mother’s exhausted breast. Such is the state of things.

Steam power, he said, had “given life and wealth and greatness to a slumbering wilderness.” It had “changed the whole commerce of the West; which had brought into existence, as it were, a nation from the wilderness, and quickened it with sudden life and vigor”:

Sir, you might as well attempt to bind down the lion in his strength by throwing cobwebs over his mane, as to cripple the energies of the West. The journey from Pittsburg to New Orleans may be performed in as many days, under the operation of the steam-power, as, in 1806, it took months. And yet the appropriation is claimed to facilitate commerce.

He pointed out the commercial value of the Ohio River running parallel to the Cumberland Road in the States west of Wheeling, and the inland seas furnishing “the finest commercial intercourse of any inland country upon the face of the globe.” He

asked:

What more can be done? The puny efforts of this Government sink into contempt before the majestic works that nature herself has thrown around this magnificent country.

He summed up his point:

If the Congress of 1806 had good inducements to make these appropriations, the Congress of 1840 have none, and it is the height of folly and of madness to continue to make appropriations originally based on a different state of circumstances in the country, when the whole country itself has changed.

Having addressed the constitutional issue, he turned to the fiscal question. Based on projections of revenue and needs, “we will be barely able to meet just demands upon the Treasury”:

Now, I put it to those who have rallied themselves upon the late able message of the President in favor of economy and retrenchment; I put it to them whether it is proper, under the existing circumstances and embarrassments of the country, to vote an appropriation of *four hundred and fifty thousand dollars* for this road? I put it to them whether it is proper to vote this amount, with the certainty that you must either borrow money or issue Treasury notes? It is reported that there is

universal derangement, a general pressure, in the money market, from one end of the country to the other; and I take it for granted that the idea is not to be entertained that the Government is to borrow money to meet its exigencies . . . .

The Government has undoubtedly a right to borrow, and to use the form of Treasury notes instead of bonds. But when gentlemen come and ask me to *vote four hundred and fifty thousand dollars* for an object which I believe to be beyond the Constitution, and unnecessary, and with the certainty that, according to the *estimates on our table*, we will be called upon to appropriate nearly eight millions more to the same object, I, for one, raise my protest against it . . . .

If they expect him to vote for such a measure, “I will trample upon the ties of party with contempt, and refuse my vote.”

The debate had raised his anger:

Sir, I confess that some of the remarks which fell from the able gentleman from Indiana [Mr. Howard] made my blood run warm. I confess that I felt a deeper emotion of the heart when he spoke of the rising strength of the West – of the numbers they would include under the next census; when he spoke of their power and ascendancy; and when he said that they would remember their friends, and visit their enemies.” Sir, this remark of the gentleman may have been full of Christian charity and forgiveness, but if it was, it created different feelings in my bosom . . . . Sir, I know not how I am to be visited. I know not whether I am to be viewed as a friend or enemy; but I know my duty to the Constitution; I know my devotion to the great interests of the country – not to the interests of a particular section, or of a few States – but to the interests of the whole country; and, knowing my duty, the language of the gentleman has neither terror nor temptation for me.

Representative Howard had asked why appropriations were constitutional on the Atlantic side of the mountains, but not to their west. Representative Pickens was not sure what appropriations were being cited, but if Representative Howard meant the harbors bills, “by which Congress has appropriated money under the power to regulate commerce, I hold all such to be against the genius of the Constitution, a gross and profligate perversion”:

It is a fraudulent perversion of the internal improvement power to make such appropriations under a bill nominally for harbors. Since the famous veto of the Maysville road bill, appropriations for internal improvement have taken that direction; but if true intention is to protect and “regulate” our commerce, where commerce exists, then such objects come directly within the provision of the Constitution, which declares that “Congress shall have power to regulate commerce with foreign nations.”

He objected to the “perversion of this power.”

He wanted to dispel any notion that he had a particular objection to the appropriation for the Cumberland Road. He had no special objection to the road or the States through which it passed. "The only feeling I have towards it is, that it is connected with a system of measures – with a precedent, which is hereafter to be quoted, as it now is, as being a part of the Constitution – a precedent, upon the strength of which eight millions of dollars are hereafter to be asked, and probably eight millions upon that." It was part of a pattern he opposed:

Rather than be harassed year after year – rather than have the whole system of corrupting patronage which is connected with the public lands, through public agencies of all kinds, remain as it now is – rather than see such power and patronage wielded under executive influence and dictation, I will vote to cede the public lands to the States in which they lie, on certain conditions, reserving a portion of the net proceeds, at least equal to what they have yielded us heretofore, and let the States incur the expense of sales, &c., and control all the patronage incident to their management – the minimum price to be fixed by this Government.

In closing, Representative Pickens said:

Mr. Speaker, as to the instructions moved upon your table, ordering positively the Committee of Ways and Means to bring in a bill appropriating \$450,000 for this road, I have only to say, that if they are carried, it will change the mode and manner of doing business in this House. You will have instructions moved upon all other sectional subjects, and the consequence will be, we shall be forced into a vote upon propositions which ought to be moved first in Committee of the Whole. I have moved my amendment with a view to allow the committee merely to inquire into the expediency of reporting a bill. And if my amendment prevails over the positive instructions, then I can vote against the proposition even as amended. This course is perfectly parliamentary. It is a mere matter of expediency, and does not commit me to anything except a preference of mine over positive instructions. I shall vote, finally, against all instructions.

Having concluded his remarks, Representative Pickens moved the following amendment:

And that the memorial be committed to the Committee of Ways and Means, with instructions to consider the expediency of reporting a bill in favor of the measure.

(Although Representative Pickens played a key role in the 1840 debate about the Cumberland Road, he is best known to history for his role before and during the Civil War. He was a wealthy land owner who, as of the 1860 census, owned 276 slaves. He served in the House until March 1843. After a stint as U.S. Minister to Russia under President Buchanan (January 11, 1858–September 9, 1860), he returned as Governor of South Carolina (December 14, 1860–December 17, 1862). As Governor, he oversaw the secession of his State from the Union and ordered the bombardment of Fort Sumter that launched the divided country into the war. After the war, as a member of the State constitutional convention in 1865, he introduced the line that brought the State back into

the Union: "We, the Delegates of the People of the State of South Carolina, in General Convention met, do Ordain: that the ordinance passed in convention, 20 December 1860, withdrawing this State from the Federal Union, be and the same is hereby repealed.")

Representative Proffitt, an Indiana Whig, took the floor. He favored the Casey Amendment and opposed the Pickens Amendment "because, he said, it evaded the question; and if referred to the committee in that form, it would never be reported upon." In any event, he said the committee "would not report a bill without having before it estimates" from the appropriate department. "He censured the Department of the Treasury for omitting the Cumberland road in the estimates, and contended that it was done intentionally." He then launched into the real purpose of his speech. He criticized the Van Buren Administration's land policies, war in Florida, and other reasons, before challenging the military career of General William Henry Harrison and his claims as a Whig to the office of President.

New York Representative Marvin, a Whig from New York, offered a substitute for the Pickens Amendment:

And that the Committee of Ways and Means be instructed to report bills in accordance with the estimates contained in the reports of the Chief Engineer and the Chief of the Topographical Engineers, to the Secretary of War, and communicated to Congress by the President, making appropriations for the year 1840, for the continuation of the construction or improvements of harbors and roads, and the navigation of rivers, for which appropriations have been heretofore made.

His point was that the Committee of Ways and Means "should discharge a duty which it had done at every previous session of Congress":

Until the last session, it had been in the habit of reporting bills for the Cumberland road, and for constructing harbors and building light-houses; but it had refused at that time to take the responsibility; and if it be left to them at this time, as a mere question of expediency or propriety, the House would never hear of the matter again. The committee was so constructed, that it would control the subject, and entirely keep it from before the House to carry out its views.

He thought it "more than idle to pass upon any proposition simply to ask the committee to inquire into the propriety of reporting an appropriation for this road." In contrast with Representative Pickens, Representative Marvin "contended that it was perfectly constitutional for the General Government to carry on works of internal improvement."

Representative Daniel D. Barnard, also a Whig from New York, asked his colleague to accept a modification of his amendment to follow at the end:

Unless, in any particular case, the committee should be of opinion that the particular work ought to be entirely discontinued; and in such case, if any, the committee shall submit to this House the reason which lead to such conclusions.

Although he wanted to speak on the subject, an unrelated matter came up, after which the House adjourned.

He had the opportunity on February 14 when, again, the order of the day was the motion by Representative Casey regarding the resolution of the National Road Convention. This time, however, the amendments by Representatives Pickens and Marvin were part of the debate.

Representative Barnard explained why he introduced the amendment to the Marvin Amendment. He said “the proposition before the House was general, and embraced the whole system of internal improvements, which have been under the fostering care of the Government for many years.” He did not want the issue to be about party although as a Whig, he knew it was hard to divorce party entirely from the question:

The question was one of a great national party policy – it was whether it be not the duty of Government to provide, by all the means in its power, and that it commanded, for the construction and repair of roads, of national and military importance; for construction and improvement of harbors, and removal of obstructions from navigable rivers for the good of commerce.

He considered it of “the utmost importance” for the general government to pursue such projects:

The system of internal improvements to which he had referred was one commenced long ago, and was prosecuted by the power and agency of the Government for a long series of years, and there was nothing new or unusual in it – it was one which had commanded the favor of every President of the United States, every Administration of Government, every party in power, and every party of any considerable standing which expected to get into power, since the system was first introduced. It had met, certainly, with personal and partial opposition; but he believed if there was any one system of policy which might be considered as established by the Government, it was this one.

Now, for the time, it was suspended and placed in jeopardy. As far as the President and his Cabinet were concerned, it was abandoned. Revenue from the sale of public lands and duties on imposts was needed for other purposes, leaving “nothing for objects of internal improvement.” Judging from President Van Buren’s annual message, any idea of increasing the tariff was “so entirely [out] of the question, that it is not to be regarded for a moment as the ultimate source from which the great system could derive means for its support.” The tariff, as he stated, had been set by the Compromise of 1833 through 1844:

The National road, harbors, all the great objects of the past care of the Government, were to be sacrificed to the genius of the compromise act. Thus, sir, we have a new rule set up, by which the action of the Government should be measured. The question hereafter would be no longer what the interests of the

Government required, but whether the 20 per cent. *ad valorem* would admit of carrying out any measure that might be for its interest.

A political alliance had been formed between the head of the present Administration and a distinguished individual, the great champion of the compromise act. The first effect of that alliance was the total abandonment of the system of internal improvements. He begged leave, for one, to enter his solemn dissent, and upon his official responsibility, to the whole doctrine which belonged to the assumption, on the part of the President of the United States, that this compromise could not be touched. He did not believe that it was superior to the Constitution, and could not be disturbed, though he was not, at present, willing that it should be disturbed.

If the system were suspended, “the greater part of the money already expended would be as completely lost as if it had been sunk in the ocean. A great enterprise was to be broken off, half executed; and the part of the road completed would be of no sort of value.”

Referring to improvement of the Hudson River in his home State, Representative Barnard said that if the House would agree to complete that work, but abandon all other internal improvements, “he would, on behalf of his constituents, reject the proffer.” He was for “the whole system, which was a glorious one, and would never consent to abandon it to benefit a particular part of it.”

He believed that revenue from the sale of public land should be used for internal improvements. “The money expended on objects of internal improvement, he thought, would be reimbursed to the Government, eventually, through the means of the general benefits which it would confer on the country in developing its resources.”

It was “absolutely necessary” for the House to instruct the Committee of Ways and Means to report on the issue. Otherwise, he concluded, “he did not believe it would report one single bill for objects of internal improvement.”

Representative Isaac E. Crary, a Democrat from Michigan, began by commenting on the Marvin Amendment, particularly its proposed appropriation for harbor and river projects:

I am aware that it has become a common custom to examine nearly all questions that come before us with reference to constitutional considerations. It is not to be supposed, however, that the most rigid constructionist will call in question the power of the House to give efficiency to the amendment offered by the gentleman from New York, [Mr. Marvin.]

There was no question that the general government has jurisdiction over most of the country’s navigable waters. They were “the common highways of the whole Union:”

The United States have the jurisdiction over them, and have the right to improve their navigation. This improvement cannot be made by the States if by such

improvement those waters are deprived of their character of “common highways.”

The only question, then, Mr. Speaker, for our consideration, is, whether these improvements are necessary, and appropriations at the present time expedient.

I was aware that the system had been charged with “numberless abuses.” They should be corrected. “But until they are pointed out, I am disposed to vote the appropriations, believing them necessary to give protection to the rich and increasing commerce of the West.”

He pointed out that the frequent “cry of extravagance is without foundation.” Prices had gone up over the years “by reason of the great rise in prices, and the universal demand for labor.” Projects were now being “made more permanent than was originally contemplated.” For example, instead of building bridge piers of wood, “that must soon decay by the action of the elements,” they were being built of stone, “which often had to be transported from a distance.” He continued:

But the greatest cause of the excess of the expenditures over the estimates, is traceable to the action of this body. During our long sessions, we have been in the habit of delaying the appropriations to so late a period in the season that contracts for labor and material could not be made to advantage. It often happened that works were suspended for six months in the year, awaiting the tardy and uncertain action of Congress; and were then recommenced in the midst of the summer months. This left only about three months for active operations, two of these the most unhealthy of the year, and the other a month of storms and tempests. Under such a system of appropriations, there must be waste and extravagance; but the fault was with the makers of the laws, and not with those who executed them.

These problems were particularly evident in northern climates, such as Michigan. He illustrated his points by discussing the value of the expenditures for harbor improvements on Lakes Erie and Michigan:

It has been by means of the harbor improvements on the lakes that the whole of the public domain in the Northwest has been brought into market. When this system was commenced, the State that I have the honor to represent was supposed to be a bleak and barren wilderness – “a country of sand hills, sometimes crowned with a few stunted trees and a scanty vegetation, but generally bare, and thrown by the wind into a thousand fantastic shapes” – a country unfit for cultivation, and so filled up with marshes that enough of good land could not be found to supply the demands of the soldiers of the war of 1812. Such was Michigan, even after the close of that war; but its whole aspect has been changed by the expenditures of a few thousand dollars in harbor improvements.

(The quote was from Morse's Traveller's Guide, Or, Pocket Gazetteer of the United States in 1826.)

He commented on Representative Pickens' idea that improvements in the northern States were not needed for the common defense. "He thinks that all our future battles are to be fought upon the Atlantic." He was mistaken, Representative Crary said, that "if we had a war with Great Britain, the battles would be fought on the ocean, or that the Atlantic cities would be the only points attacked by the enemy." Great Britain, he suggested, would not invade East Coast cities. Instead, battles would be fought on the lakes between the United States and Canada. Already, Great Britain was pouring troops into Canada, and adding fortifications, to enable a strike against the United States "in our weakest point."

He also disagreed with assertions that President Van Buren was opposed to appropriations for harbor improvements. The fact that the Department of the Treasury did not include estimates in its report accompanying his annual message to Congress was not evidence of the assertion. His proof was in dates:

When his message, together with the report from the Treasury Department, was transmitted to this body, the operations of the Topographical bureau and Engineer corps, for the year 1839, had not been laid before the head of the War Department. Directions had been given that all our public works should be inspected by competent officers, and the result of their labors were not communicated until the 7th of January. The bureau of Topographical Engineers reported on the 30th of December, 1839, and the Chief Engineer on the 7th of January, 1840. On the 8th of January these reports were laid before the President, and on the 9th of the same month he transmitted the same to Congress "for their action and consideration."

The report from Colonel Totten dated January 7, 1840, included estimates required to complete civil works under charge of the Engineer Department, as well as estimates for work required in 1840. For the Cumberland Road, the amounts were:

State	Estimate for Completion	Amount Required for 1840
Ohio	\$638,166.26	\$100,000.00
Indiana	\$3,144,250.20	\$150,000.00
Illinois	\$1,432,138.49	\$150,000.00

[*Message from the President of the United States Showing the Operations of the Topographical Bureau during the year 1839, United States Senate, 26th Congress, 1st Session, Doc. No. 58*]

Representative Crary emphasized that last phrase:

Does it indicate a spirit of hostility either to the Cumberland road or to harbors?  
As the particular friend of the latter, I am glad of such opposition. It will do more

than has ever yet been done to induce the country to urge these works to completion.

Those of the Opposition who are friendly to these improvements are doing the President great injustice. He has sent to us the best report that ever came from the head of the Executive, and yet they are dissatisfied because the estimates were not to be found in the annual report from the Treasury. They are not there, because they were not completed when the Treasury document was made out. But they are before us now, and with the sanction of the President. What more do gentlemen want? What more would they have?

But no; the President can do nothing that will satisfy them. If he includes the estimate for such works in the annual budget, he is forthwith charged with recommending extravagance, and with wishing to extend executive patronage. If they are omitted in the budget and sent up by the proper Departments, according to the practice of the Departments, then comes the cry of opposition to all improvements. Sir, the spirit of opposition to this Administration rides over the best interests of the country.

Changing subjects, he said:

It must be well known to every member of the House that the expenditures of Government are in a great degree confined to the Atlantic States . . . . The great body of our legislation has been for the immediate benefit of these States. Congress seldom looks westward, except when some question in regard to the public domain is under consideration.

Despite the imbalance, he was disposed to vote liberal supplies for defense to support the Army and Navy along the coast:

Will the Atlantic States be actuated by a similar liberality? When the West brings forward objects for which expenditures are expedient, will those States give to them a consideration commensurate to their importance?

If not, the consequences were predictable:

There is glory in belonging to the Union; there is a feeling of pride in its associations. But all these may pass away, by the infliction of burdens grievous to be borne, by forcing one section to become hewers of wood and drawers of water in support of a Government established "to provide for the common defense, and promote the general welfare." Sir, this is not spoken in a fault-finding spirit. I am not to be thus misunderstood. But it is to be borne in mind that the West has contributed more than its full share to the funds of the Treasury; and in asking that a portion of these funds be returned to them, and expended on constitutional objects, they are governed by a sense of justice, and a desire for "a more perfect union."

After Representative Crary concluded his remarks on unrelated matters, the House adjourned.

On February 15, the order of the day was, again, the motion introduced by Representative Casey and the two proposed amendments to the motion. However, the following debate as reported in the *Globe* was on other matters, such as the pending census. Representative Patrick G. Goode, a Virginia Whig, did briefly discuss the Cumberland Road. After citing the history of the road and its support by President Jefferson and his successors, he “argued that the faith of the Government was pledged to the completion of the work, and that if an appropriation be not now made, great loss will accrue to the Government in waste of materials already purchased, and dilapidation of bridges half finished.”

The Committee of Ways and Means could not bring in a bill “because no estimates were before it,” prompting friends of the project to take some steps to bring the road into the committee’s jurisdiction:

He thought there could be no fairer way to do so than to instruct it to report a bill. If the emptiness of the Treasury was the reason why it had not been included in the estimates by the Departments, he thought it due to the House and the country that the President should have informed them of that fact. He went on to show that the Cumberland road had received the fostering care of the Government when the Treasury was in a more exhausted condition than it now is, and when a heavy debt was hanging over the nation. He believed the President had evaded the question intentionally, and that any effort to cut the Government loose from this road, would be tantamount to the separation of the Government from the interests of the people.

Representative Casey’s motion was once again the question before the House on February 17 after discussion of other matters. However, Representative Thomas Corwin, a Whig from Ohio, was the only person to discuss the Cumberland Road. He addressed Representative Pickens’s discussion of the constitutional issues involved. He reminded his colleagues of Representative Pickens’s objection to the passage of any bill appropriating funds for the road:

That gentleman, he said, had congratulated himself and the country, that the Constitution, which had been administered in such a way that it was entirely different from what it was intended by its framers, was about to be restored to its purity. If that gentleman’s position was correct, he conceived it very unfortunate and most extraordinary that the framers of that instrument had committed such gross errors in expounding and administering it for so many years; for he believed that Washington and his cabinet, and Madison, Jefferson, and Monroe, as would be seen from their recorded opinions, were in favor of this road, and conceived it perfectly constitutional.

Representative Corwin argued “at great length” to demonstrate that a contract existed between the general government and the States for completion of the road, “and that the contract had not been complied with on the part of the Government”:

No one could deny, or dared deny, that the agreement did exist, which was all the friends of the measure wanted – and unless the opponents could show that the contracting parties had no right, under the Constitution, to make the agreement, it was obligatory on the part of the General Government to fulfil its provisions to the letter, by constructing this road to and through the State of Ohio.

The States, after all, had given up 122,000,000 acres of land they could have taxed, “a right which Mr. Gallatin said they possessed, not only to tax land sold by the Government, but also that remaining unsold.” The four sovereign States gave up the right for 5 years:

He wished the State Rights party to remember this when they compared these States to mendicants at the National Treasury, because they demanded a fulfilment of the obligations of the agreement. Mr. C. maintained that the Cumberland road was a great national and military road and commercial highway; and that the same reasons existed for the continuation of it now, as there did when it was commenced, as a means of defence of the Western frontier . . . .

The State sought the appropriation, not as a matter of favor, but “on the ground of justice and right.”

He showed that progress could be curtailed, if the “low state of the Treasury” were the issue, to keep the expenditures within the gross amount of estimates.

After an unrelated discussion, the day was nearing an end, but some members wanted to end the debate on the subject of the Cumberland Road that evening. The feeling was that if they did not resolve the matter on this date, it could drag on for weeks. Representative Casey had a suggestion:

The original proposition as to the instructions was offered by himself. So far as he was concerned, he was willing to forego the desire he felt to address the House; and he believed that he might say for a number of the friends of the measure, that they were willing and anxious to take the question this evening. Other subjects would come up, on which gentlemen might have an opportunity to express their views on all the various matters which had been brought into the discussion; and in order that the subject before the House might be referred to the committee, (if it was the pleasure of the House so to do,) and that the committee might act upon it, he hoped the question might be taken this evening.

Representative John Bell, a Whig from Tennessee (and a former Speaker of the House, June 2, 1834, to March 4, 1835), said he would oppose the motion as he always had opposed it, on the grounds of its inexpediency, and not on constitutional grounds, which, in his opinion, were untenable.” Appropriations for the Cumberland Road were “as

much in accordance with the Constitution as those for harbors, light-houses, &c. on the sea coast, and therefore the most successful mode of attacking this measure would be on the grounds of its inexpediency, and not of its unconstitutionality.”

He recalled that Representative Pickens had claimed that “such a crisis had arrived in our national affairs, that it was possible to bring back the Government to its original purity.” If that were true, Representative Bell said, he would be willing to cut off “these enormous appropriations not sanctioned by the spirit of the Constitution . . . and do all in his power to stay the tide of extravagance and profusion of expenditure that had, for some years past, been running so strongly.”

But was the country really at such a point? Representative Pickens had asserted that it was, but “did not dwell upon the evidence which was so satisfactory to his mind, that this happy state of things had arrived.” He did not suggest that the Republican party of the South “now occupied the vantage ground, which would enable them to control the action of this Government with regard to a more economical administration of its affairs.”

Allusion had been made in the course of debate to the state of the Treasury, “an argument that had been used every year the Cumberland road was before the House, and was both idle and unprofitable.” It could not be the absence of a reference to the Cumberland Road in President Van Buren’s recent annual message. “He was not aware that it had ever been customary for the President of the United States to notice these great works in his annual message to Congress; and therefore, there was nothing to warrant them in supposing that he was opposed to the Cumberland road . . . .”

Perhaps the problem was that 1840 was an election year. To illustrate his argument, he quoted from proceedings from the *Globe* for 1834 on the bill for the Cumberland Road, “and then went on to allude to the effects to be produced on the South, if it could be satisfied that these appropriations would cease.”

Representative Bell’s objection was that approval of Representative Casey’s motion with instructions to the Committee of Ways and Means “compelled the House to express an opinion” on the matter:

He expressed his wish that some settled system of internal improvements should be adopted, by which a known and fixed amount should be appropriated every year, and by this means break up that system of combinations and alliances which had too often carried through the most objectionable appropriations. He blamed the members from the South for their unalterable and unqualified opposition to internal improvements in every shape, and believed that such opposition had caused the combinations of members from the Northeastern and Western States, which had enabled them to carry all their sectional objects through the House. He had no doubt but that millions might be saved to the South by their relaxing their system and admitting of fixed and permanent appropriations for objects worthy of the national bounty.

Because of the lateness of the hour, the House adjourned before Representative Bell had completed his comments. He reserved the right to finish the next time the subject came up.

The next time turned out to be March 2:

Mr. B. said that the President of the United States had expressed himself to the effect that he would not consider it expedient to veto any bill for this purpose, and referred to a letter in the Globe from three members of the House in relation to the Cumberland Road. He understood it to be called forth, with a view to ascertain whether the Administration was opposed to the road; and if so, to have some evidence on which its hostility was predicated. He said, as the Secretary of the Treasury had placed the omission of an appropriation for this road upon the ground of the depletion of the Treasury, that they should retrench their own expenditures – that the starting point was the House of Representatives.

Mr. B. referred to several speeches which had been made by members of the Administration on the subject of the road, and said that in some portions of the country the Democracy [sic] opposed the measure; and in others, sustained it.

Some, he thought, might wonder why he opposed internal improvements that he actually supports:

It was on the ground of inexpediency, as he had stated ten years ago – because there was no system in relation to them . . . . Mr. B. referred to General Jackson's veto of the Maysville road bill, and said the ex-President had only postponed the system of internal improvements until the national debt should be paid off; and that Mr. Van Buren had never, directly or indirectly, denied the power to appropriate money for that purpose. Jefferson, Madison, Washington, Monroe, the elder Adams, and Jackson, and the present President, all admitted the constitutionality of the power.

With the conclusion of Representative Bell's statement, Represent Casey offered a modification of his motion referring the National Road Convention's memorial to the Ways and Means Committee:

That the petition be referred to the Committee on Ways and Means, with instructions to report a bill making a reasonable appropriation for the continuation of the National road in the States of Ohio, Indiana, and Illinois, for the year 1840, to be expended under the direction of the War Department, said appropriation to be subject to all the restrictions and conditions of former appropriations on said road.

He explained that the committee should act on its own discretion. "He probably owed the committee an apology for having proposed to instruct them at all." He had done so because "he was certain" the committee would not report a bill without instruction.

Due to the rules of the House, discussion of his motion was preventing members, including himself, from introducing their own petitions. This discussion, he said, “ought not to have occupied a week, [but] had taken a very wide and unnecessary range.” Therefore, he moved the previous question.

Instead, the House adjourned.

The House finally voted without further debate on the motion, as well as the Pickens and Marvin amendments on March 16. After the House rejected the Marvin Amendment, 80 to 112, Representative Pickens withdrew his motion amending the Marvin Amendment “in view of the vote given.”

The House then voted, 88 to 109, to refuse to refer the National Road Convention memorial to the committee with instruction. “The memorial alone was then referred to the Committee of Ways and Means, without instructions.”

Following the vote, Representative Rariden gave notice that he soon would ask leave of the House to introduce a bill to make appropriations to continue the Cumberland Road in Ohio, Indiana, and Illinois. He did so on March 23. In asking leave to introduce the bill, he said “he did it in good faith, and hoped the vote would be given in the same spirit”:

There could (he said) be no propriety in granting the leave, if the same is only to result in the consumption of time by a protracted and exciting discussion, without the design finally of granting the appropriation; he therefore hoped the vote for leave would indicate the views of the House in regard to the appropriation proposed by the bill.

With the clock approaching 5 p.m., a brief debate took place on whether to lay the motion for leave on the table or order it to lie over. The House agreed to the lie-over option then adjourned. In the end, the House would not grant leave to Representative Rariden to introduce his bill.

Similarly, Representative Reynolds begged leave on March 26 to introduce a bill authorizing the Secretary of War to conduct a survey of extension of the Cumberland Road from Vandalia, Illinois, to Alton by way of Greenville. The House, for parliamentary reasons, did not admit the motion.

The Senate still had its bill under consideration for continuation of the Cumberland Road through Ohio, Indiana, and Illinois. On March 17, Senator Norvell had introduced an amendment adding a section to the bill “making appropriations for the further prosecution of the improvement of all the roads, rivers, and harbors, which have been heretofore commenced by the General Government.” In view of the “exhausted condition” of the Treasury, he would defer most of the appropriations “if the Cumberland road bill were not pressed upon us”:

But if we had to borrow five millions of dollars, or to authorize the issue of that sum in Treasury notes, to enable us to go with that expensive work; and to

replenish the exchequer for other purposes; he thought that it would be equally right and proper to borrow or issue ten millions, instead of five, to enable us to improve the harbors, rivers, and roads in other States, for the completion of which he considered the faith of the Government more evidently pledged than for that of the Cumberland road. The former works were commended, and to be continued out of the general funds of the Treasury. The Cumberland road was to be made out of a special fund, which had been run out long since.

Estimates for the projects were available. He wanted his bill printed to give the Senate a chance to consider it “and to see that it conformed to official estimates made by the topographical and military bureaus.” He urged the Senators from Indiana and Illinois to allow consideration of the bill to be postponed until the following day.

His point was that appropriations for the additional projects would fail if not linked to the Cumberland Road bill:

It would be vain for us to indulge the delusion, or to affect to believe, that the separation of the propositions, so naturally connected, could secure the success of both: it might be fatal to that of either. The estimate for the Cumberland road had come to us in the same report, under the same head, in the same table, with the estimate for the other roads, rivers, and harbors, for the completion of which the amendment which he had submitted proposed to make appropriations. Why, then, should the Senate select a single object, detach it from the others of kindred nature, and make it the favored and favorite work for Government patronage?

Senator Young had pointed out that the appropriation for the Cumberland Road had always been kept separate from other comparable projects. If so, said Senator Norvell, and “he entertained great doubt,” but in that case, “the practice had been improper and unjust, and should be arrested.”

The Senate agreed, 20 to 14, to his motion to postpone debate Thursday, March 26.

On that date, the Senate took up the bill appropriating funds for continuation of the Cumberland Road, starting with Senator Norvell’s amendment. In support of his amendment, he began by saying that in a presidential election year, he understood why Senators from the three States were supportive of the project affecting their States. “It was to be anticipated that they would be unwilling to embark their fortunes with the kindred claims of other States whose weight was not so commanding as theirs in the political scale, or who would not present so compact an object, so exciting an interest for the appropriating patronage of the Government.” He trusted that the Senate would take a different view, and agree to the principles behind his “more enlarged and comprehensive policy.”

Some of the supporters of the Cumberland Road bill did not approve of “combinations for the purpose of carrying measures through Congress.” They forgot the system of logrolling – that is, “combining interests to effect an object” – which was “no worse in principle, no more to be condemned in practice, than a system of scrambling, in which all

the liberal feelings of the human heart were suppressed, and selfish, local, and personal objects alone were sought to be accomplished, without regard to any other consideration, social or national.”

He had taken the time to research the claim that Cumberland Road bills always stood alone. “This assertion was a great mistake.” He listed five appropriations acts that included funds for the Cumberland Road along with dozens of other projects:

Here, sir, was not one instance only, in which this rickety child of the honorable Senator had been put out to nurse, but five several times, within a few years, it had to be sustained by incorporation with other objects, such as his amendment now before the Senate embraced. He had thus proved to demonstration the fallacy of the declaration that the Cumberland road had always stood upon its own merits, and was too strong and too sacred to be mingled with other objects more constitutional and national in their character.

His amendment embraced only “work long in the progress of construction or improvement; works which had often been examined and reexamined by the most scientific officers; works, the estimates for which had frequently been subjected to the most rigid scrutiny by the appropriate committees.” Every Senator was familiar with the projects. He listed several, including funds for the Cumberland Road, with the amendment’s appropriations totaling \$2,289,478. “The sum was tolerably large, but not greater than the importance of the improvements would justify.” Moreover, in looking at each project, the Senators could reduce the appropriations. “They might cut down the amount to \$1,000,000, or to half that sum.”

He emphasized that his amendment “was not a substitute, but an addition to the Cumberland road” appropriation bill:

The Cumberland road, after it left the river Ohio, had become a sectional rather than a national improvement; and viewed, as it was, as a sectional measure, it had no special claim to the favor of a Michigan Senator. Its tendency was to facilitate immigration not into that State, but into the States south of her. It would promote their settlement and cultivation; and while he contemplated their march to prosperity with pleasure, he could not consider it the part of wisdom to hasten that march, while they continued to exhibit a disposition to withhold from his State the means of adding to her advances in agriculture, navigation, commerce, and population. He was not satisfied with professions; he wanted votes.

He added, “At any rate, if he stood alone in his vote, he should insist upon taking the sense of the Senate on the subject, until he found that any further perseverance would be useless.”

Senator Augustus S. Porter, a Michigan Whig, said he would vote against the bill, “not because I am hostile to these appropriations, but because I am friendly to them.” He was eager to support western trade, “which I believe to be essentially interwoven with the fate of the harbor policy.” The Norvell Amendment would appropriate \$2.5 million for a

variety of projects and, although the Topographical Bureau had provided estimates, “I have enjoyed no means of being advised in detail of the merits of all these works”:

I am left to the inference which, in the absence of information I must draw, that there may be some for which further appropriations would not be demanded by high considerations of public utility. A suspension may be advisable as to some, and an entire abandonment as to others. I believe, sir, this want of information in detail pervades almost this entire Senate. I do not believe it is prepared to act advisedly on this complicated amendment; and this fact would of itself be fearfully portentous of the fate of the harbor bill were it dependent alone on the vote about to be taken.

He rejected the characterization of the Cumberland Road as a “rickety child” requiring other provisions in the legislation to secure appropriations for its continuation:

In my judgment, sir, this is a most unfortunate personification for my colleague. If the Cumberland road bill be indeed “a rickety child,” I am unwilling to give it an opportunity of imparting any of its infirmity to the harbor bill. An inseparable union of the two will lead to a common fatality. Equally certain, too, for reasons I have stated, would be the doom of our favorite local policy, were his amendment to be pressed now as a substitute, and the vote on it to be final and conclusive.

He wanted the harbor bill to stand on its own:

We all know there are gentlemen in both Houses whose opinions in respect to the power of Congress to appropriate money for the Cumberland road are such as to forbid the hope that their voices can be had for its continued prosecution at the national charge. The naked question comes up, sir, for I take it as granted that the two per cent. fund is no longer a fountain at which constitutional sins may be washed away. The number of these gentlemen is by no means small; and, while the entire bill, with amendments, is sure to encounter their opposition on this ground, and while we are, by embarrassing the action of the Senate on the Cumberland road bill, unnecessarily inviting the hostility of its immediate friends to our measure, in case theirs falls through our act, we have “the hope of despair” to look to that Senators will vote for us in the dark (for they must do so if hey [sic] vote at all in our favor) on this voluminous, complex, uninvestigated, (except in the figures of the Topographical Bureau) amendment of my colleague.

After speaking at length about the value of the harbor bill, especially to the city of Detroit, he concluded:

I will take occasion, Mr. President, while I am up, to say to the friends of the Cumberland road that I am with them. I shall vote for all necessary and judicious appropriations for its continuation, let them be what they may, unless objections I do not now anticipate shall present themselves. I regard it as a great national improvement. I admire the wisdom of its conception, and commend the zeal with

which its friends have pressed thus far its onward march toward completion. I belong to that school of constructionists who believe in the power of the Federal Government, with the assent of the States whose territory is occupied for that purpose, to construct works of internal improvement of this character, and I cannot regard that work as “sectional” which, like this, will, in its completion, penetrate more than one fourth of the States of this Union, and by direct or indirect means contribute to the common benefit of all.

I will only add, sir, that I do not believe the zeal of my colleague for this harbor appropriations to be less earnest and devoted than my own. We only differ as to the time and mode of presenting the subject to the consideration of the Senate, and if I do not greatly mistake the indications around me, the vote about to be taken on this amendment will show that I have judged correctly.

The Senate then voted on the “first branch” of the Norvell Amendment, defeating it, 1 to 34. Then as the *Globe* put it, “Mr. NORVELL then said that as he perceived an indisposition in the Senate to favor his amendment he would withdraw the residue of it.”

With the amendment disposed of, the Senate turned to the Cumberland Road bill itself. Senator Benton moved to amend the bill by inserting the words “east of Vandalia” after the word “Illinois.” The Senate agreed to the motion.

Senator Clement C. Clay, a Democrat from Alabama, moved to strike all of the bill after the word “dollars” in the eleventh line. The motion would have eliminated these words:

Which said appropriations are made upon the same terms and shall be subject to all the provisions, conditions, restrictions, and limitations touching appropriations for the Cumberland road, contained in the act entitled “An act to provided for continuing the construction and for the repair of the Cumberland road,” approved the 3d of March, 1837.

He reminded his colleagues of the language in the Act of March 3, 1837, that the 1840 bill referred to:

Sec. 4. And be it further enacted, That the several sums hereby appropriated for the construction of the Cumberland road in the States of Ohio, Indiana, and Illinois shall be replaced by said States respectively, out of the fund reserved to each for laying out and making roads under the direction of Congress, by the several acts passed for the admission of said States into the Union on equal footing with the original States.

This provision, Senator Clay said, implied that the appropriation “could or might” be replaced from the two-percent fund. Any such assertion was untrue, “and was consequently calculated to deceive and impose upon the country.” The Senate should take care that its laws “should be founded in truth, and contain nothing false and delusive.” He recounted the statistics of public land acreage and dollars paid, leaving the two-percent fund exhausted:

No, sir, it is untrue, deceptive, and fraudulent. Every gentleman who will turn his attention to the facts and the figures must know it to be untrue, must be conclusively satisfied that the clause of the bill in question asserts, in substance, that the United States Government is to be reimbursed out of a fund which has no existence now, and never can exist.

Considering that reimbursement “was wholly fallacious and unfounded,” he expected that the Senate would support his motion. With that language removed, the “naked question” would be the constitutional power of the general government to make internal improvements within the limits of the States:

Upon that question, he said, as well as the expediency of exercising such a power, his mind had been long made up, and he was prepared to meet it. He said, moreover, in the present state of things, when the national Treasury was exhausted, when we should be compelled to borrow the money which was to be expended on this road, and when, too, we saw the proposition distinctly made that we should hereafter add to the expenditures already made about eight million dollars more, it was peculiarly proper that we should strip the subject of all disguises, and march up to the true question, and meet it with manly firmness.

The Senate moved on to other business, but returned to the Cumberland Road bill the next day, March 27. Senators Young and Benjamin Tappan of Ohio spoke in opposition to the Clay Amendment, but the *Globe* did not record their statements. Senator Clay asked the Senate’s indulgence for a response to Senator Young:

The Senator to whom he referred had endeavored to elude the force of the facts which he (Mr. C.) had on yesterday brought to the view of the Senate, establishing the total exhaustion of the two per cent. fund, six times told, resulting from the sales of lands in Ohio, Indiana, Illinois, and Missouri, by a construction which was entirely new and most extraordinary. The Senator from Illinois had insisted that by the terms of the compacts between the United States and those several States, on their admission into the Union, the General Government was bound to make, that is, as Mr. C. understood him, to complete, a road leading to each. Such a construction was a palpable perversion of the meaning of the language employed in every one of those compacts, as could be shown by a moment’s recurrence to them.

Each of the Enabling Acts had set aside 5 percent of the revenue from land sales for roads, with the amount split between roads within the State (3 percent) and leading to the State (2 percent). “Now, (said Mr. C.) can it be pretended that, under this agreement, Congress is bound to do more than faithfully ‘to apply two fifths to the making of a road’ leading to either of those States?” He continued:

If it had been intended that Congress should make the road, that is, complete a road leading from the navigable waters of the Atlantic to either State, for what purpose was the amount to be expended for that object limited to two per cent. of the net proceeds of the public lands? The cost of such a work was wholly

unascertained; and if it had been intended that it should be done, regardless of expense, it was altogether absurd to limit or name the amount to be expended.

It was plain, he stated, that “all Congress ever intended to do in this matter was to aid in making roads leading to the new States to the extent of two per cent. of the net proceeds; and this had been faithfully done, and far more, as I shall show before I sit down.” He discussed expenditures thus far for the Cumberland Road totaling \$6,609,407.76. He went through each State, citing the balance of amounts beyond the two-percent fund in favor of the States:

Ohio:	Balance in favor of the State:	\$3,159,532.53
Indiana:	Balance in favor of the State:	\$1,313,532.64
Illinois:	Balance in favor of the State:	\$ 825,412.12
Missouri:	Balance in favor of the State:	<u>\$ 583,902.53</u>
	Total:	\$5,883,902.82

He did not claim his figures were “precisely accurate.” Referring to a comment from Senator Young that the *Globe* did not report, he said:

He trusted that gentleman would consider this response to his question, “how much has been appropriated to each of those States?” entirely satisfactory until he could show some other claim to the public treasure than the two per cent. fund arising out of the compacts for their admission into the Union.

Senator Clay also denied “in every particular” Senator Young’s assertion that the Cumberland Road was “a great national work, in which many States are interested.” If by “great national work” was meant the road was long and had received large expenditures, Senator Clay would agree:

This, however, would not do, for upon these principles a road of equal extent and equally costly through any other part of the Union would equally deserve the character of national, and, in that way, all roads might be rendered national. Such a position, he presumed, would be too absurd even for a friend of the Cumberland road to maintain. He could imagine no road to be properly national unless within the constitutional power of Congress; nor did he know how that could be the case, as there was no such distinct, substantive power granted us by the Constitution, unless it could be made an incidental one, necessary and proper to carry some delegated power into effect.

He had thought construction of the road might be incidental to the war power, and that Congress could appropriate funds for a road to some vulnerable site. But no such case applied to the Cumberland Road:

This road leads to no frontier, either bordering upon any Indian tribe, upon the possessions of any foreign Government, or to any point on the Atlantic or Gulf of Mexico. After it reaches the Ohio, that river, which runs a great portion of its

distance nearly parallel to it, affords easier and cheaper transportation for troops and all the munitions of war than the Cumberland road.

Moreover, the road was not a commercial road, except locally, because commerce, too, flowed on the river.

It passed through only four States, counting Missouri, out of 26 States. Except those four, "it cannot be said to be used by, or even useful to the citizens, generally of any other State." Nevertheless, "all the other States are to be taxed to make a great road for the convenience of parts of four only":

Sir, this is unequal, unjust, and ungenerous; it is not that equality and fairness which lies at the foundation of all our institutions. I protest it as not warranted by the letter or spirit of the Constitution.

But, sir, the Senator from Illinois [Mr. Young] has thought proper, by way of sustaining this unwarrantable and iniquitous measure, to attack my consistency . . . . If he had ever pursued a course inconsistent with that he was now pursuing, it did not prove that such a measure was right . . . .

Sir, (said Mr. C.,) the Senator from Illinois asks, with a triumphant air, alluding to me, "Did not the Senator from Alabama vote for the Maysville road bill?" With all candor and frankness I answer, I did. But let me state the consideration which influenced and determined that vote, before the gentleman shall avail himself of its imagined support or condemn me for inconsistency. Sir, I repeat, I did vote for the Maysville road bill; but remember, at that time, and even now, not one dollar of the two per cent. fund arising from the sales of the public lands in Alabama or Mississippi, had, or has yet, been appropriated to making roads, according to the terms of the acts for their admission into the Union . . . . [No] road leading to either had been made or commenced by or under the direction of Congress, nor had one dollar of that fund been applied according to the terms of the respective compacts. The Maysville road (commonly so called) was a link in the great road proposed to be made from Zanesville, on the Cumberland road, by way of Maysville and Lexington, Kentucky, Nashville, Tennessee, and Florence, Alabama, to New Orleans, which (if he was not greatly mistaken) had been laid out with the approbation of the then Chief Magistrate by the engineers of the United States. From what he had stated it would be apparent that the Maysville road was a part of the great road contemplated, which led to and through Alabama and Mississippi to the city of New Orleans; and as the whole two per cent. fund of Alabama and Mississippi which had then accrued, or might thereafter accrue, was unappropriated to any object contemplated by the compacts of those States with the General Government, he thought he was sustained and justified in the vote which he had given, and which had attracted the animadversion of the Senator from Illinois.

However, if the circumstances stated do not sustain my vote on that occasion, I have another answer to give, which ought to be satisfactory to every ingenuous

mind – that is, if not so justified, I frankly admit my vote was wrong. He said he regarded a confession of error one of the best modes of atonement. But does all this prove that the Senator from Illinois is right in pressing upon us a claim for an expenditure of money so prodigal and unwarrantable? He would leave the Senate to decide.

Moreover, Senator Clay had voted against all other similar bills to the present day. “This was some evidence, Mr. C. thought, that if he had sinned at all upon this subject he was not a very great sinner.”

Senator Young had argued that the Senate had passed a bill relinquishing to Alabama the revenue from the two-percent fund. Senator Clay said this assertion meant “Illinois and her co-States in this business must have all they may think proper to ask.” He pointed out that the fund had been accumulating for 20 years “and now the bill as passed does not entitle her to receive all that has accrued at once, but only in quarterly payments, and as she may expend corresponding sums, derived from other sources, upon the contemplated improvement; and she can only receive the balance as it may accrue.” The State would not receive one penny until the general Treasury had received it:

How different with Illinois and other northwestern States! They have not only anticipated the receipt of every dollar of the two per cent. fund by appropriations before it accrued, but the General Government has expended for their benefit millions of dollars beyond the largest amount that ever can possibly accrue . . . .

It must be apparent that the bill to change the application of the Alabama two per cent. fund bore no analogy whatever to the bill now under consideration, and could not aid the gentleman in sustaining his claim to the appropriation which it proposed.

The Senate adjourned without voting on the bill.

Toward the end of the day on March 31, the Senate took up the Cumberland Road appropriation bill, with the first order being the amendment from Senator Clay of Alabama to strike out the two-percent clause. Senator Wright said he did not want to debate the merits of the bill; others were in a better position to debate the merits of the road. He had voted to approve appropriations for the road in the past and wanted to do so again, as long as it “should retain its usual form, the characteristic which had distinguished appropriations for this road from those for internal improvements generally.”

If the Clay Amendment were approved, he would not be able to vote for the bill. The motion would free the appropriations from the “provisions, conditions, restrictions, and limitations” of the 1837 Act. That would leave the appropriation “open, general, and unconditional,” and in that respect would be far broader than the amendment intended. He went through the provisions of the 1837 Act that would not apply to the present appropriation. It would eliminate the limitation in the first section:

That the said road within the State of Illinois shall not be stoned or graveled, unless it can be done at a cost not greater than the average cost of stoning or graveled said road within the States of Ohio and Indiana.

It would eliminate another restriction in the same section:

That in all cases where it can be done, it shall be the duty of the superintending officers to cause the work on said road to be laid off in sections, and let out to the lowest substantial bidders after due notice.

The amendment also would eliminate the condition in the second section of the 1837 Act:

That the second section of an act for the continuation of the Cumberland road in the States of Ohio, Indiana, and Illinois, approved the 2d day of July, 1836, shall not be applicable to expenditures to be made on said road.

The referenced provision of the 1836 Act called for expenditure of funds to complete continuous portions of the road, “so that such finished parts thereof may be surrendered to the said States respectively.”

Senator Wright thought that some other Senators would agree with him that these were not provisions that should be overlooked.

He realized, of course, that the purpose of the Clay Amendment was to eliminate the provision in the 1837 Act calling for reimbursement of Treasury funds from the two-percent fund. Senator Wright went through the history of the set-aside from public lands sales, then turned to the Act of March 29, 1806. Its provision setting aside 5 percent of revenue, including 2 percent for roads leading to Ohio, made the Cumberland Road, as conceived, peculiar as a work of internal improvement prosecuted by the authority and under the direction of Congress.” He said:

It was not necessary for him to defend the wisdom of this policy at that early day. It was sufficient that it was then adopted, and was one of the expositions, by the then fathers, of the powers and duties of Congress growing out of these new and peculiar compacts with the new States. It was too late for him now to question the soundness of the principles upon which they acted, or the wisdom of the policy which guided their course. Nearly every Congress from 1806 to the present time had followed in their footsteps, and every President of the United States, from Mr. Jefferson to the present incumbent, had approved bills appropriating money for this road.

Every appropriation act, except two, for surveying or constructing the road had called for reimbursement from the two-percent fund. “He had found some bills appropriating money for the repairs of those portions of the road which had been once called completed which did not contain this pledge, as he thought they should not” because these “were mere appropriations for the preservation and security of the property of the United States,

as this road when finished clearly was, until transferred to the States, or otherwise disposed of.”

One of the exceptions was the Act of May 15, 1820, appropriating \$20,000 for a survey of a road from Wheeling to the Mississippi River, with the funds to come from the general Treasury. He considered the legislation unique in the history of legislation for the Cumberland Road, “but such as it was, he had felt bound to present it as an exception to the rule.

The other exception was the Act of March 2, 1833, one of the bills President Jackson signed 2 days before leaving office. “This was a plain case of departure from the rule of charging these appropriations upon the two per cent. fund . . .”:

All who were here at the session of 1832-33 will remember that it was one of the most exciting periods of our history, and that an unusual number of bills of the deepest interest finally passed the two Houses and reached the President within the last few hours of the session, which closed on Saturday the 2d of March.

Instead of the usual Cumberland Road appropriations bill, it was of “an anomalous character, coupling harbors, rivers, roads, and a variety of other subjects in the same bill”:

Its title is a very imperfect index of its contents, and yet it is evidently made up of the substance of the titles of three or four originally independent bills. It is “An act making appropriations for carrying on certain works heretofore commenced for the improvement of harbors and rivers, and also for continuing and repairing the Cumberland road and certain territorial roads.” It embraces more than thirty separate and independent appropriations, which take from the Treasury more than one million dollars. In such a bill, and reaching the President at such a period, it was not in the least surprising to him that the absence of this qualification to the Cumberland road appropriation was not noticed.

He signed the Act, but would not have done so had he noticed the absence of the language for repaying the Treasury from the two-percent fund.

Senator Wright realized that the two-percent fund would not be sufficient to reimburse the Treasury and “therefore that the clause in the present bills was wholly useless.” In the interest of fairness, he suggested:

The practice commenced with the commencement of the work, to anticipate the moneys which this fund was to yield, and if those anticipations had been pushed too far, it was no reason, to his mind, why we should abandon our hold upon that portion of the fund which remains.

According to an official statement that Senator Wright had received from the General Land Office, the States of Ohio, Indiana, and Illinois had a combined 26,835,234 acres of unsold land as of the third quarter of 1839. He estimated that at current prices, sale of

the land would pay \$670,000 into the two-percent fund. Adding Missouri into the total would increase the land to 32,154,897 acres, bringing the total of the two-percent fund to \$800,000:

But when it is considered that the unsold land in all these States must become more valuable as settlements increase and improvements in its vicinity are extended, who shall say what limit shall be fixed to this contingent fund? In any event it seemed to him a plain dictate of duty to secure whatever it is to yield to reimburse the Treasury for this expensive work.

Shall we do this if we pass the amendment now proposed, and thus by our own act release the pledge for the future?

By comparison, Congress was taking actions regarding the other new States. As mentioned earlier, the Senate had passed a bill to pay the fund to the State of Mississippi, and a similar bill for Alabama had passed the Senate and was on its way to the House. For Michigan and Arkansas, the 5 percent had been yielded to the new States:

Other new States will come after these examples, and who can make himself believe that if we strike out this clause, and thus release our hold upon the future accruing revenue to the fund from the States of Ohio, Indiana, Illinois, and Missouri, those States will not come, when their road shall have been completed, and tell us, up to 1840 you held and expended this portion of our two per cent. fund, but in that year you, by your own express act, refused longer to pledge it for the Cumberland road, and the money which has come into your Treasury since that period is ours, upon the principles which have governed your conduct toward the other States. Who can convince himself that our successors will be able to resist such an application from these States?

He realized that some Senators were unalterably opposed to the bill, so his reasoning about the two-percent fund would only “add to their anxiety to press the motion, that they might force him and others who held similar opinions to vote against the whole measure.” In fact, he thought, that was the point of the Clay Amendment. “He was conscientiously opposed to the bill in any shape; and its defeat is the object of his motion.”

He closed by saying that to those who supported the bill, “the pledge of this fund could not be objectionable, even if they did not consider it any longer useful.” They will not jeopardize the bill “rather than not discharge it from what they consider, at the worst, but harmless surplusage, and that, too, after they know that others, equally friendly, consider the provision proposed to be stricken out one of essential, of vital importance”:

He must be permitted to believe, therefore, that however far he may have fallen short of producing conviction upon the minds of either the foes or the friends of the measure as to the importance of retaining the pledge of this two per cent fund, the simple information that he and others so held it would induce every friend to the Cumberland road to vote against the proposed amendment.

Alabama Senator Clay requested the Senate's indulgence while he replied to "some of the remarks which had fallen from the Senator from New York." Senator Wright had highlighted provisions of the Act of March 3, 1837, other than the one the amendment was about:

Seizing upon those other conditions and limitations which no one who had before participated in the debate had deemed of sufficient importance to be noticed, the Senator had apparently endeavored to deter other gentlemen from supporting the amendment, by remarking with portentous solemnity that it went much further than the mover (Mr. C.) or others supposed.

As relates to himself, Senator Clay said "he knew perfectly all the conditions and limitations in the act referred to, and he presumed other gentlemen were not so uninformed as seemed to be supposed."

The "most obnoxious condition" proposed to be submitted to the President was "the false idea and delusive hope that the amount appropriated was to be replaced by the said States respectively out of the fund reserved for each for laying out and making roads under the direction of Congress." Because Senator Wright had acknowledged that the fund "was already exhausted," Senator Clay said that including his amendment in the bill "was compatible with the fairness, candor, and dignity which should ever be manifest in the proceedings of this body."

He referred to the other provisions that Senator Wright had listed. Senator Clay had no objection to them at all. "Neither of them comes in collision with my object; and I am perfectly willing, if the money is to be appropriated, that it shall be applied under all those restrictions, and any others the Senate may deem salutary." His amendment would merely strike out a portion of the bill, "and how easy would it be, if the other provisions brought to the attention of the Senate were necessary, to have them inserted."

Although Senator Wright had cited the compact with the States, Senator Clay said "he understood the Senator from New York to admit, distinctly, that we were bound for no more by those compacts, for laying out roads leading to the several States, and that the fund reserved for that purpose had long since been entirely exhausted." At the same time, he continued, Senator Wright had referred to the taxing rights the new States had yielded to the general government. Senator Clay pointed out that "the new States had assented to these conditions, and made the several compacts, and were bound by them, however hard they might operate where the public land remained long unsold." If those States thought they were unfairly treated, "let the Senator from New York bring in a bill to make up for all deficiencies, and placing all on an equal footing":

Let Alabama, Mississippi, Louisiana, Arkansas, and Michigan first be placed on an equality with the other four new States by expending for their benefit as many million dollars as had been literally poured out of the Treasury on the Cumberland road; and let your liberality be apportioned among the several States in proportion to the amount which each has paid into the Treasury for public

lands, and we shall have less cause to complain of injustice in your exercise of unauthorized power.

Referring to all the bills that referenced the two-percent fund and the exceptions, Senator Clay agreed with Senator Wright that President Jackson had signed one of the exceptions, “but the Senator does that distinguished patriot the justice to say that he alluded to it afterwards, and said the want of the reimbursing clause had escaped his attention, in the hurry of business, perhaps on the last night of the session, or he should have withheld his approval”:

And so it would doubtless be with the present Chief Magistrate if a bill were to pass for the same object and be presented without such a clause; he, too, professing the same views of constitutional power would feel bound to return it with his veto. To avoid this result shall we send him a bill masked in fraud? Shall we send it to him with the assertion on its face that money “shall be replaced by the States respectively” out of a fund which has long ceased to exist?

Although President Jefferson had signed legislation related to the Cumberland Road, Senator Clay said, “That venerated man never gave an opinion that any delegated power of the kind was to be found in the Constitution.” The closest the Constitution came, in Senator Clay’s view, was the declaration:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

This power, along with the exemption of public land of the United States from taxation, justified the compacts that resulted in construction of the Cumberland Road. “It is very obvious that the construction of such roads would encourage and facilitate emigration, and accelerate the sale of the public domain. He saw construction in the wilderness as a justifiable exercise, “but when those States had been settled from twenty to forty years, were in a high state of cultivation and improvement, with millions of inhabitants, and with numerous roads leading to and through them, how could it longer be pretended to have any necessary connection with the settlement of the country or the sale of the public lands?”

He also addressed Senator Wright’s inquiry about what the objection to the clause was for those who would support the bill without it:

Mr. C. expressed his surprise at this question. He asked, in turn, is it no objection to a bill, which is to be sent to the President, to tell him, in effect, that this money is due by the compacts with Ohio, Indiana, Illinois, and Missouri, and that it is to be reimbursed from a particular fund, when we know it is not so due, and, moreover, know that we never can be reimbursed. Sir, such are the facts; and the Senator from New York has admitted them by telling us he knew that we had already appropriated more money to the Cumberland road than had or ever would accrue from the two per cent. fund of the four States. Let gentlemen decide for

themselves whether, because they believe an appropriation constitutional, they can consistently attach to the bill an unfounded assurance to the Executive and to the country that the amount is due to us by contract, and will be refunded, when they know it is not due and will not be refunded.

He “expressed his profound regret” that those who supported the Van Buren Administration “should support a measure of the character of the bill before the Senate.” But having demonstrated that the two-percent fund was exhausted, he believed that the “naked question” remaining was “whether the General Government could make appropriations for the construction of roads within the States consistently with the Constitution or principles of sound policy.” The question had been addressed by President Jackson:

It would be recollected that President Jackson, in his veto message on the Maysville road bill, and in his subsequent messages on similar measures, had laid down principles entirely unfavorable to the exercise of such power as that now contemplated. The Cumberland road, he thought, had been sufficiently shown to be a mere local improvement in the proper sense of those terms. Although it ran through several of the States, it was wholly unconnected with any national object; it was entirely in the interior of the country, and could not be said to be necessary to or even to facilitate its defense. Not being national in its character, it was without and beyond the constitutional power of Congress; for all must admit that this Government was instituted for national and not for State purposes.

Senator Clay observed that in the quarter of the country where President Jackson came from, people “were in favor of a strict construction of the Constitution of the United States, and a rigid limitation of the powers of this Government to its legitimate functions”:

During the last presidential canvass, when the present Chief Magistrate was a prominent candidate before the people of the Union, among the strongest objections urged against him in the South was that he was latitudinous in his constitutional opinions, and would favor internal improvements by the General Government. This objection was met by his friends and supporters with his pledge that he would “follow in the footsteps of his illustrious predecessor,” by the resolution he offered in the Senate of the United States in December, 1825, declaring that “Congress does not possess the power to make roads and canals within the States,” and by his remarks, on various occasions, expressive of his opinion that Congress could not constitutionally exercise any such power. He was among those who then and still believed the President a strict constructionist, and opposed to the exercise of the power in question. It was under this confident belief that the present Chief Executive had received such a generous support in the Democratic States of the South.

He had no doubt that if presented with a bill that violated those principles, President Van Buren “would do his duty.” Could not those who supported the President see, Senator Clay asked, that sending him a bill that “masks and disguises” its true character were, “in

truth, opposing the acknowledged principles on which the Administration came into power, and bringing it into discredit with the Democratic Party?"

A political party must remain committed to its principles. A party could not be harmonious if one part of it favored strict construction and the other had a "latitudinous construction of the Constitution – one portion in favor of an economical and the other an extravagant and prodigal administration; one portion in favor of large appropriations to a certain class of objects in one quarter of the Union, and against such appropriations for like objects in another quarter." The "mass of our plain, honest, intelligent, but unsophisticated fellow-citizens could never be made to understand why millions of dollars could be constitutionally appropriated for a road in Ohio or Indiana, Illinois or Missouri, while it was held to be unconstitutional to do the same thing in Tennessee or Alabama, South Carolina or Georgia."

He concluded:

They could not be made to understand – he hoped they never might – that the Constitution meant one thing north of the Ohio, and another thing entirely different on the south side of the same river. They understood that the Constitution was intended to impose equal burdens and dispense equal benefits and blessings, among all the free citizens throughout all the States of the Union. Equality of rights and privileges, burdens and benefits, amongst all the free citizens of this great and enlightened Republic was the great principle which laid at the foundation of all our institutions. Disregard and destroy that distinguishing characteristic, and you jeopardy [sic] the happiness and prosperity of this great people if not the existence of the Government itself.

After additional speeches that were not reported in the *Globe*, Senator Henry Clay proposed to modify the amendment of Senator Clay of Alabama, but the Senate adjourned for the day.

The following day, April 1, the question of the amendment proposed by Alabama Senator Clay was taken up after he accepted the amendment proposed by Senator Henry Clay. Kentucky Senator Clay "addressed the Senate at length in favor of the amendment," but the *Globe* did not report his remarks. The Senate then voted, 17 to 19, to reject the amendment.

Alabama Senator Clay proposed a new amendment that would strike all after the enacting clause of the bill and insert:

That the two per cent. of the net proceeds of the sales of public lands in the several States of Ohio, Indiana, Illinois, and Missouri, which may accrue after the passage of this act, and which was reserved by the several acts for the admission of said several States into the Union, to be applied to the laying out and construction of roads leading to the said States respectively, be, and the same is hereby, relinquished to said States respectively, to be paid over to such person or persons as may be authorized to receive the same, to be applied by said States,

respectively, to such roads or canals within their several limits as they think proper: *Provided*, The Legislature of each of said States shall, before receiving any part of the said fund, pass an act, irrevocable without the consent of Congress, assenting to the provisions of the act.

Senator Clay said that based on the vote just taken rejecting his original amendment, “we were to go on appropriating money for this road on the pretext that the General Government was to be refunded out of the two per cent. arising from the sale of the public lands in the States to and through which it was to run, notwithstanding that fund, present and prospective, had been exhausted more than three times told.” Therefore, he had prepared the new amendment “to put an end to this enormous annual drain from the Treasury” in the form of appropriations for the Cumberland Road “by giving up all that was hereafter to accrue.” Considering the amount appropriated for the road above the accumulated 2 percent, namely \$5,513,395.58 appropriated out of \$6,609,407.76 expended, he thought that friends of the road surely “would consent to take all the fund which was hereafter to accrue, and release us from any further expenditure.” It appeared to him to be “a liberal proposition.”

He wondered how the friends of the road “could reject this proposition when no one denied that we had gone far beyond the amount which had accrued in past expenditures, and even to surrender all that could possibly accrue hereafter?” He thought “this question would determine how far the two per cent. really had anything to do with the bill or the money it granted.”

The proposition should be acceptable to those whose State was not involved in the Cumberland Road. He had earlier explained that decades would pass before sufficient revenue had accumulated in the fund to reimburse the Treasury, which would have expended that amount in a year or two. In view of the engineers’ estimate that the cost of finishing the road would be \$7,896,045.44, “he thought all must entertain the opinion that we should do well by making the surrender proposed by his amendment.” He added that he believed the actual expenditures would be greater than the estimate.

With that brief explanation, he left his amendment for consideration by the Senate.

After Senator Preston advocated the amendment, and opposed the bill at some length, Senator Young “went into an extended argument in support of the bill.” The *Globe* did not report either speech.

Alabama Senator Clay responded that the two-percent fund accruing over the years was “the basis of the whole argument in favor of the appropriation”:

But now, when it had been clearly demonstrated that the entire fund, so far as sales had been or ever could be made, had been long since exhausted, and consequently that the General Government had more than performed its compacts with those several States, the Senator from Illinois [Mr. Young] had assumed the bold and new ground that the Cumberland road did not rest upon the compacts.

Why, then, did the bill include the reimbursement clause and why were friends of the bill “so averse to striking out that clause, on the motion made for that purpose?” If friends of the Cumberland Road agreed with Senator Young, “the pertinacity with which he and his friends clung to the clause for reimbursement under the compacts was most extraordinary”:

He said the stage of the discussion at which this ground had been taken, and a recurrence to the course of argument which preceded it, gave it very much the appearance of an afterthought. The friends of the bill had not only resisted striking out the clause connecting it with the compacts between the United States and Ohio, Indiana, Illinois, and Missouri, but they had succeeded in overruling Mr. C.’s motion; they would not agree, he said, to place the measure, as he had desired them, upon its own merits, independent of any hope or claim upon the two per cent. fund; but still it retained that feature.

Yet the Senator from Illinois now maintains that the Cumberland road does not rest upon the compacts with the States interested. He said he would leave it to the Senate to say whether this course was not strangely inconsistent with the whole argument against his amendment and the vote by which it had been overruled.

Senator Clay of Alabama addressed Senator Young’s assertion that President Jefferson thought the road was constitutional:

Now, if the gentleman means to convey the idea that Mr. Jefferson believed the General Government possessed the constitutional power to make roads or canals within the States, I deny the assertion, and challenge him to the proof. Can the Senator from Illinois or any other gentleman show a single sentence in all that Mr. Jefferson has said or written to warrant the belief that he ever entertained the opinion that this Government possessed power to make internal improvements?

No, sir, it is impossible, except so far as to agree to expend two per cent. of the net proceeds of the public lands in making roads to the new States, to accelerate the settlement and facilitate the sale of the national domain, as he had stated in a former part of the discussion; and this was a mere incident to the “power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” But, although in this aspect that distinguished Republican had approved of bills making appropriations for the Cumberland road, and although those bills had anticipated the accrue ment of the fund reserved for that purpose, he had never exceeded its ultimate probable amount, nor had he ever signed a bill which did not promise reimbursement.

Alabama Senator Clay said his views on eliminating reference to the two-percent fund were based “on the principle of quieting a vexatious claim, and by way of buying our peace.” The history of the road was precedent enough:

It was on the principle to which he referred that several acts had been passed, making large appropriations for the Cumberland road on this side of the Ohio,

conditioned that the several States through which it passed would accept the road within their respective limits, and keep it up. Indeed, he said, a session of Congress seldom occurred that some act did not pass, founded on this principle of compromise; and he had no hesitancy in saying that one more advantageous or necessary than that proposed had never been passed.

Senator Daniel Webster, now a Whig from Massachusetts, said the bill called for a large amount of money in view of the present state of the Treasury, “and, as the object is not embraced in any estimate submitted by the Treasury Department, we shall be very likely, hereafter, to hear Congress reproached with extravagance and with disregard of the economical maxims of the Executive.” Nevertheless, he was inclined to vote for the bill.

Under the circumstances, he regretted that friends of the Cumberland Road based their plea for passage “on grounds which do not appear to me to be substantial.” He had voted for the Clay amendment to strike that portion of the bill “because the fund has long since been exhausted”:

This every one knows. Yet the section is retained to give the color of contract or obligation to the bill, instead of leaving it in the plain character of a bill making a direct grant of money out of the Treasury for constructing a road. This section is a little narrow isthmus, along which a few friends, it is hoped, may persuade themselves to walk, who are afraid of the broad general ground of the Constitution – a sort of bridle path which they can thread along and arrive at an affirmative vote by a way not known to others. I am against these contrivances, and place my support of the measure on grounds entirely different.

He recalled the history of the Northwestern Territory, which had been ceded to the United States under the Articles of Confederation. “All the property and rights belonging to the United States under the Confederation devolved upon this Government by the establishment of the present Constitution, as did also all their debts, compacts, treaties, and obligations.” The Constitution gave Congress the power to dispose of this Territory. At the direction of Congress, the land had been surveyed, divided into townships and sections, and then into States that had been admitted to the Union:

In general, Congress has done nothing to promote the sale of these lands, but to survey them and let them out; and, while yet held by Government, and for five years after, none of them are taxable by the State governments. The Government of the United States, therefore, in relation to these lands, is a great untaxed proprietor. As a great proprietor, then, holding these lands for sale, is anything more reasonable than that it should open the country, make roads through it, render it accessible, and thus bring the lands into markets?

Funds had been expended to implement the regulations that Congress adopted, and no one questioned the constitutionality of those actions. Certainly, no one objected to such activities in territories that had not yet achieved statehood:

But the public territory, so far as it remains unsold, is under the control of Congress after a State is established as well as before. It is as much the duty of Congress to take care of it, to sell it advantageously, and to do everything necessary and proper for the purpose of making such sales, after a State exists, as while the territorial form of government existed.

There is, it is true, a difficulty, rather theoretical than practical, springing up, or which, by possibility, might spring up, by the establishment of the State Government; that is to say, there might possibly be a difficulty about jurisdiction. It might be necessary, in some imaginable cases, to carry the road over lands belonging to individuals; in other imaginable cases it might be necessary to exercise some authority, resembling municipal authority, for the protection of the road.

These were, however, hypothetical cases:

No actual difficulty has ever occurred; and, as to the mere power of appropriation, there cannot be the slightest difference in the two cases, of States and Territories. There must, in each case, be a proper object – an object within the just power of Congress. And if this object exists, the right to expend money upon it is clear in one case as the other.

He thought that the issue of jurisdiction was why President Jefferson had deemed State concurrence important. If Congress did not have a certain power, “it cannot obtain that power by obtaining the consent of three or four States for its exercise. The power must rest, and it does rest, on the direct authority of Congress.”

Some opponents described the road as a local object and that “we, in effect, tax the whole people for the benefit of a part”:

But this may be said of almost anything. To be sure the road is local; and so is every fort, every harbor, every pier, every light-house, and every armory and arsenal in the United States; but they are not, for that reason, less within the just exercise of the powers of Congress, or less deserving its attention. The money, it is true, is to be paid out of the Treasury; but then the public lands are constantly paying money into the Treasury. Suppose it had been the practice to keep the proceeds of the sales of the public lands in a distinct fund, separated from the general moneys of the Treasury; it would seem plain enough that out of this fund any reasonable sum might be applied, for the purpose of making roads to and through the lands, for the purpose of bringing them into the market.

Senator Webster suggested another view that “exhibits, I think, the duty of Congress in a clear light.” After the sale of the public lands, settlers bought lots, felled the trees, began cultivation, and built their houses. He said, “there must be roads from house to house; there must be bridges over the streams; much cost and labor are demanded for these and similar neighborhood purposes.” The settlers bore these costs, because it had “not been thought proper or convenient, for general reasons, that the Government should be called

on to bear any part of this expense, though it may be a very heavy expense, as all know who are acquainted with the settlement of new countries.” Although the general government did nothing to advance “these smaller objects, the reason is greater that, on a larger scale, and in regard to larger and more general objects, it should make its just contribution.”

As for cost, he thought the Cumberland Road had “cost a great deal more than it need to have cost. It has been very badly managed.” He hoped future funds would be “more economically expended.” That said, he concluded:

But I am of the opinion that the work ought to go on; and, notwithstanding that the Treasury is not overflowing, and notwithstanding that the executive branches of the Government do not recommend it, nor include the expense in the annual estimates, I shall yet give my vote for the bill, and hope it may pass.

Senator John Calhoun of South Carolina addressed his colleagues on the subject. As a member of the House of Representatives, he had worked with Speaker of the House Henry Clay to pass the Bonus Bill as a way to fund internal improvements, but as discussed earlier, President Madison vetoed it on March 3, 1817. He had served as Secretary of War, during which he had submitted a plan for a system of such works. He had served as Vice President under Presidents Adams and Jackson, whose views on internal improvements differed, before resigning to return to Congress on December 12, 1832, to fill a vacancy in the Senate.

He had joined the Senate as a Nullifier, but now was a Democrat whose views on internal improvements had changed. Having aligned himself with the Jackson/Van Buren views on the subject, he had broken with Kentucky Senator Clay in bitter disagreement on several issues, including the American System his former ally advocated. Speaking after Senator Webster, Senator Calhoun began:

Mr. CALHOUN said that he was thoroughly satisfied that the General Government was wholly unfit to carry on works of internal improvement, and that in his solicitude to see the termination of the whole system he would vote for the amendment as a substitute for this bill by his friend from Alabama, [Mr. Clay.] He believed the offer was a liberal one, and ought to be accepted by the States interested. It went beyond the measure of real justice in the spirit of compromise and the hope that it would put an end to this distracting question and the system of which it constitutes a part. It was only in that view he could justify his support of the proposition. Indeed, he believed that the fund was entirely exhausted, and that the States interested in the road had no just claim to further appropriations or aid from the Government.

He disagreed with Senator Young’s argument that although the two-percent fund was exhausted, the general government had a contractual obligation, under the compact, to finish the road. If correct, Senator Calhoun said, this view “would oblige us to finish the road throughout its whole extent to the borders of Missouri. In giving this construction, he distinguished between ‘to’ and ‘toward.’”

He thought that addressing the issue was necessary; his opinion rested “on more solid ground”:

It was in fact too late to inquire into the true meaning of the compact in reference to the fund. Two points were certain. In the first place, that the Government is not bound to expend more than two per cent. on the road, and that the fund had been exhausted. And in the next place that it had been exhausted by the votes, in part, of the members of the States interested in that fund, and at the earnest solicitation of the States which they represent, and against the strenuous opposition of a large portion of the members from other parts of the Union.

He cited an argument from Senator Young’s speech. The example was a contractor who agreed to spend \$10,000 to build a house, and spent that full amount on the foundation. Would that fulfil the contractor’s agreement? “Yes, certainly, if that be the limit of the amount agreed to be spent, and if you stood by and insisted he should spend the whole sum he had engaged to do on the foundation; and such is precisely the present case.”

He also addressed an opinion stated by Senator Tappan of Ohio (not reported in the *Globe*). “He takes the ground that justice demands the appropriation; that in consequence of this and other improvements by the Government, we have received a much higher price for the land sold than what we could otherwise have got, and that the purchasers have already paid for the road in this increase of price”:

In answer to this it is sufficient to remark that the public lands, so far from affording an income, have not yet returned to the General Government the sum expended for them, as was stated and not denied in the recent discussion on the question of assuming the State debts; and that, of course, if the road has been thus far constructed, and if it is to be continued, must be constructed, at the expense of the commerce of the country, our only available source of revenue in reality.

The appropriation, he had shown, could not be justified on the basis of justice. “If, then it can be defended at all, it must be on the broad and general ground of expediency and constitutionality, on which every other work of the same description would stand.” He could not “assent to the ingenious attempt” by Senator Wright to distinguish the Cumberland Road from other similar works. Senator Wright had conceded that the two-percent fund was exhausted, but without that reimbursement provision in the bill, there would not be any distinction between the Cumberland Road and any other road. Senator Calhoun summarized the argument by saying that Senator Wright “undertook the Herculean task of proving that the retention of the provision charging the appropriation on that exhausted fund would, by some magic, make a material distinction between this and all other roads.” Senator Calhoun continued:

His intellect, he acknowledged, was too obtuse to perceive the difference; unless, indeed, it be meant that, if the provision were retained, it would have the effect to prevent the President, in the exercise of his approving power, from looking beyond the act itself, and ascertaining whether, in truth, the fund was exhausted

or not, and thus to compel him to sign an act which otherwise his oath to support the Constitution would compel him to veto.

He took an entirely different view. He believed it due to the President, to ourselves, and the Constitution, to present the act to him, if presented at all, in exact conformity to the state of the facts, so as to afford him a fair opportunity to exercise the high power vested in him by the Constitution over our acts, with full knowledge of all the facts; and if he had no other objection to the bill than the retention of this deceptive provision, as he regarded it, he would on that account vote against it. He held a strict adherence to truth, in every particular, to be among our most solemn obligations.

He viewed the bill as he would any other bill for internal improvements. He was opposed to it “if for no other reason, because the experience of a quarter of a century had proved that this Government was utterly unfit to carry on works of the kind. He would vote for the substitute, in order to get rid of the whole system.” He pointed out that according to the Treasury Department, the government had spent \$18.6 million for internal improvements, an amount he increased to \$25 million to include interest. “And what do you suppose has been the aggregate income of the Government from this immense expenditure, equal to one fourth of the debt of the Revolution?” The full profit amounted to \$173,620, “and that from a single work – the Louisville and Portland canal.” That deficit between expenditure and profit was only one example of “wasteful and thoughtless expenditure”:

It has been stated in debate, and not contradicted, that it has thus far cost \$18,000 per mile, a sum at least three times as great as a good road of the kind may be made for, and much greater than what a substantial railroad ought to cost.

Moreover, the Cumberland Road was going to be superseded in 10 years by a railroad “and will prove worthless, like all our other projects of the kind . . . .” Given the uncertainty of navigation on the Ohio River in summer and winter, a parallel railroad was a necessity. As for the Cumberland Road, “when made, this, which costs so much and is the cause of so much contest, will be no more than a mere neighborhood road, being used to drive stock on, and not good for that.”

To illustrate the “wasteful and thoughtless” nature of internal improvements by the general government, he pointed out that Georgia had received \$17,000, Tennessee \$27,000, but Kentucky, South Carolina, and Virginia had received nothing:

The truth is, the expenditures appear to have been governed by importunity and political influence, with little or no regard to justice or utility. A system so conducted must lead to discontent, and be productive, politically, of mischievous consequences. Need we go further than this very instance to prove the truth of this assertion? Can we doubt that there is, in reality, a large portion of this body discontented with so large an annual draft on the Treasury for a single work as local in its characters as a thousand others that may be named? Nay, further; can we doubt that there is a great majority of the body of both parties opposed to it

both on the ground of expediency and constitutionality, but who feel themselves compelled, in a measure, to vote for the appropriation because of its supposed bearing on a certain question which now agitates the country which he did not deem it proper to name here?

According to his mode of thinking, those who represented the States immediately concerned had the greatest interest in terminating the whole system. They were placed, in his opinion, in a state truly awkward and embarrassing; and for himself, he would rather that his State should never receive a cent than to receive double the amount contained in this bill under the circumstances under which it would have to be voted.

It was time to “awake from our long slumber”:

We have, for the last fifteen or twenty years, been wasting the resources of the Union on innumerable objects of internal expenditure – roads, canals, harbors, an overgrown eleemosynary pension list, never intended to be placed, by the Constitution, under the charge of this Government – while we have been grossly neglecting the great objects for which the Government was really instituted. It is high time that this internal bleeding, which has been wasting the strength of the Government, should cease, and that we should direct our attention and resources to objects really intrusted to the Government and for which it is responsible. He was no alarmist; he did not believe that war would grow out of the boundary question.

He was referring to the boundary dispute regarding the northern boundary of the Oregon Territory. He thought that Great Britain, when it “came to a full and calm consideration of the subject,” would agree to the view of the United States (known by the slogan: “Fifty-Four Forty or Fight”). Although he did not expect war, “he could not look at the general state of the world without fearing that the elements of strife were daily multiplying and gaining strength, and it was time for us to economize our resources, and direct them to the point where they would be felt in the hour of trial.” He was particularly concerned about maritime dangers and the importance of strengthening the U.S. Navy:

He would be prepared to show, on the proper occasion, that it would be in our power, by strict economy, and withholding useless, profuse, corrupting, and unconstitutional expenditures, to put on the ocean, at no distant period, and without increase of burden, a force that would give to us the habitual command of the adjacent seas against any force on our coast . . . .

The first step is to put a stop to these internal expenditures, at the head of which stands that which is the subject of this discussion. Till it is stopped this system cannot be arrested; nor can we have any assurance till then that it will not return on us in its full vigor. Other portions of the Union will not stand by and see a part receiving all the benefit of the system, be the pretense what it may, without struggling to participate in its advantages.

The Senate adjourned without taking a vote on the question.

On April 2, the Senate again took up the substitute proposed by Alabama Senator Clay.

Senator Albert S. White, an Indiana Whig, “addressed the Senate at length in favor of the bill, and in opposition to the amendment,” but the *Globe* did not report his remarks. Senator Henry Clay responded, but his remarks also were not recorded.

Senator Wilson Lumpkin of Georgia, a Democrat, said “many considerations have inclined me to give a silent vote on this bill.” It was a favorite of many of his personal and political friends:

But, sir, after what has fallen from the Senator from Indiana [Mr. White] I feel myself called upon at least to correct his impressions and statements in regard to matters which he has thought proper to introduce in connection with my own State . . . . It was to me a matter of surprise that the Senator should attempt to aid the passage of Cumberland road bill by stating that the Federal Government had expended upward of \$6,000,000 to aid Georgia in getting rid of her Indians, and other purposes of liberal expenditures in aid of that State.

He thought that perhaps Senator White’s age explained why he did not understand “things which transpired before his birth; and he has neglected to make himself acquainted with the history of the transactions upon which he has attempt to enlighten the Senate.” (Senator White was born in 1803 and was in his mid-30s at the time.) Senator Lumpkin, who had been born in 1783, knew that all of his colleagues, except the Senator from Indiana, knew the facts, but he wanted to enlighten Senator White:

Yes, sir, Georgia has given much to build up and strengthen this great confederacy of States, while she has asked nothing, received nothing

Georgia had ceded land that became the States of Alabama and Mississippi, in return for which the State had received a “mere song, sir - \$1,250,000, a promise to settle certain fraudulent claims against the State, and the more important consideration of a promise to extinguish the Indian claim to all lands within the limits of Georgia, abridged as they were by that cession.” The general government had demonstrated bad faith in complying with these promises:

We have, sir, but just got rid of our Indians; much of our territory is still an unimproved, unsettled wilderness; whereas, if this Government had been faithful to its compact with Georgia, we should have had a population and improvements proportioned to our extensive limits and productive soil.

Could, Senator Lumpkin asked, the Senator from Indiana think he would benefit the Cumberland Road by trying to leave an impression “upon the minds of Senators that there is the slightest similarity between this Government paying a debt to Georgia and taking money from your Treasury to make a road in the States to be benefited by this

road?" Senator Lumpkin said he had in his hand a report from the Treasury on expenditures for internal improvements since 1803, totaling \$25 million:

And, sir, out of this immense sum what amount would you suppose Georgia has received, out of \$25,000,000, \$17,000, applied to the removal of obstructions in the Savannah river. Yes, sir, you have the amount, all told. Now, sir, the new State of Indiana, the Senator's own State, has received considerably upward of one million of this vast expenditure. Under these circumstances, sir, can that Senator expect to stand here unrebuked when he attempts to make comparisons between Georgia and Indiana in reference to sharing the spoils of the public Treasury in a scrambling system of internal improvement?

Georgia had never sought special favors from the general government. "Equality, justice, a strict adherence to the Constitution, is the motto of Georgia." The State had sometimes been "ridiculed for our constitutional scruples":

But, sir, ample and conclusive objections to my mind may be found against a further prosecution of this Cumberland road by the Federal Government, upon the "general welfare" principle; and, sir, should I hereafter, as I possibly may, submit my remarks to the Senate on this subject, I will meet the friends of the "general welfare" school on their own ground, and endeavor to show that it is inexpedient, impolitic, and unwise, further to prosecute this work.

He recommended that friends of the road "come to a compromise," namely to accept the proposal by Senator Clay of Alabama, "proposing to give the States through which this road passes two per cent. of the net proceeds of the public lands hereafter accruing from the sales in those States."

He pointed out that the Cumberland Road appeared to be losing favor in the House of Representatives. "Sir, I think it will not require many more such speeches as we have this day heard from the Senator from Indiana [Mr. White] to seal the fate of this Cumberland road." All the speeches in opposition to appropriations for the Cumberland Road that he had heard for the past 25 years "have not tended so effectually and fully to convince me of its great evils as has the speech of the Senator this day, intended for its support."

In view of the \$6,777,739.82 already expended on this road, why talk about the two-percent and three-percent funds that these States are entitled to under the compacts? "No one will hereafter be deluded by thus mystifying this subject." It was equally "fallacious and futile" to try to make it appear that other States had received like benefits. He concluded:

All such attempts will have to stand upon a similar foundation to the one this day attempted to be imposed upon the State of Georgia, and which I have felt myself called upon to expose and refute.

Senator William H. Roane, a Democrat from Virginia, said he normally was “extremely reluctant” in Senate debate and had never “opened my lips” on the subject of the Cumberland Road. However, Senator White’s “very earnest, fervent, and almost personal appeal” rendered it proper that Senator Roane “promptly and immediately add a few brief words to the more potent monosyllable which it will very soon become no less my pleasure than my duty to utter against the passage of this bill.”

Apparently, Senator White thought the bill would appeal to Virginians because part of the road went through their State:

On what principle, on what grounds, by what precedents, am I invoked to give aid or countenance to this Cumberland road bill? Has it heretofore received the countenance and support of that State? Have my predecessors in this Chamber been advocates or patrons? If so, I am unacquainted with the fact.

Geography and the principles of engineering between Cumberland and Wheeling required “that the road should seek a passage to the Ohio through a small portion, a mere corner, of the territory of Virginia.” Only about 14 miles were in the State:

What great favor does this circumstance confer on that State? What great interest can it excite in Virginia or her citizens? And what obligation should it impose on her representatives to vote annually large sums of the national treasure toward extending its progress through the boundless West?

True, as Senator White had stated, the city of Wheeling was a flourishing city. But neither its growth nor “any of the other cities which have sprung up, as if by magic, on the banks of the Ohio and all our other western rivers, owe their rapid growth and unexampled prosperity to the Cumberland road.” If they had relied entirely on the Cumberland Road, they would be struggling economically. They owe their growth partly “to her almost unequalled water power, but mainly to the mighty power of steam, which had given navigation to her noble river, and machinery to her multiplying workshops.”

Senator Roane also commented on the invocation of President Jefferson to support continued appropriations for the Cumberland Road. It was true that some 40 years earlier, President Jefferson had sanctioned, perhaps patronized and fostered the road, “but I am certain that he would never have done so could he have foreseen its consequences, direct and collateral.” He never dreamed of its present length or that it would “become an annual sponge or perpetual drain on the public Treasury.” He could not have foreseen the coming of “safe, easy, rapid, and most profitable” navigation along the Ohio River. At the time, he did not have the option of steam as an alternative for achieving the goal of populating his “‘favorite West,’ as he was wont to call that region.” If he had known about the advances in transportation since the start of construction of the road, “it seems clear to my mind that . . . we should never have heard of this ‘Cumberland road,’” which was becoming a mere neighborhood road. Nearly all who reach the Ohio River, “abandon the delightful coaches of this magnificent road and pursue their journey in steamboats whenever the river is navigable”:

Mr. President, this “Cumberland road,” which was at first but a little serpent, is now fast growing to be a might anaconda, elongating itself through an empire, and involving States in its griping [sic] and inextricable folds!

When and where would it stop? “Where is to be its terminus, or is it to be interminable?” Would it stop at the Rocky Mountains or continue across “the delightful plains of Oregon to the bright shore of the great Pacific ocean?” And what was to stop it from returning to the East on a “new and circuitous route through other States?” He concluded:

I, sir, for one, am ready at this moment to stop the “progress of this evil” and if we cannot “kill the snake,” let us “scotch it.” I am against this bill, Mr. President, because in my soul and conscience I do not think we have power under the Constitution to pass it. I am against it because I think it unjust, impolitic, and inexpedient to pass it; and if it was both constitutional and expedient, I should be against it because of the present meager state of the Treasury, and the disturbed condition of the country both in its domestic and foreign relations.

Senator White, a member of the Committee on Roads and Canals as well as coming from a State interested in the matter, felt the need to reply to the “remarkable speech” of Alabama Senator Clay, “who seems to be among the most zealous opponents of this measure.” After asking for that Senator’s particular attention, he asked, “Did I understand the Senator correctly as saying that this road is local in its character because it does not point to Mobile or New Orleans?” Senator Clay replied that “he did not place its unconstitutionality on that ground, but that it did not terminate either on the sea-board or on the frontier.”

Nevertheless, Senator Smith replied on the “remarkable doctrine” that constitutionality of the road depended on its termini:

As this road is to terminate at a point connecting itself with the great thoroughfare of commerce in the Southwest, it is unconstitutional; whereas, if it had connected with the frontier or the Atlantic, it would have been constitutional.

Senator Clay of Alabama responded that “he had contended that the work was local, as it was confined to three or four States at most in its benefits.”

Senator Smith questioned the premise of Senator Clay’s theory that the road was unconstitutional because its benefit accrued to only a few States. “Why, sir, he must sever the work at the Ohio River, and take one end or the other of it – either the eastern or the western section – and even then his position is untenable.” Because he surely would not sever the eastern portion that President Jefferson had approved, he must refer to the western section through Missouri “and ultimately, I hope, through Arkansas.” He asked, “am I to understand that the road, in the contemplation of the Senator, west of the Ohio is unconstitutional, and east of the Ohio is constitutional.”

The *Globe* reported:

Mr. CLAY, of Alabama, again said he should despair of making the Senator from Indiana understand him. He had contended for no such doctrine as that one end of the road was constitutional and the other end unconstitutional.

How, Senator Smith asked, does the Senator from Alabama consider it a local road? It ran through seven States from Maryland into Missouri and "it is contemplated to continue it through the eighth." He continued:

He had referred to the veto message of General Jackson on the Maysville road bill. I did not expect to hear the Senator refer to that document, as he voted for that bill both before and after the veto, as I understood him as admitting to my friend from Illinois, [Mr. Young.] But, sir, let me once for all say to those who recognize the doctrines of that veto message, here and elsewhere, that for one I am entirely willing to test the question before the Senate by doctrines of that document; I mean upon the question whether this be a local or a national work. Sir, if the Cumberland road is not a national work, where, in the name of Heaven, can you find one? A work that connects, as it were, two continents, the Atlantic with the great valley of the Mississippi, crossing the American Andes, and uniting the States and people of the Republic by a chain that will remain for ages a monument to the wisdom of our statesmen, and which may, like the Appian way of Rome, outlive the liberties of the country, and remain a memento of our nation as she was in the pure days of the Republic.

Senator Smith observed that the Senator from Alabama was not alone in suggesting the western portion of the road was local, and "almost useless," compared with the portion east of the Ohio River. If Senator Smith had a choice of which end of the Cumberland Road to eliminate, he would without hesitation eliminate the eastern portion to Cumberland:

I would not hesitate a moment in selecting the eastern portion . . . for this obvious reason: you have a number of avenues, roads, and canals, from the Ohio river to the Atlantic beside the Cumberland road, when it is a fact known to all that there is but the single thoroughfare for the whole travel, stages, mails, and emigrants, west from the Ohio, running directly through these great States; nor could it be maintained for a moment that the Ohio river would answer as a substitute for the road, even if it were admitted that it was at all times navigable, as the road runs through the center of the States, about equidistant between the Ohio and the Lakes, say at an average of near one hundred miles from the Ohio.

He also challenged the view that the road was of value only to the four States:

It is beneficial to the whole; if it is not, what becomes of your breakwaters, light-houses, fortifications, harbors, custom-houses, and improved rivers? They are infinitely more local than this work, and yet who ever thought of confining their benefits to the particular State in which they are located?

If, he wondered, the benefits were confined to the four States the road passed through, would that justify ending appropriations? He answered:

These four States contain a population greater than was contained in the Union at the period of the Revolution. They have paid into the national Treasury over seventy million dollars for public lands alone, beside their equal proportion of your imposts. And are they to have no return? Are they to be ostracized by this new-born policy of the present day?

He pointed out a project in North Carolina:

I would now like to hear some gentleman who had made this matter his study – and I see several in the Senate – tell me why it is that you can constitutionally clear out and improve, at the expense of the Government, under the commercial [sic] power, Tar river, in North Carolina, where the whole commerce may consist of a passage, in a wood boat, of a few barrels of tar or turpentine, and a return cargo of a barrel or two of salt, when, under the same power, you cannot construct or complete the Cumberland road, over which, in addition to the great mails, (which are strangers at Tar river,) there are more actual commercial operations in one day than there are on the river I have named in a year.

He had selected that project because the State's two Senators (Bedford Brown and Robert Strange, both Democrats) denied that appropriations for the Cumberland Road were constitutional:

Let Senators read me the clause in the Constitution that relates to the regulation of commerce carried on in boats or vessels and excludes that carried in wagons. Can it be possible that as soon as a box of goods leaves the boat and enters a wagon it changes its constitutional relations?

He did not intend to go fully into the constitutional question “until I hear gentlemen who admit the commercial power to make harbors and clear our rivers, in which I heartily concur, draw a distinction intelligible to me against the power in this case.”

Another argument against the bill, he said, was that the two-percent fund was exhausted. He did not dispute the fact, but “when I have admitted all this, I contend that, so far as the merits of the question are concerned, I have admitted nothing against the bill.” The government had begun the road, and agreed to extend it to the Mississippi River “with the avowed object of facilitating the settlement of the public domain,” thereby aiding the Treasury:

. . . and if, by such location, as I contend, the Government held out to the purchasers of her lands the assurance that the road so located by her should be finished, she cannot now abandon the work without a gross violation of public faith, nor without doing the greatest injustice to the people who have purchased, and improved at high prices the land on the line of the work, relying on the completion of it in good faith; nor can the Government now abandon the work

without doing violence to the States through which it runs, upon general principles.

The States had located their own roads to serve internal needs, but the general government had located and intended to construct the Cumberland Road “upon a scale of expenditure far beyond anything that a State would have contemplated; hence the great injustice of abandoning this national work to be completed on a scale ruinous to the States, and about which they were not consulted; nor are their means adapted to it.”

Senator Smith said the Senator from Alabama contended that the compacts committed the general government only to the extent that the two-percent fund permitted, at which point the commitment was discharged:

This position I wholly repudiate. I contend that the General Government was bound to make the road, and that the two per cent. reserved by her was to aid her in the completion of the work, and I rely upon the following facts to sustain me.

The road was part of the “original land policy of the nation” as owner of the territorial land. “It was commenced and in progress long before the existence of the compacts between the States of Indiana, Illinois, and Missouri, with the General Government, and was not therefore prompted by these compacts.” Shortly after locating the road in Ohio, the government had reduced the price of land from \$2 to \$1.25 per acre “and made large grants for various purposes without the consent of the States”:

The States were never consulted in relation to either the route, scale, or location of the work, but, on the contrary, the Government laid down the scale and prosecuted the work upon her own plan, wholly independent of the States, which certainly would not have been the case had it been understood by either party that the work was to be abandoned whenever the two per cent. fund would finish the work; and it was upon that principle the Government agreed to make it, and proceeded without consultation with the States in relation to the scale or location of the work, as the States had nothing to do with that matter.

He summarized his thoughts on this point:

I hold that, viewing it merely as a trust question, a faithful discharge of that trust required the Government to appropriate the whole fund that would have arisen from the sales of the whole of the public lands at the prices fixed at the date of the compacts to the completion of the work, and if she reduced the price of the land, made donations or grants for any purpose whatever, laid out the work on a scale too extensive for the fund, withheld appropriations until they were consumed in repairs, or otherwise improvidently dissipated the fund or defeated the object, it was at her peril and at her own expense, and is no answer to the States when they ask for the appropriation to complete the work.

One of the repeated arguments involved the condition of the general Treasury:

I have met this argument more than once during the discussion on this subject in its various stages, and I can do little more now than repeat what I have before said; and that is, that I will not accept of that plea as a defense against the charge of a refusal to make this appropriation. Last year the same cry was raised; the bill passed the Senate, and fell in the House. Notwithstanding the cry, then, I see the expenditures of the Government last year were \$31,815,000, not a dollar of which was appropriated to this work. Where did it go?

. . . Will not objects of expenditure be always found sufficient to drain the Treasury, in exclusion of this work, if we are to be put off with that excuse? As one of the friends of the work I demand that it shall participate in your expenditures. If economizing is to be the order of the day, I am willing that our great work may bear its due proportion of the reduction of expenditures with the other objects to which the national expenditures have been directed but I protest against its exclusion.

He understood how hard it was to overcome party beliefs, but he hoped friends of the road would rise above party to “sustain that policy which was commenced by Mr. Jefferson, and prosecuted through the succeeding Administrations, maintain the national faith, and give no just grounds of complaint to those who have relied on us to complete this great national work.”

Senator Clay of Alabama made “some remarks in reply,” but the *Globe* did not report them.

Senator Alexander O. Anderson, a Tennessee Democrat, said the Clay substitute amendment had been offered as a way to “put this perplexed claim forever at rest.” If he believed that would be the result, he would “cheerfully unite with those gentlemen.” He desired nothing more than that “some plan could be devised by which this important and exciting subject could be surely and lastingly severed from us.” The substitute “would only end as a mere gratuity, and the practical result would be, if they were to accept your proposition, the condition would not be felt to be binding as to anything except that they should merely take into their own hands the application and expenditure of a certain amount of money.” And after the funds involved were exhausted, friends of the road would be back for more:

We ought to remember that a massive population, growing in numbers, and spread over a vast territory, occupying four States of this Union, will continue to feel that their interests have entered into the success of this road; and, sir, you have no alternative but to meet the question face to face.

He had voted against the original Clay Amendment partly because it was a strategy for ending debate on the subject:

We have, sir, no safety in mere strategy. Ours is a cause which must be fought upon the basis of principle or not at all. We have no allurements to offer. If we are defeated we must renew the contest, discuss our principles, enlighten the

public mind, and rely upon it, in the end, a free and thinking people will abide by their Constitution and return into the Halls of Congress the true expression of their opinions. As to this amendment, you have nothing to hope from it. It settles nothing, and I shall vote against it, and against the bill because it is unconstitutional.

The Senate then voted, 12 to 26, against Senator Clay's substitute amendment.

Senator Felix Grundy, a Tennessee Democrat, pointed out that the season would be far advanced before the bill could be enacted and, as summarized in the *Globe*, indicated that "as the amount appropriated could not be profitably expended the present season, he moved to reduce the sum in each State from \$150,000 to \$100,000." Senator Preston moved to amend the amendment by reducing \$100,000 to \$75,000. The Senate agreed to the Preston Amendment, 23 to 17.

The Senate was about to vote on engrossment of the bill for a third reading, but Senator Henry Clay said he wished to address the Senate on the bill. With the day at an end, the Senate adjourned.

The Senate took up the subject again on April 3, this time on the bill itself.

Senator Samuel L. Southard, a New Jersey Whig, addressed the Senate "at length," first, in opposition to the bill. The *Globe* summarized his remarks. He firmly believed that Congress had the constitutional power to appropriate money for internal improvements. However, the Administration had not recommended the appropriation or included it in the Treasury's estimates. Therefore, "he, for one, was not willing to subject himself, and the party with which he acted, to the charge of extravagant appropriations, after the lecture they had received from the Executive on the subject of economy." Regarding the section of President Van Buren's annual message on economy in public expenditures, Senator Southard "denounced it as the most impudent and the most insulting lecture that has ever been given to any Congress by any man who has ever honored or dishonored the Executive Chair."

The next speaker, Kentucky Senator Clay, told his colleagues that he had always believed the Constitution conferred the power on Congress to appropriate funds for construction of internal improvements. There was, however, a caveat:

It was only when it could be done without inconvenience to the Treasury that he had been willing to concur in appropriations to that object. Of late years, considering how much the States have done for themselves, and how much had been contributed by the General Government in aid of them, under the act distributing surplus revenue among them, he for one was willing to waive the exercise of the power in respect to canals and roads, especially if a law could be passed to distribute the net proceeds of the sales of the public lands. They would supply a fund, in perpetuity, abundantly sufficient for all desirable objects of internal improvement.

He turned, as he had in recent years, to President Jackson's veto of the Maysville and Lexington turnpike road bill, describing the turnpike as "but a section of one arm of the Cumberland road." As a result of the veto, the Constitution as he understood it had been suspended throughout the country, except in Ohio, Indiana, and Illinois, "as to the construction of artificial roads":

We have had, in effect, two Constitutions of the United States, one for these three States, and another for the rest of the Union. For I repeat, what I have before said, that the proposed appropriations to the Cumberland road are wholly indefensible but upon the ground of the existence of a general power in the Constitution authorizing works of internal improvement.

He understood why Senators from those three States supported the road and their contention that the United States, "as a great land proprietor," opened the road to enhance the sale of the public land. "But no one can, I think, allege that if that were the object a road so costly as this would be made, or that it has been in fact constructed with that view."

As a resident on the south side of the Ohio River, he had a hard time understanding why appropriations for this road to the north of the river were constitutional, while appropriations for a road to the south were not:

We have felt the injustice of being taxed to supply the means of constructing the roads of others without any reciprocal taxation of them to assist in making our roads. This inequality has made me heretofore, since the veto of the Maysville and Lexington turnpike road, vote with great reluctance for appropriations for the continuance of the Cumberland road. That reluctance was increased by a knowledge of the fact that the very States which were thus exclusively benefited, constantly maintained the Administration which originated and inflicted this inequality. Nay, more; a majority of their delegations had been always opposed to a distribution of the proceeds of the sales of the public lands, by which other States, as well as themselves, might have acquired the requisite funds to construct their works.

After the Maysville road veto, he thought, perhaps he should not have voted for appropriations to continue the Cumberland Road "until the general power was restored, or an equivalent obtained." Nevertheless, he had done so, and would continue to do if it were possible to provide the funds without going into debt and if the Van Buren Administration had recommended the appropriation. Not only had the appropriation not been included in the estimates, but President Van Buren had urged economy in appropriations, and had intimated he would use the veto, "which, instead of being a power of occasional and extraordinary use, has been too frequently exercised."

As it was, the Treasury was "literally empty," and would have to borrow money to meet expenses. Even so, the Senate was being asked to appropriate \$225,000 that would have to be borrowed "against all the motives to economy which exist." Friends of the Van Buren Administration had unjustly accused the "Opposition" of swelling the budget with

extravagant spending. If the Senate approved the bill, "shall we not, so far as it goes, give color to the accusation to which I have referred." If the Democrats wanted to pass the bill, he said, they could do so in both Houses without the Whigs.

Another issue raised his concerns about the bill. He described "the necessity, which I think exists, for a thorough investigation into the causes of the extraordinary expenditure upon this road in those States, and especially in Indiana." He pointed out that the road had cost \$13,000 or \$14,000 a mile, with estimates that completing the work to the Mississippi River would cost \$7 or \$8 million. "Now, sir, this astonishing expenditure requires a most rigorous examination." He thought that use of the road prior to adding the macadam layer would result only in "a trifling expense compared to the original cost of grading it":

There must be some other cause of the enormous expenditure upon this road, and before we make further and lavish appropriations to that object that cause ought to be probed and certainly and carefully ascertained.

He pointed out that since the veto, Kentucky had built between 400 and 500 miles of macadamized road "at an average cost not exceeding, I believe, \$6,000 per mile." He asked why a road north of the river cost twice as much per mile as a road to the south. "And that, too, notwithstanding the difference in the character of the labor on the two sides of the river," apparently referring to the use of slave labor on the roads. Based on experience in Kentucky south of the river, only half of the \$8 million estimated for completing the road to the north would be needed "to construct the whole road if not a stroke of work had been executed upon it."

In view of these concerns, he could not vote appropriations for the Cumberland Road, regardless of what he had done in the past. "I think it will be better to remit the whole subject to the administration of President Harrison." (Here, Senator Clay was assuming, correctly as it turned out, that General William Henry Harrison would win the presidential election of November 1840.) Once he takes office on March 4, 1841, an investigation of the road would be possible. And, because future President Harrison was a Whig who lived in Ohio, "his whole life with the interests of the three States more directly interested in the road will secure a just and liberal patronage."

Senator Clay concluded:

Whether that patronage should be extended by a direct grant from the public Treasury, by a division among all the States or the proceeds of the sales of the public lands, or by other means, will then be fit subjects of inquiry. And we may rest in perfect confidence that the Administration which, with the aid of the people, and with the blessing of God, will commence on the 4th day of March in the year of our Lord 1841, will do in respect to this road whatever may be demanded by the interests of the particular States and of the whole Union.

Senator Smith, the one-term Whig Representative (1827-1829) who had joined the Senate in 1837, said "he rose under feelings of a character that he had not language to

express.” He had listened to Senators Southard and Clay “with deep mortification and regret”:

I hope I need not point to my short political life to prove that I have been the friend of those Senators through evil as well as through good report. I have felt for them all the devotion which their brilliant career, and especially that of the Senator from Kentucky, was calculated to produce in the mind of a young and ardent politician of the West.

Being from Indiana, Senator Smith had an “all-absorbing” interest in the Cumberland Road and had “looked up to and advocated the high pretensions of the Senator from Kentucky, on more than one occasion, to the highest office in the gift of the American people.” In doing so, “I have with pride and satisfaction pointed to him as the champion of this work.” He had “fondly hoped” that Senator Clay and Senator Southard were still “firmly enrolled among our western friends; but in this I have been doomed to bitter disappointment.”

Had their statements come from any other part of the chamber, Senator Smith said, he would have remained silent:

But when two of the former friends of this measure, so distinguished as the Senators to whom I am replying, all at once bound from their original position and come out with set speeches against this road, I feel that I should be recreant to my duty were I to suffer the interests of my State and the wishes of her people to yield to any personal or political considerations whatever.

(Regarding the reference to “distinguished,” Senator Henry Clay is well known today from numerous biographies and for his role in countless histories for his work in the first half of the 19<sup>th</sup> century on a range of issues, including his role as a compromiser on slavery to keep the country united, and as a founder of the American System and the Whig Party. Senator Southard is little known today but had a distinguished career. As an attorney, he served in the New Jersey State legislature and on the State Supreme Court. He served as Secretary of the Navy under Presidents Monroe and Adams (September 16, 1823-March 4, 1829), as Governor of New Jersey (October 26, 1832-February 27, 1833), and as United States Senator starting on March 4, 1833. All of these career highlights were known at the time of Senator Smith’s reference to Senator Southard as distinguished.

(In later years, Senator Southard became President pro tempore of the Senate on March 11, 1841, a position that gained special importance following the death of President Harrison. With Vice President John Tyler elevated to President, the Vice Presidency remained vacant, meaning that the President pro tempore was second in line to the Presidency, after only the Speaker of the House, should President Tyler leave the office before his term ended. Senator Southard left the Senate and his position as President pro tempore on May 31, 1842, for health reasons and passed away a month later on June 26, 1842.)

Never in his life, said Senator Smith, had he been called upon “to perform a duty which has given me so much pain” as does replying to Senators Clay and Southard, but he felt obligated to do so. In responding, he would exercise the “the freedom and candor” of a Senator from “a free and independent State.”

Senator Smith began with their argument that the appropriation would add to the national debt, which they were opposed to doing. He compared their refusal to vote for the bill on that basis with past actions:

I understand that both those Senators voted for or supported the Cumberland road when there was a national debt of over one hundred and fifty million dollars upon the country, and when it required immense sums annually to pay the interest on that debt . . . . And can those Senators now satisfy themselves that they can place their votes on such grounds? It seems to me that this is an after-thought, as the fund is already raised, and the money will be expended at all events.

He recalled what had happened in 1839:

I am unwilling to accept this plea to our application. The same cry was raised last year, and the bill fell; no money in the Treasury. And so long as the West can be put off with this plea, so long as they can be tickled with the idea of obtaining an appropriation when there is money in the Treasury that there is no other use for, just so long as we shall have the consolation of aiding in filling the Treasury from the purchase of the public lands, and the equal portion we pay in the shape of duties, and in return receiving the answer to our applications, “The money has all been expended, and we cannot let you have a dollar.”

He had heard that argument from other Senators, including Senator Clay of Alabama, but did not expect to hear it from the Senator from Kentucky or the Senator from New Jersey:

Sir, it may do for the enemies of this work who are the friends to expenditure elsewhere, but it sounds badly in the mouth of a friend of the Cumberland road. The tendency of this doctrine is to exclude that great national work from any participation in the expenditures, and to encourage other objects, to its total exclusion now and forever.

The fact was, Senator Smith said, that the Treasury had been replenished by issuing a note of \$5 million. The Senator from Kentucky had voted against the bill authorizing the note because it was an Administration bill. “Suppose it to be so, then the argument is, because the Administration have filled the Treasury in a manner exceptionable to the Senator, he will abandon the Cumberland road, his own darling child.” And he will do so even though he knows that the money will be spent on other activities instead of “this cherished work.” In other words, he prefers “every other object of expenditure that may be selected by the Administration to this great western work.”

Similarly, Senator Southard, who “set out with the strongest declaration of friendship for the Cumberland road,” decided “that none of the objects of appropriation within the estimates can be dispensed with.” Therefore, “he is willing to abandon this work in its dilapidated situation, and appropriate the whole revenue of the nation to every other object suggested, to its total exclusion.” These reasons, Senator Smith said, “have operated on their minds very differently from what they have on mine.”

The two Senators also pointed out that the Van Buren Administration has not asked for the appropriation, “or they would have been disposed to have granted it.” Senator Smith was surprised by this argument. “I did suppose that those Senators were the last men in this body who would yield a tithe of their own judgment to the request of the Administration.”

They also were concerned the Administration would charge them with prodigality if they voted for the bill:

I have been heretofore unwilling, Mr. President, to believe that either of those Senators could be deterred from doing what he believed to be right for fear of censure from any quarter, much less from the Administration and its friends. I hold that Congress is an independent branch of the Government, and, while it shall look to the estimates from the proper Department for information, it should act on independent principles.

Next, Senator Smith turned to Senator Clay’s question about the cost of the road – twice as much as Kentucky’s turnpike road:

I will tell him, at least in part. The country through which the Kentucky roads have been constructed is very different from the route of the Cumberland road. Rock is found on their lines in abundance, the soil is dry, the width and dimensions of their roads much less, the travel is kept off of them until they are finished, their appropriations have been timely made in sums sufficient to insure economy in construction; while the Cumberland road passes over a flat, alluvial country, from Columbus to Vandalia, without rock for considerable distances, and cut up the whole time by immense travel that is thrown upon it in its unfinished state. The appropriations have been made at so late periods in the season that a great portion of the sums have been required to put the road in as good repair as it was the preceding year. But, sir, admitting all the prodigality and waste of which the Senator complains in the expenditure of the fund under the compacts, I put it to those Senators, as lawyers and statesmen, to say whether it lies in their mouths, as the organs of this nation, to say that such prodigality has been committed.

The Senators admit that the General Government was a trustee for the benefit of the States west of the Ohio to the full extent of the trust funds reserved by her under the compacts to make this road, and as she was bound to expend it in good faith upon the object intended, it does not lie in the mouth of such a trustee to point to her own waste of the fund as an excuse for not fulfilling the trust. I have

answered this argument before at large, but as it was put forth by the Senator from Kentucky, in a more imposing aspect, I have felt called upon to notice it,

As he neared the end of his speech, Senator Smith said he had, “to my own mind at least,” shown “the sandy foundation” on which the two Senator had based their views.

From the start of the session, he knew “the battle was to be warm and the struggle desperate to defeat us.” He had hoped that, if the bill were to fail, “it would be left to its enemies alone to deal the fatal blows.” He had hoped “to be spared the mortification of seeing it fall by the hands of its former friends, acting in concert with its former enemies.” He concluded:

I repeat, I thank them for their former friendship in our interest, and part from them now with deep mortification and regret. Sir, let the vote be taken, and if it is the will of the Senate to defeat the bill, and deny us the appropriation, we must submit to your power, but will never admit your justice, or surrender our claims until justice is done us.

Senator Young added his thoughts on the views expressed by Senators Clay and Southard. He had thought that when the appropriations in the bill were cut in half, “it would have been permitted to pass.” He scoffed at the idea that a national debt of \$5 million was sufficient to kill the appropriation. “We had seen votes appropriating larger sums when the Treasury was in a much worse condition than at present. If, as was likely, the bill was to fail, “the States interested in it would soon be enabled to present it under more potent auspices, if not here, at least in another wing of the Capitol, when he trusted they would be able to make their rights felt and respected.”

The Senate then voted on engrossment of the bill for a third reading. By a vote of 20 to 22, the decision was in the negative. “So the bill was lost,” as the *Globe* put it. Senators Clay of Kentucky and Southard joined Senator Clay of Alabama in the nays. Senator Buchanan joined Senator Webster in voting yea.

### **Continuing Efforts in 1840**

Although prospects for an 1840 appropriation for continuing construction of the Cumberland Road were not good, supporters had not given up hope. One vehicle for an appropriation was the annual civil and diplomatic appropriation bill.

On April 17, with the House organized into the Committee of the Whole, Illinois Representative Reynolds, a Jacksonian who identified himself now as a Democrat, entered into a lengthy discussion in the Committee of the Whole on the principles of the two parties. He discussed many aspects of the civil and diplomatic pending bill, but before closing, presented another subject for the committee’s consideration:

Mr. Chairman, before I conclude my remarks, I will present one other subject to the consideration of this committee, and to the people in the State of Illinois whom I represent.

The continuation of the Cumberland road is of the utmost importance to the people that you and I represent, and some of them have desired us to address them on the subject. I consider it my duty, in the relation in which I stand to them, to give them a plain narrative of the life and death of the Cumberland road.

He realized that people who did not reside in the States involved had “very little interest and think we take too much.” However, the people in the four States west of the Ohio River “are identified with it, and therefore they are extremely anxious that it should be continued.” This support was reflected in resolutions adopted by the General Assembly of the State of Illinois. On behalf of these people, he was “extremely anxious that this appropriation should be made.” In fact, he knew his colleagues recalled that “I urged this measure on their consideration to such an extent that my exertions became rather offensive”:

I will still vote for the appropriation on any bill, or in any shape which it may assume, and I pretend not that I have done more than my duty, or more than any of its friends.

He recalled that the House had voted, 88 to 109, against the instructions on the Casey Bill, and mentioned some of the speeches during that debate. Referring to Representative Hoffman, “I thought then, as I do now, that his speech, together with that of Mr. Bell of Tennessee, defeated the appropriation in this House.”

The debate, however, had not been on a direct appropriation for the measure, but on instructions on a bill to refer the National Road Convention’s resolution to the House Committee of Ways and Means. In contrast, the Senate had voted, 20 to 22, against a formal appropriation bill for continuing the work. He broke the vote down by party:

Out of the 20 votes given for the bill, 13 were of the Administration party and 7 of the Opposition; and out of the 22 against it, 12 were of the Opposition and 10 of the Administration party . . . . These facts stand recorded in the history of this transaction; and although it may appear unimportant in some sections of the Union, yet with us, in the State of Illinois, it is of vital interest to the people.

Basically, he said, the Opposition party to the Van Buren Administration, namely the Whigs, had defeated the Cumberland Road. Many were guided in their opposition by the fact that President Van Buren had not recommended it:

This is to me a most extraordinary objection coming from them. The Administration has, on former occasions, recommended it, and the President has signed a bill appropriating money for this improvement. It may be the reason with the President that it was not urged on the consideration of Congress this year, that Congress refused last session to make an appropriation for it when it

was recommended to them. Let this be or not be the reason, it is no excuse for the failure. The Administration, although it did not recommend the measure, is not opposed to it, but leaves it, as it should be to the free action of Congress.

Although President Van Buren's message to Congress the previous December had called for "rigid economy," he also recognized that Congress made the laws. "This duty," the President had written, "has been considered fulfilled by requesting such appropriations only as the public service may be reasonably expected to require." These expressions, according to Representative Reynolds, "show that the President is not unfriendly to the measure, but leaves it entirely to the wisdom and discretion of Congress, as he should do."

As evidence, he referred his colleagues to the Act of March 25, 1838, which President Van Buren had signed. "This solemn act will do away the fears of the most timid as to the views of the Executive."

He appealed to the good sense of his colleagues, be they Whigs or Democrats:

Is it possible that the descendants of freemen must wait their action for the dictation of a President, or had they not better "act well their part, there all the honor lies?" I dare any man to return to his constituents and tell them that "he was not independent enough to support this measure because the President did not recommend it."

We have heard much said in this Hall against the dictation and party discipline of the President, and that the Democrats were not free, but bound neck and heels by executive shackles. Is it possible that the Whig party, after making these expressions, wish to be forced to make this appropriation by executive dictation? Or will it not be better for both parties to take the responsibility that is just and proper, and act with that fearless independence that is becoming the Representatives of a free and enlightened people.

Taking the facts as contained in the Journals, and to which I respectfully refer the committee, no other conclusion can be drawn except that the Cumberland road bill received and experienced a Whig death in the Congress of the United States in the year of our Lord 1840.

On April 21, following a discussion on an unrelated matter, Representative John T. Stuart, an Illinois Whig, obtained the floor. With "great regret," he was induced to speak because of comments by Representative Reynolds, "who intended his remarks for Illinois," where they were reprinted in newspapers. Regarding the failure of the bill in the Senate, Representative Stuart went into the history of the proceedings, concluding that "he did not hold either party in that House responsible for the defeat of the Cumberland road." Senators from both parties voted for and against the bill. He examined the votes on the bill, adding that at the last session in 1839, "the bill was laid on the table, and that the larger portion of the Democratic party voted in the affirmative on that question":

He censured the proper departments for not reporting to Congress the estimates for that road in the usual way; and hence he argued that the responsibility of the defeat of that measure rested with the President. He also adverted to certain votes by Mr. Van Buren when in the Senate of the United States, to prove that the President was opposed to the road.

Moments later, Representative John Jameson of Missouri, a Democrat, “replied at great length” to Representative Stuart’s remarks. The remarks covered a variety of topics, including the Cumberland Road. “The gentleman from Illinois, [Mr. Stuart,] Mr. Chairman, set out, as he said, to make a speech for home consumption, and to that end he attempted to show that Mr. Van Buren was opposed to the Cumberland road”:

How does the gentleman undertake to show that Mr. Van Buren is opposed to the Cumberland road? Why, he is opposed to it because the Secretary of the Treasury did not in his report at this session make an estimate for the appropriation for that road, and has been in the habit of doing it heretofore.

To prove his point, Representative Stuart had referred to a letter from Representative George W. Hopkins, who had been a Jacksonian and Democrat during his congressional service but during the 26<sup>th</sup> Congress listed his party as Conservative. Representative Jameson guessed that Representative Hopkins had no more evidence than Representative Stuart for the claim. Therefore, to be certain, he asked Representative Hopkins if he had ever talked with President Van Buren on the matter and, if so, had the President expressed his opposition to appropriations for the Cumberland Road, “or have you come to the conclusion that Mr. Van Buren was opposed to it from the same circumstances and facts as those mentioned by the gentleman from Illinois?”:

Mr. HOPKINS said that he had never heard Mr. Van Buren say anything, directly or indirectly, in relation to the Cumberland road, and that he presumed that he had come to the conclusion that Mr. Van Buren was opposed to the road from the same circumstances and facts that the gentleman from Illinois had.

In short, Representative Jameson told his colleagues, the reason the two gentlemen believe President Van Buren opposed the road was that the Secretary of the Treasury “did not give any estimate in his report at this session for that road, and that he had done it heretofore.” He proposed to offer a full view of the facts regarding the Cumberland Road, “so far as Mr. Van Buren has acted in relation to it”:

And it seems to me that you and I, and the people of the States interested, must come to the conclusion that he is not opposed to the road, as he has given no evidence that he is, but has given strong evidence that he is not.

In fact, Representative Jameson pointed out, during the 25<sup>th</sup> Congress, “this same Secretary of the Treasury, under the direction of Mr. Van Buren, did, in his report to the first session of Congress after Mr. Van Buren came to the Presidency, give an estimate for this road; a law passed at that session making an appropriation for it, and was signed and approved by Mr. Van Buren.”

At the next session, the Secretary of the Treasury sent an estimate, but Congress “for the first time since the road started, failed in making an appropriation for it, and thereby abandoned the road:

Then, Mr, Chairman, who is to blame for the abandonment of this road? Where did it get its death-blow? At the hands of the President or the Congress? Sir, it was not at the hands of the President, but of Congress. It was Congress, for the first time, at the last session, [that] failed in making an appropriation for it – abandoned it. How, then, could the President have acted in this matter to have escaped the denunciations of the Whig party? If he had recommended it again, by directing estimates to be reported for the same by the Secretary of the Treasury, after this decisive expression against it at the last session of Congress, he would have been denounced by the greater portion, if not all, of these same Whig gentlemen, as profligate and extravagant, and as aiming to dictate to Congress after it had decided against this road, rejected and abandoned it.

He understood the Whig strategy of putting down “executive dictation, power, and patronage” while it was in the hands of a Democratic President. He pointed out, however, that “many of them, from States not immediately interested in this road, in order to pave the way out of which political capital could be made to operate against the President at the next presidential election in the States interested in this road, have declared upon this floor that they could not vote to appropriate money to carry on this road, because it had not been recommended by the President; that is, because estimates had not been furnished by the Secretary of the Treasury.” Representative Stuart, following this strategy, had declared that “the President is opposed to this road, and that that opposition was the cause of its failure.”

Representative Jameson did not believe “such hollow professions” would fool the people in the West “by attempting to throw such chaff and dust in their eyes.” They will know that those who claimed they voted against the appropriation in the absence of an estimate would have voted against the appropriation in any event. Members of the Whig Party had been raising a “hue and cry” for 8 or 10 years – the time of the Jackson and Van Buren Administrations – about “executive dictation, and the people will not believe you now when you come out and say that you cannot vote for an appropriation because the Executive did not dictate it; they will believe that you have sacrificed this road to electioneering purposes, and that the President has had no hand nor fault in it”:

The last session of Congress took the responsibility of giving this measure its deathblow; and Mr. Van Buren pursued the course of his predecessors, and paid respect to that expression of opinion on the part of Congress; and as Congress took that responsibility, it was their duty to take the responsibility of resuscitating and reviving it. The Executive, then, as in duty bound, will pursue your lead. Then let it be revived by the same hands that killed it; and let us hear no more of this stuff, that we should do nothing unless the President direct us to do it. This doctrine may suit Whigism but it does not accord with Democratic principles.

The failure of the Cumberland Road appropriation bill was not simply because of political maneuvering for advantage in the upcoming presidential election. The road was “first diseased by the action of the Legislature of the State from which the gentleman [Mr. Stuart] came.” The Illinois legislature “determined that the road should not pass through that State unless it struck the Mississippi at Alton”:

It was the entering edge to its destruction. The friends of it falling out among themselves about its location weakened it. The enemies of it seized upon this circumstance and worked its ruin, at least for the present; and I now have but little hopes of it being revived again until 1843, after a new census is taken, and the apportionment thereon made.

He hoped that when Representative Stuart looked back on that portion of his speech “complaining so much of executive dictation,” he will not “come to the conclusion (for if he does he will find himself mistaken) that the people of Ohio, Indiana, Illinois, and Missouri, are so ignorant that they can be humbugged by such palpable inconsistencies.”

Representative Jameson’s lengthy remaining remarks were on other topics.

April 30, as the House debated the civil and diplomatic appropriation bill, Indiana Representative Davis moved to strike out a \$100,000 appropriation for coast surveys, and insert:

*Be it further enacted*, That the following sums be, and they are hereby appropriated for the continuation of the Cumberland Road, viz: For the State of Ohio \$75,000, Indiana, \$100,000, Illinois \$100,000. These sums to be expended under the direction of the Secretary of War, subject to all the restrictions and regulations of former appropriations.

He said he intended to move to strike out other provisions from the bill, amounting to \$360,000, while his goal was to stay within “the limits of gentlemen who were fastidious in not exceeding the estimates from the Departments.” The fact that the President had not included the Cumberland Road in the estimates for this bill “was a gross omission.” Although Representative Davis said he was a party man, he “did not approve of this part of the course of the Administration but he was not one of those plastic politicians whose only merit was their pliability.” The President had, however, forwarded the Secretary of War’s estimate, “yet no bill had been reported for it to the House; of this he complained”:

Gentlemen refused to vote for this appropriation because Martin Van Buren had not recommended it. Was Martin Van Buren the oracle of the House? He would [say] that gentleman considered him so in some other cases.

He also responded to Representative Parris’s accusation on February 11 that the people of the west were squatters and pillagers of the soil. Representative Davis “went into a eulogy on the said squatters and pillagers, of whom many came from Maine, who were known by their fondness for pine logs and saw mills; but all of them improved the soil by labor.”

He discussed the constitutionality of the project, citing the approval of all Presidents beginning with President Jefferson, and recalled “the masterly speech of Mr. Mason, of Ohio” on the subject. He then discussed the estimates for completing the road, “and insisted that they were altogether erroneous and extravagant”:

The West would take, gladly, one-half of the sum, and engage to finish the work. He argued to show that it would be a saving to appropriate now, lest the road should go into a state of complete dilapidation, and require four times as much hereafter. He noticed the accusation against the President, that he had sacrificed the West to get the South; if so, it was miserable policy, for he would, by such a course, lose the West, and not thereby gain the South.

Representative W. Cost Johnson, a Maryland Whig, offered an amendment to the Davis Amendment to appropriate \$80,000 to complete the road between Rockville and the Monocacy River. Representative Davis declined the amendment to his amendment. Representative Johnson defended his amendment “with great earnestness, showing its great importance to the regularity of the mails; insisting that the United States had failed of fulfilling its contract to Maryland, in neglecting this part of his State, and commending the enterprise of his State, in expending so largely on her roads and canals.” He would offset the amount by seeking reductions in the surveys included in the appropriation bill.

Representative George N. Briggs, a Whig from Massachusetts, said he opposed the Johnson Amendment, but supported the Davis Amendment “as part of that great system, which, though broken in upon, had not been broken down, and he hoped never would.”

Representative Davis now interjected that he did not wish to strike out the appropriation for the coast survey.

Representative Briggs began to discuss party affiliation of those on either side of the question, but this resulted in a complaint of irrelevance and a quorum call. After the call for a quorum went out, Chairman Fillmore of the Committee of Ways and Means announced when the quorum was achieved:

Mr. BRIGGS resumed, and further insisted on his former position, and protested against Massachusetts being included in the general charge of having destroyed the appropriations. Mr. B. had always voted for the road, and should continue to do so, on general and unchangeable principles.

Mr. FILLMORE appealed to all friends of internal improvements not to press the question now. If that subject was brought up, he should be compelled to introduce amendments to the bill for harbors and rivers. The speeches were interesting; but this was not the time to press amendments of this kind. There was no hope of such measures succeeding till the aspect of the Administration was changed.

Mr. REYNOLDS rose to reply.

Loud cries of order echoed through every part of the Hall.

The CHAIR called to order.

Representative Reynolds argued “with some warmth” that he had not misrepresented the votes as shown in the journal, “insisting that the Whig speeches had operated to defeat the appropriation; and that it would be found, by reference to the journal, that its death blow had been given by the Whigs.”

Representative Briggs said that the journals proved the opposite of what Representative Reynolds had claimed. Representative Reynolds “continued, and in his reply elicited much merriment from the committee, insisting that the Whig speeches defeated the measure.” Representative Briggs countered that a review of the journal showed that 63 Administration votes had defeated the bill.

Representative Horace Everett of Vermont, who had entered Congress in 1829 as an anti-Jacksonian but was now a Whig, wanted to explain why he had voted for the Cumberland Road, and also against it:

Sir, (said Mr. E.) when I first came here, I was a friend of the system of internal improvement, and voted for this road for four or five sessions. I then considered it, and now consider it, a national object. But, sir, when I found that the system was broken down – when the Constitution was limited to tide water; when, sir, I found the system completely prostrated, so far as the country at large was interested, I voted against this road. I have done so for years. Since the system was prostrated, the States have taken the subject into their own hands; and in the situation they were now placed, and after having expended large sums, he had no hope that a majority could hereafter be found in favor of the system. He considered that the system of internal improvement had been, years since, effectually prostrated; and he had no expectation that it would ever be resuscitated under any future Administration.

The House then voted on the Johnson Amendment to the Davis Amendment. The vote was decided in the negative. The House then voted, 51 to 92, against the Davis Amendment to the appropriations bill.

Although the appropriation for the Cumberland Road was dead, the subject would come up again. On May 18, Representative Davis presented resolutions on several topics, including “certain joint resolutions passed by the Legislature of Indiana, on the subject of the Cumberland road; which he moved to refer to the Committee of Ways and Means, with instructions to report a bill [to] continue the construction of the said road in the States of Ohio, Indiana, and Illinois.”

The House rejected a motion to lay the resolution on the table, 63 to 78. Representative Hubbard called for dividing the motion to vote first on referral and second on instructions. The House voted 77 to 60 for the referral, but adjourned before a vote on

instructions was taken. That vote took place on May 25, and resulted in a refusal to adopt the instructions, 87 to 90.

Representative Wick moved to reconsider the earlier vote on referral. He wanted to refer the joint resolutions to the Committee on the Judiciary “with instructions to inquire whether the obligation does not rest on the Government to complete said road; and he said he would be glad to see a report on the subject from the Judiciary Committee.” It would bring “a true view of the matter before those interested, and tend to settle a vexed question.”

The House voted, 79 to 51, to lay the motion on the table.

On July 9, the House was considering the Army Appropriation Bill when Representative Rariden submitted an amendment proposing to appropriate \$225,000 for continuation of the road with an equal amount of \$75,000 going to each of the three States. In response to an inquiry, the Chair ruled that the amendment was not in order. Representative Davis appealed the ruling, but the House adjourned for the afternoon before a vote on the appeal. The evening session began with the question pending. Representative Rariden “observed that as there was no quorum present, he would withdraw the amendment, with a view of renewing it hereafter.”

He would not have an opportunity to return to the subject until the second session of the 26<sup>th</sup> Congress, which would end on March 3, 1841, the day before the new President, General William Henry Harrison, took office.

### **The End of Operations**

On December 5, 1840, President Van Buren sent his fourth and final annual message to Congress. He began with thanks for “the invaluable blessings of health, plenty, and peace”:

Seldom has this favored land been so generally exempted from the ravages of disease, or the labor of the husbandman more amply rewarded; and never before have our relations with other countries been placed on a more favorable basis than that which they so happily occupy at this critical conjuncture in the affairs of the world.

A usual, he went through many topics, including banking reform, but he included a strong message of economic frugality:

The policy of the Federal Government, in extinguishing as rapidly as possible the national debt, and, subsequently in resisting every temptation to create a new one, deserves to be regarded in the same favorable light . . . . In time of peace there can, at all events, be no justification for the creation of a permanent debt by the Federal Government. Its limited range of constitutional duties may certainly under such circumstances, be performed without such a resort. It has, it is seen, been avoided during four years of greater fiscal difficulties than have existed in a

similar period since the adoption of the Constitution, and one also remarkable for the occurrence of extraordinary causes of expenditures.

But to accomplish so desirable an object, two things are indispensable: first, that the action of the Federal Government be kept within the boundaries prescribed by its founders, and, secondly, that all appropriations for objects admitted to be constitutional, and the expenditure of them also, be subjected to a standard of rigid but well considered and practical economy.

He discussed the topic at length, including:

To avoid the necessity of a permanent debt, and its inevitable consequences, I have advocated, and endeavored to carry into effect, the policy of confining the appropriations for the public service to such objects only as are clearly within the constitutional authority of the Federal Government; of excluding from its expenses those improvident and unauthorized grants of public money for works of internal improvement, which were so widely arrested by the constitutional interposition of my predecessor, and which, if they had not been so checked, would long before this time have involved the finances of the General Government in embarrassments far greater than those which are now experienced by any of the States . . . .

President Van Buren transmitted the report of Secretary of War Poinsett dated December 5, 1840. Along with many other topics, Secretary Poinsett commented:

No appropriation having been made at the last session of Congress for the works of internal improvement which were under the superintendence of this department, they have, for the most part, ceased. I adhere to the opinion expressed in my last report, that the system required to be revised, both with regard to the principle upon which such improvements ought to be authorized, and the manner in which they ought to be conducted.

The documents accompanying the message included a report, dated December 3, 1840, from the Chief Engineer, Colonel Totten. He explained how the absence of an appropriation affected work on the “National Road”:

On the adjournment of the last session of Congress without having granted further appropriation for the road, the agents were instructed that, in consequence of the small amounts still applicable, it would be necessary to draw the operations to a close; and to this end, all public property belonging to these appropriations should be disposed of, and the avails thereof applied to the road, or to the extinguishment of claims against it. Every outstanding claim, of every nature, was to be liquidated, and the remaining funds reduced to a minimum by operations on the road. Should there remain, unavoidably, claims not liquidated, the means of paying them must be retained. Care was to be taken, moreover, that the closing work on the road should contribute most – 1st, to the

preservation of the road;  
2d, to its good condition; and 3d, to its extension.

Colonel Totten had sent the instructions on July 24, 1840. He informed Captain Dutton:

Congress having adjourned without making appropriation for the Cumberland road, it becomes necessary to adjust the further operations to existing means . . . .

The department would be sorry to believe that no further appropriations are to be expected for this road; but a present grant having been decidedly refused, it becomes necessary to bring the operations to a close. The measures to be taken with this view, the department, with the fullest confidence, leave entirely to your judgment and discretion, and also the time to be consumed in consummating these measures; knowing that there will be no delay not called for by prudent arrangements.

You will bear in mind that these closing operations must be as complete as if they were final, although it is to be hoped they may not prove so; that is to say, all the public property belonging to this appropriation must be disposed of, and the avails thereof applied to the road, or to the extinguishment of claims against the road; every outstanding claim of every nature being liquidated, and the remaining funds reduced to a minimum by operations on the road. Should there remain, unavoidably, claims not liquidated, the means of paying them must be retained. As to the road itself, you will be careful that these latter operations are of a nature to contribute most – 1st. To the preservation of the road; 2d. To its good condition; and 3d. To its extension.

Have the goodness to present, as soon as may be, your project for winding up the business of the road; proceeding therein, in the mean time, however, without waiting for the special sanction of the department.

I will thank you to inform me whether you cannot dispense with the services of your assistant; and, if so, how soon.

Colonel Totten sent a similar letter on the same date to Major Ogden.

On August 11, Colonel Totten changed instructions:

Since my 24th ultimo, it has been found necessary, from the condition of the Treasury, to direct the smallest possible expenditures under all appropriations of the Government; and I have therefore to request you to remodel your project for the closing of operations on the road in Indiana and Illinois, in such a way that the smallest sums possible shall be called for during the present year, and, indeed, till after the 1st of April next. And it is desirable that you should make similar arrangements, whenever it can be done without violence to the public faith, for the postponement of the payment of outstanding claims.

This necessity for a very sparing expenditure will of course prolong your closing operations; but as a similar delay must attend all works of the department, there is not the same reason to regret your being detained on the road, that there would otherwise be.

Captain Dutton was in Albany, New York, when he received Colonel Totten's letter. On July 28, Captain Dutton wrote that he would reply in detail when he returned to Springfield, Ohio, but added:

I have to state, however, that the funds available for further operations on the road are insignificant in amount . . . . The whole proceeds on this account may be about \$150.

The operations on the road in Ohio, since 30th September last, have been confined almost exclusively to the completion of certain contracts for grubbing, grading, and bridging, all which are now finished; and, at this time, that part of it under the control of the United States is in the best possible condition for lying over, without receiving injury, until a further appropriation is made for its continuance.

He submitted his annual report from Springfield on October 15, 1840. The absence of an appropriation for 1839 meant that since his 1839 report, operations in Ohio had "been restricted, with trifling exceptions, to the work then under contract and unfinished; which consisted in the building of wooden superstructures and abutments of bridges, the masonry of arched bridges and culverts, and the grubbing and clearing between Springfield and the State line":

This work, embraced in five contracts, has been satisfactorily completed; the amounts due thereon paid over; and the operations brought to a close about the termination of the last spring.

Five wooden bridges on stone abutments have been built or completed across Mad river, Buck creek, Donald's, Jackson's, and Mud creek; and the stone bridges and culverts put up to the 52d mile west of Columbus, or 9th west of Springfield; and the line grubbed and cleared to the 82d, or for 39 miles west of the latter place.

The work done during the year amounts to 5 miles grubbed; 1,122 perches of masonry laid; 168 linear feet of bridge superstructure built; 8,798 cubic yards of earth removed and embanked, in completion of the fill across Bartlett's run, on the 46th mile; and the delivery on the ground of 311 perches of building-stone for culverts; together with some repairs of the grade and cutting of water-ways for bridges and culverts. The structures have all been neatly and substantially executed; the masonry built of the stratified limestone from the valley of Mad river, and the bridge superstructures of poplar and oak from the adjoining country.

The unfinished portion of the road in Ohio, being the 53¾ miles included between Springfield and the State line, now presents 39 miles opened and grubbed; 4 miles graded and bridged; and the bridging and masonry complete for 9 miles, exclusive of a bridge of fifty feet span, on the twelfth mile west of this place.

The expenditures on the unfinished division of the road amounted to \$129,543.77:

The only portion of this work which can be considered useful, and available to the travel in the present condition of the work, is the four miles reported as bridged and graded, and which, crossing the streams and hills to the west of this place, greatly facilitates the travel between this point and the country hence to the Miami river.

Additional appropriations would be required to render the balance “useful, or enable the line opened to be used as a thoroughfare.”

As of September 30, 1840, the balance of funds available was \$407.74. “This balance will be absorbed in making some slight but necessary repairs of the road, and in liquidating some accounts unsettled at this date, but small in amount.”

The estimated cost of completing the unfinished section was \$292,000.00:

The above sum, if it is intended to proceed with the construction of the work, can be advantageously applied during the year 1841, in fulfilment of the project submitted last year, of continuous completion, and surrender of the road to the State in toll-gate sections.

In a letter dated November 4, 1840, Captain Dutton reported:

I have the honor to report that, during the past month, I have been engaged in bringing to a close the business connected with the national road in Ohio, and in directing certain repairs thereon, and that I shall be occupied with the same duty during the greater part of the present month of November. The services of my assistant, Lieutenant Woodbury, were . . . no longer necessary on the Cumberland road in Ohio after the 1st November, and he is now here awaiting instructions from the department.

In response to the July 24 letter on limiting expenditures, Major Ogden replied on August 14 regarding the steps for closing out operations in Indiana. His initial reaction was to expend the funds on hand (\$10,968.52) as follows:

Of which it is proposed to expend \$6,000 on grading east of Richmond; (this will connect the present finished part of the road with a turnpike now under construction from Dayton, Ohio, to Richmond, Indiana;) \$4,000 to be expended on the road throughout the State, in placing it in the best condition the means will admit of; the balance, \$968.52, and the proceeds of sales, to be expended in the collection of materials for the Wabash bridge.

It is believed that the operations may be closed by the 30th of September, and every exertion will be made to effect that object.

The services of my assistant can be dispensed with, whenever they are required by the department.

Major Ogden informed Colonel Totten on August 15:

. . .that the balance on hand of former appropriations for the Cumberland road in Illinois on the 1st of August, amounted to \$38,304.07; and that there will be due to contractors, when they shall have completed their work, \$34,306.51: leaving a balance of \$3,997.56, the greater part of which will be consumed in the payments for extra work performed by them, (the contractors.) After the settlement of which, it is proposed that the remaining funds be applied to placing the road in a proper state to await further operations.

A few days later, he received Colonel Totten's August 11 letter ordering him to minimize expenditures on the road. Major Ogden replied on August 19:

In consequence of which, I have this day ordered all work that had been commenced in conformity with my project of the 14th instant to be stopped, and made rather a short estimate of the probable expenditures of this month, and forward herewith a requisition for \$1,200 for the service of the Cumberland road in Indiana for the month of August. This may not meet the amount of expenditures; yet, with other funds I have on hand, I can close the accounts, and provide for any difference in the requisition of September; after which, it is believed that other funds will not be required until December.

The operations for collecting materials for the Wabash bridge have already closed, and the steamboat is now employed in bringing the tools, machinery, &c., from the quarry to this place, where they will be sold at auction on the 25th of September, if not before disposed of at private sale.

Major Ogden, by letter dated October 11, 1840, reported on the condition of operations in Indiana and Illinois. Contracts for bridges on the 44<sup>th</sup> and 66<sup>th</sup> miles west of Indianapolis had been completed:

A small force was employed in completing and securing the unfinished part of the road near Indianapolis until the 15th of July, at which time the road being considered in a proper state to lay over, the assistant superintendent, assistant engineer, rakers, &c., were discharged. The steamer Terre Haute has been employed, when the state of the river would admit, in transporting stone from the quarry to the site of the Wabash bridge. The operations on the eastern part of the road had been suspended, after the completion of the contracts near Richmond until early in July, when the superintendent was informed that the company who were constructing a turnpike road from Dayton, Ohio, to Richmond, Indiana, would urge it to completion as far as the State line, during the present year,

provided the citizens of Richmond would connect it with that borough, and that they had determined on complying with the wishes of the Ohio company.

This road connects with the Cumberland road east of the present grade, and near a hill requiring a deep-cut and extensive embankment at its base. It was therefore thought advisable to reduce the grade of this hill as much as the available means would allow; operations to effect this object were commenced and urged with sufficient energy to insure its completion by the 30th of September, until the receipt of your communication of the 11th of August, when they were suspended. As this is work that may be carried on during the winter, its further prosecution will be postponed until after the road generally is put in repair.

Major Ogden's report continued:

Operations with a view to place the road in the best possible condition to await future appropriations were also commenced, and some progress made; but these were likewise suspended, in consequence of the condition of the Treasury. The public property, as far as practicable, has been sold.

Previous to the sale of the property at Terre Haute, (knowing that the steamer Terre Haute, and many of the articles purchased for the Wabash bridge, would not bring one-tenth part of their value if exposed to sale at this place,) I was induced, by a temporary rise in the river, to send the steamboat and four loaded scows to the Ohio river to be sold, where such articles would be more in demand. She unfortunately grounded on the rapids, where it is thought advisable to let her remain until the fall rise of the Wabash.

He described the state of the road in Indiana:

The present state of the road is decidedly bad. The temporary bridges that were constructed to facilitate the operations have nearly all decayed, and are falling almost daily. The unfinished and unprotected grade is washing away or cut in gulleys by every shower, where the ground is undulating; and, from a want of proper care, worn in deep holes where the country is level.

He estimated that \$8,745.74 remained available for future operations. It "will be expended in placing the road in the best condition the means will admit of."

In Illinois, "expenditures on this road have been restricted to as small a scale as was consistent with its essential interest. Contractors were given considerable leeway, but were urged in June to complete work by September 30, in order that all accounts relative to the road might be closed on that day; since which time, it is believed that every exertion within their means has been made":

The grading on miles 12, 13, part of 14, 74, 75, 76, 77, 78, and 79, has been finished during the year, and the same on 89 and 90 will be completed by the 20th instant. Section 3, western, and 12 and 13, eastern division, will be finished

in a few days; so that it is probable that all accounts with the contractors will be closed at the end of the present month.

The state of the road in Illinois “may be said to be in fair order for travelling during the summer and fall”:

In many places where no work has been done since 1834, the road has washed, and been otherwise so much injured as to be dangerous to the travel. The tressels which were put under the superstructure of most of the old bridges have become decayed, and deranged by the falling in of the abutments: such is particularly the case with the bridge of 200 feel span over the Embarras; the bridges over the North and Muddy forks, and a bridge in the Embarras bottom. These are all of large size; have been built with small timbers, on Long’s plan; are in good preservation; and could be repaired at a small expense, when compared with the cost of new bridges.

Calculating funds and expenditures, Major Ogden estimated that \$4,847.76 was available for future operations “and which will be expended in repairing the road and securing the bridges.”

While Major Ogden was implementing the change of plans, Colonel Totten submitted a memorandum on September 28, 1840, to Secretary Poinsett regarding the plan Major Ogden had outlined in his August 14 letter regarding the expenditure of about \$6,000 in Indiana. With \$6,600 in the Treasury for the road in Indiana, Colonel Totten asked if he

could authorize Major Ogden to proceed. The Secretary responded:

The Chief Engineer will authorize Major Ogden to renew the works according to the original plan presented by him, and without unnecessary delay, as the means of the Treasury will now admit of this expenditure; to be drawn, however, gradually from it.

Colonel Totten informed Major Ogden of the change of plans on October 1:

I am directed by the Secretary of War to say to you, that, as the means of the Treasury will now admit of the expenditure, the operations on the Cumberland road in Indiana will be resumed without delay, according to the plan submitted by you to this department of the 14th of August last. The money being made available, the department fully approves this plan.

Noting the phrasing of Secretary Poinsett’s response, Colonel Totten added:

Your attention is drawn particularly to the concluding clause of the Secretary’s endorsement, referring to the gradual withdrawal of the funds from the Treasury. And, in order that the department may be aware of the calls it will have to make from time to time, you will present an estimate of the funds that will be required

for each month, until exhausted; and, unless compelled by necessity to deviate from it, your monthly requisitions will be made to conform this estimate.

On October 12, Major Ogden informed the Chief Engineer that:

The operations will recommence this day, and proceed by first placing the road in a proper condition to be left, and then expending the balance on the road east of Richmond.

The funds required to effect this object will be \$2,000 per month for the months of October, November, and December, 1840; and \$600 for the month of January, 1841.

[*Message from the President of the United States to the Two Houses of Congress, 26th Congress, 2d Session, Senate, Doc. No. 1; Suspend Operations – Public Works, Letter from the Secretary of War in relation To the suspension of operation on the public works on the lake borders of Ohio, Indiana, Michigan, Illinois, and Wisconsin, and on the Cumberland Road in Ohio, Indiana and Illinois, &c.; 26th Congress, 2d Session, Ho. of Reps. War Dept., Doc. No. 41*]

### **One More Try**

On December 17, 1840, Representative Rariden introduced the following resolution:

*Resolved*, That the Committee of Public Lands be instructed to inquire into the expediency of setting apart three hundred thousand dollars per annum of the proceeds of the public lands for the continuation of the Cumberland Road in Ohio to its western termination, to be constructed in a continuous line from East to West, and of distributing the residue of the said proceeds among the several States upon the principle of what is called Mr. Clay's land bill, taking the census of 1840 as the basis of the distribution.

A motion to lay the resolution on the table was pending when the House adjourned.

Representative Rariden's motion was taken up on December 22, with the question being on the motion to lay the resolution on the table. By a vote of 105 to 81, the House agreed to lay the motion on the table.

Representative Proffit asked leave to submit a second resolution:

*Resolved*, That the Committee of Ways and Means be instructed to inquire into the expediency of reporting a bill providing for the expenditure of \$150,000 in each of the States of Ohio, Indiana, and Illinois, during the year 1841, on the Cumberland road.

Speaking in "a very animated manner," he predicted dire consequences if the House did not make an appropriation to continue construction:

He declared that the eight States of the Northwestern Territory would unite, and in their indignation would make their way into the hall to obtain their rights by force. He could not conceive why the people of that part of the Union should be treated so. The South got appropriations for its Dismal Swamps and every thing else; so also did the North; but as for his people, and those of the other Northwestern States, they could obtain nothing. Why, said he, are the people of the West to be thus trampled upon? Mr. P. also discoursed on the grievances of the Western people arising from other causes. He then touched upon nullification, the tariff question, etc. and concluded by giving the House a solemn warning, that in case the resolution should be rejected, the people of the Northwest would rise in their might, when their indignation would be an all-consuming blaze, without a particle of smoke, which should destroy all that was not right.

Maryland Representative Johnson “in the course of some very humorous remarks in reply to the member from Indiana, suggested to him that the true and only reason why the Cumberland road had not been completed, was that it had been begun at the wrong end. The right end was in Maryland, between Rockville and Fredericktown; and until the road should be commenced in that quarter, the gentleman, with all the people of the West at his heel, would never be able to obtain an appropriation. Mr. J. concluded by asking the gentleman to accept a modification of the resolution, appropriating \$80,000 for that portion of the Cumberland road in the State of Maryland between Rockville and the Monocacy.”

Representative Proffit accepted the modification. Representative Hubbard, having said that “he was sure nothing could be obtained by threats,” moved to lay the modified resolution on the table.” By a vote of 94 to 92, the House agreed to do so.

On January 6, 1841, Representative Davis indicated he would offer an amendment to the Army appropriation bill when it came up for consideration:

Sec. \_\_. And that the sum of three hundred thousand dollars be appropriated for the continuance of the Cumberland Road through the States of Indiana, Ohio, and Illinois, to be disbursed equally among said States, and to be subjected to all the restrictions and limitations of former appropriations.

The motion was ordered to be printed.

Representative Davis tried again on February 27 as the session was rushing to adjournment in time for the presidential inauguration. He offered an amendment to the Army appropriation bill for 1841:

For the continuance of the Cumberland road through the States of Ohio, Indiana, and Illinois, \$300,000, to be subjected to all the restrictions and limitations of former appropriations.

After a brief discussion of whether the amendment was in order, being a different subject than the bill, the House voted, 77 to 84, to reject the amendment.

Thus, the 26<sup>th</sup> Congress would end on March 3, 1841, without appropriating funds for the Cumberland Road.

Although President Van Buren questioned the constitutionality of many internal improvements, he had signed the last major appropriation bill for the work in 1838.

Overall, he was willing to consider projects of national importance. According to Alwine, President Van Buren signed seven internal improvements bills during his first year in office. In addition to the 1838 bill appropriating funds for the Cumberland Road, he signed bills for Wisconsin (\$44,000 for roads, land for a canal), Arkansas and Louisiana (\$70,000 to remove the great raft or logjam in the Red River), Florida (\$37,300 for road construction), and “a lighthouse bill plus a combination rivers and harbors bill in sixty-nine localities amounting to \$1,315,111.

In his second year, he signed “five bills amounting to \$474,331; of this amount \$394,331 was devoted to a miscellaneous lighthouse bill”:

The remaining sum of \$80,000 was programmed for three roads in Iowa, amounting to \$28,500 plus \$1,500 to survey rivers; improvement of river navigation in Florida, \$28,000; and two bills for improving roads, constructing piers, and conducting a survey for a railroad in Wisconsin amounting to \$22,100.

During the final two congressional sessions of Van Buren’s administration no public funds or lands were appropriated for internal improvements.

President Van Buren vetoed only one bill, a pocket veto of a joint resolution on distribution, in part, of President Madison’s papers.

In the 1840-1841 debates, Members of Congress argued about whether Congress or the President had killed appropriations for the Cumberland Road. The people along the road had no doubt about President Van Buren’s complicity, as illustrated by an anecdote that appears in many Cumberland Road sources about his visit to Indiana.

Although the people had rejected President Van Buren for a second term, he had not abandoned hope of regaining the office. In the summer of 1842, he was on a trip to the West in hopes of restoring his popularity before the 1844 election. While he was in Indianapolis, a “devilish plan” took place in nearby Plainfield, as Jordan described in his book on the National Road:

Van Buren would be taught what it was to toil along over a highway that jounced a man’s liver sidewise. When he left Indianapolis, his route took him through Plainfield. No arches covered his pathway but a reception was ready.

The President’s carriage thumped into town while citizens yelled gleefully, “Here he comes!” Van Buren’s driver, a local lad, knew what to do. Instead of walking

his team the last half mile, he lashed them to a frenzied gallop. As the presidential stage neared a treacherous mudhole, a favorite wallow for hogs, the lad yanked hard on his left rein. The team reared and backed. The carriage slewed around to the left, its wheels cut under, climbed the bank and finally banged against the roots of a great tree. Slowly – very slowly – the stage overturned to land with a splash right in the center of the wallow. Van Buren’s agile driver jumped to safety.

Before anyone could wade through the sucking slime to aid Van Buren, his head, topped by a badly crushed, broad-brimmed hat, popped through the door. The President gradually pulled himself out, his long, black broadcloth cloak splashed with muddy water, and his tight-fitting pearl-gray trousers and fine polished boots ruined.

His stage was scarcely righted when rumor sped through town that the episode was no accident. The driver had been bribed to dump his passenger. An Indianapolis newspaper sarcastically remarked that the only “free soil” of which Van Buren had knowledge was the dirt he scraped from his person in Plainfield.

Other versions of the anecdote can be found, but in 1941, the Daughters of the American Revolution placed a plaque to mark the location of the Van Buren Elm.

### **President William Henry Harrison**

Although President Van Buren secured the Democratic Party’s nomination in 1840 by acclimation, he was deeply unpopular around the country primarily because of the economy’s severe downturn. His nickname was Martin Van Ruin. The party refused to nominate Vice President Johnson again; he was unpopular, particularly in the South, because of his common law slave wife and mixed-race daughters. Instead, the party let each State select its own vice presidential nominee.

Along with nominating President Van Buren for a second term in May 1840, the Democratic Party became the first national party to issue a platform reflecting its policies. The first three of the nine resolutions were:

1. Resolved, That the federal government is one of limited powers, derived solely from the constitution, and the grants of power shown therein, ought to be strictly construed by all the departments and agents of the government, and that it is inexpedient and dangerous to exercise doubtful constitutional powers.
2. Resolved, That the constitution does not confer upon the general government the power to commence and carry on, a general system of internal improvements.
3. Resolved, That the constitution does not confer authority upon the federal government, directly or indirectly, to assume the debts of the several states, contracted for local internal improvements, or other state purposes; nor would such assumption be just or expedient.

(The funds intended for the States under the Deposit-Distribution Act could be used to retire debt accumulated for internal improvements. The third resolution of the platform

related to the debts incurred before early 1837 by many States eager to finance roads, bridges, canals, and other internal improvements they could not otherwise afford, and the near impossibility of completing the projects and retiring the debts after the economic downturn. With the Panic of 1837, the surplus that was to be distributed to the States disappeared.)

For President, the Whigs nominated, not Henry Clay, but General William Henry Harrison, one of the candidates Van Buren had defeated in 1836. General Harrison had been born at Berkeley Plantation, Virginia, but became a resident of North Bend, Ohio, after marrying Anna Tuthill Symmes, a resident of that city, in 1795.

Although General Harrison was best known for his military activities, he had served in the House of Representatives twice (1799-1800, and 1816-1819), as Governor of the Indiana Territory (1801-1812), and in the United States Senate (1825-1828). The author of a campaign biography that focused mainly on General Harrison's military career and service as Governor, included an appendix about his service in Congress to contrast his career with that of President Van Buren on internal improvements for the western States during his Senate years. "Let the friends of Mr. Van Buren point to a single act of his public life calculated in the least to advance the interests or happiness of the West."

Consulting the congressional records of the era, the author found that:

- April 24, 1824 – Senator Van Buren voted against the General Survey Act.
- May 19, 1824 – Senator Van Buren voted against "An act to improve the navigation of the Ohio and Mississippi rivers," adding that Senators Benton, Eaton, and Jackson voted for the bill.
- February 11, 1825 – Senator Van Buren voted to strike out a provision of the military service appropriations bill "for making surveys and carrying on the operations of the Board of Engineers, in relation to internal improvements."
- February 24, 1825 – Senator Van Buren voted against "An Act for the continuation of the Cumberland Road."
- March 20, 1826 – Senator Van Buren voted to strike out a provision from "An Act making appropriations for the military service of the United States, for the year 1826" providing funds for continuing the Cumberland Road. Senator Harrison voted against striking it out.
- April 22, 1826 – Senator Van Buren voted against a bill authorizing "a subscription for stock in the Louisville and Portland Canal Company," while Senator Harrison voted for it.
- February 27, 1827 – Senator Van Buren voted to strike funds for continuing the Cumberland Road from Canton to Zanesville, Ohio. Senator Harrison voted in support of continued funding, along with Senators Benton, Eaton, Hendricks, Johnson of Kentucky, King of Alabama, and every Senator from the West.
- March 1, 1827 – Senator Harrison voted for, Senator Van Buren against, repair of the Cumberland Road.

As the list went on, the two split on such projects as opening a canal to connect the waters of the Illinois with those of Lake Michigan; public land to aid Indiana in opening a

canal from the Wabash River to Lake Erie; and purchasing stock in the Columbus and Sandusky Turnpike Company in Ohio.

After General Harrison left the Senate, Senator Van Buren continued to vote against funds for the Cumberland Road. The author listed his votes against funds for the road on January 28, 1828; April 10, 1828; and April 22, 1828.

The author advised readers:

And . . . let him contrast the public acts of Mr. Van Buren merely in so far as the West is more intimately concerned, and then let him decide which is entitled to his vote for the high and exalted station of President of these United States.

[Jackson, Isaac Rand, *A Sketch of the Life and Public Service of William Henry Harrison*, published by I. N. Whiting, Columbus, Ohio, 1840]

The party nominated former Senator Tyler for Vice President. Harrison, who was 68 years old, ran an aggressive campaign featuring the slogan “Tippecanoe and Tyler, Too,” referring to Harrison’s victory in the 1811 Battle of Tippecanoe against Tecumseh’s Confederacy – and the nominee for Vice President. The Whigs portrayed General Harrison as a man of the common people from the hard-scrabble West – the “log cabin and hard cider candidate” – despite the truth that he came from a wealthy Virginia family in contrast with President Van Buren who had come from a poor working family.

General Harrison secured 1,275,612 votes and 234 electoral votes – with 148 electoral college votes needed to win – compared with 1,130,033 votes and 60 electoral votes for President Van Buren. The Harrison campaign had energized the public, with 80 percent of eligible voters going to the polls.

Journalist Gail Collins, in her American Presidents series biography, wrote of one incident during the election year involving Representative Crary of Michigan. As noted earlier, he spoke at length on February 12 in support of the Cumberland Road bill and the importance of river and harbor improvements in Michigan before shifting to an unrelated topic:

Isaac Crary, a Democratic congressman from Michigan and a general in the militia, took to the floor of the House of Representatives during a debate over road construction to denounce Harrison as an inept military leader and the “greatest egotist that ever wrote the English language.” The next day, a Whig from Ohio, Tom Corwin, decimated Crary as a peacetime general, marching in hot from the field to unsheathe his sword “and with an energy and remorseless fury he slices the watermelons that lie in heaps around him.” Poor Crary was made merciless fun of as the “watermelon general,” so much so that he lost his seat and acknowledged that Corwin “killed me dead politically.”

As President-elect Harrison prepared in North Bend for his trip to Washington, he was distracted by office seekers, a common problem for incoming Presidents. He thought he could take refuge in Kentucky. On November 21, however, he arrived in Frankfort and was immediately greeted by Henry Clay, who always thought he should have been the presidential nominee of the Whig Party. Collins wrote:

There, Harrison's easy manner smoothed over Clay's ruffled feathers, and the two men seemed to come to agreement, especially since Clay had no desire to leave the Senate for a job in Harrison's cabinet. He had a great hope, however, of being the behind-the-scenes power in a Harrison administration, particularly since Harrison had signed on so vigorously to the idea of Congress being the driving force in settling national policy. They parted on the best of terms, with Clay believing that some of his picks would be included in a Harrison cabinet.

President-elect Harrison began his trip to Washington in Cincinnati while his wife, Anna, remained at home recovering from an illness and the death of their 34-year old son Benjamin in June. His hotel was surrounded by celebrants who kept the Harrison party awake. He insisted on "walking through the muddy streets to his riverboat," which took him east along the Ohio River, stopping at towns where he was greeted by so many well-wishers and shook so many hands that he occasionally had to use his left hand to rest his right hand. "In between there were crowds along the bank, waving and hoping to see the hero of the moment, who seldom disappointed." The steamer finally arrived in Pittsburgh, "where the huge crowd made it difficult for Harrison to make his way to the hotel, which would again be surrounded all night by well-wishers who managed to keep all the inhabitants awake."

From Pittsburgh, he traveled primarily on the Cumberland Road:

He then began the land trip to Washington, where the residents of every village and town on the route turned out to cheer him on. Harrison's days were a series of jolting rides that required incessant waving, interspersed by receptions, handshaking, dinners, toasts, and meeting with a constant stream of visitors.

Searight wrote that:

When Harrison . . . passed over the road to the capital, to be installed in the presidential office, a splendid new coach was provided . . . called the President, in which the President-elect and his immediate family were conveyed. The presidential parties did not travel in the night time, but rested at stations along the road until morning. At Uniontown, President Harrison and party stopped over night at the Walker house, now called the Central.

He added that the Walker house was not a regular stage house, "but the distinguished passengers were quartered therein . . . for the purpose, probably of conciliating some local political influences."

Between Cumberland and Frederick, Maryland, the Harrison party continued on the Maryland turnpike. When they arrived at Frederick on February 5, residents greeted the President-elect warmly at Dorsey's City Hotel and he addressed them briefly. In the morning, President-elect Harrison walked to the railroad depot to catch a Baltimore and Ohio Railroad steam train to Baltimore, where he stayed at Barnum's Hotel on Monument Square.

On February 9, he departed the city on the Baltimore and Ohio Railroad's branch line to Washington for the final leg of his journey. He arrived at the Baltimore and Ohio

Railroad station near the Capitol during a snowstorm. President-elect Harrison went to the National Hotel, at Pennsylvania Avenue and Sixth Street, NW., in Washington.

President Van Buren invited the President-elect to dinner. The President was surprised that he liked his successor, “He talks and thinks with . . . much ease and vivacity. He is as tickled with the Presidency as is a young woman with a new bonnet.” Nevertheless, President Van Buren did not attend the inauguration of his successor. [Collins, Gail, *William Henry Harrison*, The American Presidents Series, Times Books, 2012]

President-elect Harrison’s inauguration would set a pattern – the first to include a parade. Ronald G. Shafer wrote about the parade in *The Washington Post* on the occasion of the inauguration of the 45<sup>th</sup> President:

Washington, at that time, was a city of 23,000 people. There was only one paved street, Pennsylvania Avenue, which ran between the White House and the Capitol. The avenue was lined with bars, lottery shops and gambling houses. The rest of the city’s streets were muddy dirt roads. The White House stood near mosquito-infested swamps along the Potomac River.

It was a cold, cloudy day with a stiff wind blowing from the northeast. At 10 a.m., the procession escorting President-elect Harrison to the Capitol set off up Pennsylvania Avenue led by the uniform militia of the District of Columbia.

Four white horses pulled a new carriage that Baltimore Whigs had just presented to Harrison. But Old Tip declined to ride in it. Instead, the 68-year old Harrison chose to ride his horse, Old Whitey, to the Capitol. Despite the chilly weather, he wore no coat and regularly doffed his hat to the cheering crowd.

(Collins pointed out that he “had not forgotten the Democratic press calling him a ‘superannuated and pitiable dotard,’ and he was determined to demonstrate his virility – not to mention his learning.”)

Behind the President-elect came reminders of his campaign’s “log cabin and hard cider political rallies, complete with rolling log cabins on wheels, cider barrels and raccoons.” The parade included “a working power-loom on wheels drawn by six white horses and troops of old soldiers, while thousands of people along the avenue cheered and waved as President-elect Harrison rode by. The parade included military companies, political clubs, and groups of college students.

Vice President-elect Tyler, accompanied by Vice President Johnson, went into the Senate chamber to take the oath of office. As Vice President, former Senator Tyler would have two duties under the Constitution: to preside over the Senate and take the place of the President if he could not complete his term – a circumstance that had never happened in the country’s history. After being sworn into office, Vice President Tyler addressed the Senate briefly regarding his duty to preside over its deliberations:

Called by the people of the United States to preside over your deliberations, I cannot withhold the expression of the high estimate which I place on the honor which they have conferred upon me.

He was honored to fill a post once occupied by great men such as John Adams and Thomas Jefferson:

But this honor is greatly augmented by the consideration of the true character of this body – by the high order of intellectual and moral powers which has distinguished it in all past time, and which still distinguishes it – by the dignity which has for the most part marked its proceedings; and, above all, by the important duties which have devolved upon it under the Constitution.

After further praise of the Senate, he continued:

Should the spirit of faction – that destructive spirit which recklessly walks over prostrate rights and tramples laws and Constitutions in the dust – ever find an abiding place within this hall, then indeed will a sentence of condemnation be issued against the peace and happiness of this people, and their political institutions be made to topple to their foundation.

He concluded:

While I occupy this chair, Senators, I shall have frequent occasion to invoke your indulgence for my defects, and your charity for my errors. I am but little skilled in parliamentary law, and have been unused to preside over deliberative assemblies. All that I can urge in excuse for my defects is, that I bring with me to this chair an earnest wish to discharge properly its duties, and a fixed determination to preside over your deliberations with entire impartiality.

According to the *Globe*, President-elect Harrison arrived in the chamber at noon. Ten minutes later, Senate leaders escorted him to the steps on the eastern front of the Capitol, where they mounted a 15-foot tall speaking platform:

A crowd estimated at more than 50,000 people jammed into the grounds in front of the Capitol steps. Some found viewing spots in trees. Carriages carrying ladies lined up around the edges of the crowd. It was the largest turnout for a presidential inauguration yet.

The crowd erupted in loud cheers at the first sight of Harrison. The president-elect moved to a seat in the front of the platform next to Supreme Court Chief Justice Roger Taney. To their right, sat members of the diplomatic corps. Behind were members of Congress, military officers and other guests. A number of women were present . . . .

As Harrison rose to speak, earsplitting cheers rang out. Others on the speaker's platform were bundled up in overcoats and thick cloaks to protect against the chilling wind. But just as during the trip to the Capitol, Harrison wore no coat or hat, even though the piercing wind was swirling around him.

To the extent that President Harrison is remembered today, it is for a very few things, namely the slogan “Tippecanoe and Tyler Too” and his short term. He also is remembered for delivering the longest Inaugural Address – 8,845 words – in the country's history. All future Presidents, no matter how much they wished to express on

their momentous day, make a point of keeping their word count below President Harrison's total. [Shafer, Ronald G., "How William Henry Harrison invented the inaugural parade," *The Washington Post*, January 18, 2017]

The speech lasted about an hour and 45 minutes. With lengthy recollections of Roman history, President Harrison discussed the importance of the Constitution and his theories on its interpretation and implementation. Among the issues discussed was his concern about abusive power:

When the Constitution of the United States first came from the hands of the Convention which formed it, many of the sternest republicans of the day were alarmed at the extent of the power which had been granted to the Federal Government, and more particularly of that portion which had been assigned to the executive branch. There were in it features which appeared not to be in harmony with their ideas of a simple representative democracy or republic, and knowing the tendency of power to increase itself, particularly when exercised by a single individual, predictions were made that at no very remote period the Government would terminate in virtual monarchy. It would not become me to say that the fears of these patriots have been already realized; but as I sincerely believe that the tendency of measures and of men's opinions for some years past has been in that direction, it is, I conceive, strictly proper that I should take this occasion to repeat the assurances I have heretofore given of my determination to arrest the progress of that tendency if it really exists and restore the Government to its pristine health and vigor, as far as this can be effected by any legitimate exercise of the power placed in my hands.

To that end, he thought an amendment to the Constitution was needed to limit Presidents to a single term. Pending popular support for such an amendment, he said, "I give my aid to it by renewing the pledge heretofore given that under no circumstances will I consent to serve a second term."

Near the end, he paused long enough for Chief Justice Taney to administer the oath of office. President Harrison then concluded:

Fellow-citizens, being fully invested with that high office to which the partiality of my countrymen has called me, I now take an affectionate leave of you. You will bear with you to your homes the remembrance of the pledge I have this day given to discharge all the high duties of my exalted station according to the best of my ability, and I shall enter upon their performance with entire confidence in the support of a just and generous people.

On March 24, 1841, President Harrison made his daily morning walk to local food markets. He was caught in a sudden rainstorm, and neglected to change his wet clothes when he returned to the executive mansion. Whether he contracted pneumonia as a result of the event or from some other cause, he died on April 4, 1841, after only 31 days in office.

At 68 years old, he had been the oldest person to become President, was the first President to die in office, and served the shortest term in office to date.

### **President John Tyler**

Although candidate Harrison's campaign promises are known, Collins pointed out:

We have no idea how he would have done anything, but it's interesting to speculate how closely he would have adhered to his campaign promise that Congress, not the president, should be the principal force in setting government policy.

She pointed out that members of his Cabinet thought he would follow the Whig concept that they "should be the principal force in setting government policy." They would lead and he "would preside over their meetings but would be only one vote among the members when it came to final decisions." Collins believed that President Harrison was "too self-confident and too stubborn to comply."

President Harrison also broke with Senator Clay, who privately was concerned that health concerns might elevate Vice President Tyler to power. Therefore, shortly after the inauguration, Senator Clay met with the new President to urge him to convene an extra session of Congress during which the newly empowered Whigs could begin enacting their agenda. President Harrison polled his Cabinet, which was split on calling the session; he decided not to do so. When the President did not immediately call the session, Senator Clay wrote to him on March 13, even enclosing a draft proclamation for the purpose. He suggested that inaction would give people the impression that the new President was indecisive.

The Heidlers, in their Clay biography, wrote:

It was a risky move, to be sure, and that Clay was willing to chance it indicates how anxious he was to have Congress get to work as soon as possible. But it immediately proved to be a dreadful mistake. Already testy about what he perceived as Clay's meddling over appointments, Harrison bristled. There was to be a state dinner that evening where Clay and Harrison could have conversed but the president was angry and instead dashed off a note to Clay that began with a prickly "My dear friend" and went on from there: "You use the privilege of a friend to lecture me & I will take the same liberty with you – You are too impetuous."

The reply angered Senator Clay, who replied, after calming down, on March 15 to regret that expressing his opinion could be seen as dictating to the President:

He told Harrison not to trouble with answering.

When Harrison did not respond, the silence from the White House sent a clear message, and two days later Clay left Washington for home . . . . On the very day that Clay left Washington, Harrison abruptly relented and issued a call for the extra session, although a disturbing consultation with his cabinet over the plummeting economy, not Clay's influence, was the reason he changed his mind.

A week later, President Harrison became ill and would soon die.

What President Harrison, a Whig at odds with the party's leader, might have done can never be known. But as Senator Clay feared, President Tyler would take a very different path than his predecessor.

Vice President Tyler had been in Williamsburg, Virginia, when he learned of the President's April 4 death. After consulting with associates about his proper role, he headed to Washington, first by steamboat on the James River to Richmond, then by train to the capital, arriving on April 6 at 4 a.m. That day, he met with six members of his inherited Cabinet. Secretary of State Daniel Webster informed him that President Harrison had based major decisions on a majority vote of the Cabinet. President Tyler rejected that notion; he would "never consent to being dictated to" by Cabinet members, who were not co-equal with the President. He said that if they did not agree with his method of decisionmaking, he would accept their resignations. None resigned.

Having taken the oath of office as Vice President, he did not believe a second oath was necessary. However, on April 6, he again took the oath during a full meeting of his Cabinet, with William Cranch, Chief Judge of the Circuit Court of the District of Columbia, presiding. [Crapol, Edward P., *John Tyler, the Accidental President*, The University of North Carolina Press, 2006]

Because he was the first Vice President to become President following the death of his predecessor, contemporaries were uncertain if he was an acting or temporary President and whether he had the full powers of the presidency. Critics would refer to him as His Accidency.

He had been an odd choice for a candidate of the party supporting Henry Clay's American System that included internal improvements and high tariffs. He balanced the national ticket because he was from the Nation's most populous State, Virginia, and, as a slave owner, he appealed to voters who feared that Harrison might have abolitionist tendencies. However, as reflected in his statements during internal improvement debates in the Senate, he believed in a limited central government with virtually no role in internal improvements in the States. When he became President, he had few allies in the Whig Party and, since he retained President Harrison's officials, none in the Cabinet.

Although he did not have an opportunity to deliver an Inaugural Address, he issued a statement to the people of the United States on April 9, 1841, upon assuming office. After lamenting the circumstances that elevated him to the presidency, he discussed foreign affairs, and other matters, including:

In all public expenditures the most rigid economy should be resorted to, and, as one of its results, a public debt in time of peace be sedulously avoided . . . . The appropriations should be direct and explicit, so as to leave as limited a share of discretion to the disbursing agents as may be found compatible with the public service . . . .

The institutions under which we live, my countrymen, secure each person in the perfect enjoyment of all his rights. The spectacle is exhibited to the world of a

government deriving its powers from the consent of the governed and having imparted to it only so much power as is necessary for its successful operation. Those who are charged with its administration should carefully abstain from all attempts to enlarge the range of powers thus granted to the several departments of the Government other than by an appeal to the people for additional grants, lest by so doing they disturb that balance which the patriots and statesmen who framed the Constitution designed to establish between the Federal Government and the States composing the Union. The observance of these rules is enjoined upon us by that feeling of reverence and affection which finds a place in the heart of every patriot for the preservation of union and the blessings of union – for the good of our children and our children's children through countless generations.

Congress convened on March 31, 1841, for the special session that President Harrison had called. With guidance from Senator Clay, Congress took the opportunity to approve a bill to resurrect the Bank of the United States. President Tyler vetoed the bill on August 16, 1841, because he did not believe the Constitution allowed the Federal Government to operate a corporation. Congress passed a second bill designed to address President Tyler's concerns.

His Cabinet urged him to sign the new bill, but he vetoed it on September 9, 1841. As a result, the Cabinet resigned, with the exception of Secretary Webster, who was involved in delicate negotiations with Great Britain over the Canadian/U.S. border in Maine. Two days after the second veto, the Whig Party expelled President Tyler.

In short, he would block the Whig Party agenda, including distribution of revenue from public lands sales to the States for internal improvements.

He had spoken in vaguely favorable terms of distribution of land sales revenue to the States, but he did so only on the assumption that Federal revenue issues had been resolved. Senator Clay and his allies secured passage of a distribution bill in September 1841 – after a lengthy and contentious debate – addressing the rights of present and future occupants of public land, with distribution of land sales revenue apportioned to the States based on population. The States could use the revenue for new internal improvements or to retire debt on past projects – still a problem since the start of the Panic of 1837. President Tyler signed the bill on September 4, 1841.

On December 7, 1841, President Tyler sent the traditional message to Congress. He expected that as of January 1, 1842, the Treasury would have a budget deficit of \$627,557.90. While the Treasury was stabilizing, the States had problems stemming from debt incurred primarily for increased investment in internal improvements during the Jackson years:

Nor can I fail to advert in this connection to the debts which many of the States of the Union have contracted abroad and under which they continue to labor. That indebtedness amounts to a sum not less than \$200,000,000, and which has been retributed to them for the most part in works of internal improvement which are destined to prove of vast importance in ultimately advancing their prosperity and

wealth. For the debts thus contracted the States are alone responsible. I can do no more than express the belief that each State will feel itself bound by every consideration of honor as well as of interest to meet its engagements with punctuality. The failure, however, of any one State to do so should in no degree affect the credit of the rest, and the foreign capitalist will have no just cause to experience alarm as to all other State stocks because any one or more of the States may neglect to provide with punctuality the means of redeeming their engagements. Even such States, should there be any, considering the great rapidity with which their resources are developing themselves, will not fail to have the means at no very distant day to redeem their obligations to the uttermost farthing; nor will I doubt but that, in view of that honorable conduct which has evermore governed the States of the Union and the people of the Union, they will each and all resort to every legitimate expedient before they will forego a faithful compliance with their obligations.

He discussed the country's money supply, which had been disrupted by several factors:

This is the more to be regretted and the indispensable necessity for a sound currency becomes the more manifest when we reflect on the vast amount of the internal commerce of the country. Of this we have no statistics nor just data for forming adequate opinions. But there can be no doubt but that the amount of transportation coastwise by sea, and the transportation inland by railroads and canals, and by steamboats and other modes of conveyance over the surface of our vast rivers and immense lakes, and the value of property carried and interchanged by these means form a general aggregate to which the foreign commerce of the country, large as it is, makes but a distant approach.

(Senator Clay resigned on March 31, 1842, succeeded by former Senator Crittenden, who had served as Attorney General during the Harrison-Tyler Administrations until resigning in protest. With an eye on the Whig Party's presidential nomination in 1844, Clay continued to work behind the scenes from Kentucky, through Senator Crittenden and other allies, to influence congressional proceedings.)

As was usual, his message was accompanied by reports from the departments, including Secretary of War John C. Spencer, who had assumed that office on October 12, 1841. He included Colonel Totten's report of November 19, 1841, on the work of the Engineer Department. The Chief Engineer provided a summary of the status of the Cumberland Road:

National road.- No appropriation having been made for the continuation of the Cumberland road in Ohio, Indiana, and Illinois, since the year 1838, the operations have been entirely suspended, the business closed, and the officers ordered to other stations. Much of the road being left in an unfinished state, it is liable to be washed and worn away; unfinished structures upon the road are exposed to destruction; and the longer the resumption of operations is deferred, the greater must be the cost of final completion.

An estimate is submitted, herewith, for the continuation of the road in each of these States; and if it be the intention of the government to prosecute this work, an early appropriation is certainly recommended by every consideration of economy and sound policy.

The annexed reports . . . of the officers heretofore intrusted with the superintendence of this work, give a history of its progress. They contain statements showing the cost of the finished and the expenditures upon the partly finished portions of the road; they also contain estimates for its entire completion, together with other matters of interest connected with the work, and to which your attention is respectfully invited.

(In the next few years, Colonel Totten repeated this language on the National Road, minus the reports from the former superintendents.)

Captain Dutton, writing on April 6, 1841, explained that the Ohio segment of the road was  $224\frac{3}{4}$  miles long, of which 171 miles had been completed, from the Ohio River to Springfield, and taken over by the State. Total expenditures in the State since the first appropriation in 1825 totaled \$2,077,202.95, including \$129,543.77 on the remaining segment, which remained in an unfinished state.

He included a table showing the cost of the finished macadam segments in Ohio:

It will thus be seen that the average cost per mile of the part completed is \$11,258.82; that the cost of macadamizing nearly equals one-half of the whole cost; that the cost of bridging and masonry is nearly equal that of opening and grading; and that the contingencies amount to nearly  $3\frac{1}{2}$  per cent. of the whole cost.

He estimated that completing the road to macadam standards would cost \$646,000, which he suggested dividing over 3 years:

- Year 1: \$295,000
- Year 2: \$233,000
- Year 3: \$118,000

He concluded his report:

I am entirely satisfied, from experience, that, with the plan of construction adopted for the national road, as explained herein, the nature of the soil over which it passes, and the absence of materials for masonry and macadamizing within a convenient distance of the road, except at a few points only, it would be impracticable to construct it, in such a manner as to fulfil the object of a great national thoroughfare, for a less average cost per mile than that stated above.

Major Ogden commented in his report on Indiana and Illinois about the cost of keeping the macadam road in shape in Ohio:

The average cost of macadamizing in Ohio has been less than \$6,000, and yet she has had to make appropriations from her treasury to keep it in repair – the tolls being insufficient for that purpose.

More on topic, Major Ogden explained that in Indiana, only 9 miles had been finished:

- In and near Richmond: 2 miles and 270 rods,
- In Centreville: 103 rods in Centreville,
- In and near Indianapolis: 4 miles and 237 rods, and
- Near Terre Haute: 1 mile and 50 rods near Terre Haute.

He explained the reason for the split mileage:

With a view to making the road immediately available for the Western emigration, and bringing the public lands on and near it speedily into the market, it was cleared and partly grubbed throughout the State; next, to get the mail stages on it, it was partially bridged, and the level parts of it graded.

The policy on working on the whole extent of the road was continued until 1836, when the operations were confined to one point until 1837, and then extended to three, viz: Richmond, Indianapolis, and Terre Haute.

In March 1839, by direction of the Secretary of War, I submitted a project for continuing the operations from the present finished portion, near Richmond, westward, and completing the road as the work progressed. This project was approved; but, no appropriation for the continuation of the road having been made since that time, it has not yet been carried into effect.

He thought that turning the road over to the State to be completed without a macadam pavement would be advantageous to the United States and Indiana:

[For] the United States, by saving the amount of the estimate and the contingencies incident to the work, in all \$1,832,272.20 – to the State of Indiana, in greatly reducing the expense of keeping the road in repair. The wear of the macadamizing on the finished parts of the road in Ohio has heretofore been estimated at 15 per cent. per annum; but as it will be some time before there is the same amount of travel on the road in Indiana, we will estimate it at 10 per cent., from which the following result is obtained:

To keep the macadamized part of the road in repair will require \$177,242.95 per annum, when the graded road can be kept in good order for from fifteen to twenty thousand dollars; or, at the extreme, suppose one man is employed to keep each mile of the road in order, at \$365 per year, it will amount to but \$23,585.

Major Ogden described conditions in Illinois:

The construction policy in Indiana and Illinois had been the same:

The country through which the road passes from the Indiana State line to Vandalia may be considered as table land, intersected by numerous streams, the beds of which are from eighty to one hundred feet below the general surface; smaller streams break into them in all directions, forming knobs and ridges in profusion, and without arrangement. The making of a road through such a country is necessarily attended with great trouble in location and expense in construction.

For fourteen miles from the line the streams are numerous, and the country consequently very much broken. From then to Vandalia they are not so frequent, and leaving a level country (principally prairie) between them, varying in distance from two to fifteen miles.

The river bottoms are generally wide, and subject to frequent and great inundations, requiring high embankments, and frequently extra bridges.

Overall, 13 miles had been finished from the Indiana State line to the 14th mile, with another 17 miles completed from the 73d mile to Vandalia. The total cost of finishing the two segments was \$379,317.75 (or \$12,643.92 per mile). For the unfinished portions, expenditures thus far had totaled \$263,286.05, mostly for opening/grading and bridging/masonry (average: \$4,388.10 per mile).

He estimated that completing the road in Illinois would cost \$1,432,138.50, with the largest cost attributed to macadamizing (\$928,633.00).

The grading and bridging could be completed in 2 years at a cost of:

- Year 1: \$190,690.76
- Year 2: \$229,551.43

He recalled that the appropriation for the road in 1834 required “an officer of the corps of engineers should be selected to superintend the construction of, and make the disbursements on, the road in Indiana and Illinois.” He recommended that if operations on the road were to resume, “exertions be made to have this proviso repealed, in order that each State may be placed under a separate superintendent.” [*Message from the President of the United States to the Two House of Congress, 27th Congress, 2d Session., Ho or Reprs. Executive, Doc No. 2*]

By the time the British author, Charles Dickens, visited the United States on a speaking tour in 1842, President Tyler had alienated all parties. While in Washington, Dickens visited the Executive Mansion in March. An “official gentleman” arranged the visit for the famed author. They found many people also waiting. “The greater portion of this assemblage,” Dickens wrote of the visit, “were closely eying the movables, as if to make quite sure that the President (who was far from popular) had not made away with any of the furniture, or sold the fixtures for his private benefit.”

Finally, “a black in plain clothes and yellow slippers,” spotted the “official gentleman” and escorted them into a waiting room along with 15-20 other people:

We had not waited in this room many minutes before the black messenger returned, and conducted us into another of smaller dimensions, where, at a business-like table covered with papers, sat the President himself. He looked somewhat worn and anxious – and well he might: being at war with everybody – but the expression of his face was mild and pleasant, and his manner was remarkably unaffected, gentlemanly, and agreeable. I thought that, in his whole carriage and demeanor, he became his station singularly well. [Dickens, Charles, *American Notes: A Journey*, From International Publishing Corporation, 1985]

Another account, pulled together from descriptions in other sources, provides additional details:

The morning after Dickens arrived in Washington, D.C. in March 1842, he was taken to the White House for an audience with President Tyler. The interview ranks as one of the all-time non-events. “Is this Mr. Dickens?” Tyler asked. “Sir, it is,” Dickens replied. “I am astonished to see so young a man,” said the fifty-one-year-old president to the thirty-year-old novelist. He added: “I am happy to join with my fellow citizens, warmly, in welcoming you to this country.” No further words were spoken. The two men shook hands, seated themselves near a hot stove, although it was a warm day, and stared at each other. Finally, Dickens rose, saying he would use up no more of the president’s valuable time which he assumed must be fully occupied. This polite sarcasm went unnoticed.

Dickens also attended one of the president’s receptions where to his annoyance “he became the main object of attention.” An “immense crowd” ignored Tyler and surrounded Dickens.

While in Washington, Dickens also met Representative and former President John Quincy Adams and was “astonished” by the former President’s “freshness, vigor, and intellect.” He also met Senator Henry Clay, describing the perennial presidential hopeful as “perfectly enchanting; an irresistible man.” [Meckier, Jerome, “Dickens’s Presidents,” *Dickens Quarterly*, June 2018]

(Dickens had the misfortune of visiting the United States during the terms of two of the country’s worst Presidents, both of whom had succeeded a President who died in office. In 1868, Dickens visited the United States, again on a speaking tour. In Washington during the first week of February for a week of readings, Dickens met President Andrew Johnson, who had reserved an entire row of seats for himself, his family, and other officials. On Dickens’ birthday, February 7, he met President Johnson. The author described the President as “a man of very remarkable appearance indeed, of tremendous firmness of purpose. Not to be turned, or trifled with.” He added, “each of us looked at each other very hard, and each of us managed the interview (I think) to the satisfaction of the other.” [Smith, Emily, “A Very Dickens Birthday,” Charles Dickens Museum, posted on February 2, 2018])

## The Veto Power

Never really a believer in the Whig philosophy, President Tyler regularly battled Whig legislation reflecting Henry Clay's American System. With the central government running deficits in the wake of the Panic of 1837, he could accept tariff increases, but not distribution of revenue to the States for infrastructure or any other purpose. He explained his views on distribution in a message on his veto of a tariff bill on June 29, 1842:

I regard the suspension of the law for distributing the proceeds of the sales of the public lands as an indispensable condition. . . . Who at the time foresaw or imagined the possibility of the present real state of things, when a nation that has paid off her whole debt since the last peace, while all the other great powers have been increasing theirs, and whose resources, already so great, are yet but in the infancy of their development, should be compelled to haggle in the money market for a paltry sum not equal to one year's revenue upon her economical system?

Professor Hill explained President Tyler's views on rivers and harbors bills:

President Tyler and his secretary of war recommended that Congress adopt vigorous measures for improving major western rivers and lake harbors . . . . President Tyler granted that funds for rivers and harbors were being judiciously spent but cautioned that Congress must appropriate only for improvements of a demonstrably national character. To receive his approval, river and harbor projects had to pass a strict constitutional test: necessity for the safety of interstate or foreign commerce. Since the Topographical Bureau presented only estimates approved by the President, Congress was called upon to consider only projects passing this test.

With these limits in mind, 2 of his 10 vetoes were of appropriations for river and harbor projects. On June 11, 1844, he sent a veto message to Congress of "An act making appropriations for the improvement of certain harbors and rivers." The Constitution, he

said, "expressly reserves to the States all power not delegated":

No such surrender of jurisdiction is made by the States to this Government by any express grant, and if it is possessed it is to be deduced from the clause in the Constitution which invests Congress with authority "to make all laws which are necessary and proper for carrying into execution" the granted powers. There is, in my view of the subject, no pretense whatever for the claim to power which the bill now returned substantially sets up. The inferential power, in order to be legitimate, must be clearly and plainly incidental to some granted power and necessary to its exercise.

The authority exercised in the bill supposedly came from the granted power "to regulate commerce with foreign nations, among the several States, and with the Indian Tribes":

. . . the plain and obvious meaning of this grant is that Congress may adopt rules and regulations prescribing the terms and conditions on which the citizens of the United States may carry on commercial operations with foreign states or kingdoms, and on which the citizens or subjects of foreign states or kingdoms may prosecute trade with the United States or either of them. And so the power to regulate commerce *among the several States* no more invests Congress with jurisdiction over the water courses of the States than the first branch of the grant does over the water courses of foreign powers, which would be an absurdity.

In general, using Federal revenues to improve navigation of the rivers “would be for the most part productive only of local benefit”:

There can not, in fact, be drawn the slightest discrimination between . . . improving the streams of a State under the power to regulate commerce and the most extended system of internal improvements on land. The excavating a canal and paving a road are equally as much incidents to such claim of power as the removing obstructions from water courses; nor can such power be restricted by any fair course of reasoning to the mere fact of making the improvement. It reasonably extends also to the right of seeking a return of the means expended through the exaction of tolls and the levying of contributions. Thus, while the Constitution denies to this Government the privilege of acquiring a property in the soil of any State, even for the purpose of erecting a necessary fortification, without a grant from such State, this claim to power would invest it with control and dominion over the waters and soil of each State without restriction. Power so incongruous can not exist in the same instrument.

He also objected to the bill’s “blending appropriations for numerous objects but few of which agree in their general features.” Some projects might receive his sanction as national in scope. For example, one of the projects, the Delaware Breakwater, was “an improvement which looks to the security from the storms of our extended Atlantic seaboard of the vessels of all the country engaged either in the foreign or the coastwise trade, as well as to the safety of the revenue.” By contrast, “the same bill embraces improvements of rivers at points far in the interior, connected along with the trade of such river and the exertion of mere local influences.”

As a contrast, the message noted that at the same time, he was signing a bill appropriating funds for improving the Mississippi River and its tributaries. “The Mississippi occupies a footing altogether different from the rivers and water courses of the different States.” It did not belong to any State, but “is reserved as a great common highway for the commerce of the whole country.”

The key was to make the distinction between national objects and those benefiting local or private interests. In closing, therefore, he cautioned, “Every system is liable to run into abuse, and none more so than that under consideration; and measures can not be too soon taken by Congress to guard against this evil.”

The House attempted to override the veto on June 11, 1844, but came up short, 104 to 84, of the necessary two-thirds.

### **Still Trying to Advance the Road**

Friends of the Cumberland Road had not given up hope of additional appropriations to complete work on the project.

On January 3, 1844, Representative Lewis Steenrod, a Virginia Democrat, introduced a bill, H.R. 10, appropriating funds for continuation of the Cumberland Road in Ohio, Indiana, and Illinois, and erection of a bridge at Wheeling. The bill proposed \$100,000 for work in Ohio, and \$150,000 each for Indiana and Illinois. All the sums “shall be paid out of any money in the treasury not otherwise appropriate.” The bill did not include the phrase on reimbursement from the two-percent fund. It was read twice and referred to the Committee on Roads and Canals.

The following day, Senator Edward A. Hannegan, a Democrat from Indiana, introduced a comparable bill appropriating the same amounts for continuation of the Cumberland Road in Ohio, Indiana, and Illinois. It was read twice and referred to the Committee on Roads and Canals.

Representative Robert D. Owen, an Indiana Democrat, from the Committee on Roads and Canals reported H.R. 10 on January 12. The committee recommended approving the bill, but with appropriations reduced to \$50,000 for Ohio and \$75,000 each for Indiana and Illinois.

Senator Hannegan’s bill was taken up in a Committee of the Whole on April 3. With no amendments, the bill was “reported back to the Senate, and the question being on ordering it to be engrossed for a third reading.

Senator Crittenden said he previously had been favorable to appropriations for the Cumberland Road, but wanted to know why the bill contained “this very large appropriation, and why it should be proposed at this particular time.”

Senator Hannegan replied with “a rapid sketch” of government action on the road. He “contrasted the liberality with which means had been furnished for carrying it on when its benefits verged towards the older States and the national capital, with the tardiness and indisposition to complete the work on those portions where the benefits are to enure to the new States.”

Senator Crittenden reiterated his concerns about the “very large appropriation” and said he thought “there ought to be the fullest explanation before the Senate was called upon to pass it”:

Mr. HANNEGAN urged, with considerable force of argument, the justice of making some return to the new States for the sacrifices they had made for the benefit of the general government. What they asked they demanded as their rights – not as mendicants asking for charity. This, however, was not the hour

(near 4 o'clock) for all that could be said on the subject, as probably the bill would be further debated but, in the absence of his colleague, he now asked the bill to be passed over informally till he should be in his seat.

Senator Sidney Breese, an Illinois Democrat, argued that the new States had a right to some return "for the depreciation of their taxing power, occasioned by the exemption of public lands from taxes for five years after they were sold."

Senator George Evans of Maine, a Whig, wanted to know how much of the road was yet to be finished. He asked if the funds in the bill were to finish work previously begun or to commence new work, as well as "what was the length of the road incomplete, or to be completed by this appropriation."

Senator Hannegan referred Senator Evans to the report of the Secretary of War, adding, "Unless these appropriations were made, several bridges already constructed may fall, and many portions of the road may become so dilapidated that \$50,000 would not make the repairs which further delay may occasion."

Senator Crittenden wondered why friends of the road sought passage of the bill "without giving the information he had repeatedly solicited":

It might be that the gentlemen of the States to be benefited by the bill could not support it, and were therefore silent; but the Senate could hardly be expected to adopt it, unless upon the fullest and most satisfactory information of its necessity. It seemed to him, that while the Senate was kept in the dark the gentlemen ought not to expect it to be passed.

Senator Hannegan denied he was trying to pass the bill in the dark. The project had been debated for years, with estimates provided periodically to the Senate. "The cost of the whole route had been frequently stated to Congress, and the necessity for completing the work had been repeatedly urged in annual messages."

Senator Crittenden said that Senator Hannegan was taking the remarks "in a very different spirit from that in which they were offered." He simply wanted fuller information.

Senator Buchanan said he had always voted for appropriations to complete the Cumberland Road "when the condition of the treasury was such as to justify it – when the estimates were made, and when it was previously ascertained how much should be expended on the road." That was the case even though his own State, Pennsylvania, "had always considered that this road was an injury instead of a benefit to her. It was a rival road to her own improvements":

He intended, if all things turned out properly, and if he could have the necessary information, to vote for the completion of the Cumberland road; but he would never do so upon the principle laid down by his friends from Illinois and Indiana, [Messrs. Hannigan and Breese,] that there was an obligation on the part of the federal government to complete that road because the new States had agreed to

exempt from taxation lands within their borders by the government for five years after such sale. That measure has been a benefit to the new States. It had promoted the sale of the lands, and the settlement of those States. It had been, therefore, a greater benefit to those States than to the federal government. He disclaimed any such obligation.

He also objected to the portion of the Senate bill that called for reimbursement from the two-percent fund:

This was going rather too far, when it was well known that we had already expended more than ten, fifteen, or twenty times the whole amount of that fund in making roads in the new States.

Upon receipt of “proper information” about the road and the state of the Treasury, he was prepared to vote for the bill, even to extend the road to the Mississippi River, “but not because he ever expected to receive any benefit from the two per cent. fund.” Like Senator Crittenden, he wanted “more light upon the subject.”

Whig Senator White of Indiana had now returned to his seat, having missed the earlier part of the debate. He was, he said, “certainly surprised” by Senator Buchanan’s comments”:

He could give him some information; it was, that this improvement had added 50,000 inhabitants to the city of Philadelphia. He regretted that, notwithstanding all the benefits Pennsylvania had received from this great work, that State had, according to the account given by its distinguished senator, yielded to it but a grudging support.

Senator Buchanan denied the State had given only grudging support. It had supported the road “from patriotic motives.” He trusted that Senator White would provide the desired information.

Senator White responded “at considerable length.” He said that Philadelphia had been “the recipient of nearly all the travel on the road, and ought to take the deepest interest in its completion.” He cited improvements elsewhere in the country “to show the necessity of keeping pace with them, by continuing and completing the sources of intercommunication which she had with the West, and all the intermediate country tributary to her by means of the great national thoroughfare.”

Senator Breese provided the desired information by reading from previous congressional documents.

Because Senator Crittenden thought additional information was needed, Senator Hannegan proposed postponing further debate.

Debate resumed on April 5, but before the Senate could vote on whether to order the bill to be engrossed and read a third time, Senator Crittenden said he thought the bill should

be amended to limit “the grading of the road with stone . . . to 20 feet; otherwise the cost would be a great deal too much.”

Senator White pointed out that the road had been to 80 feet wide, with that width figured into the estimates. He was confident, however, that “the work could now be done so much cheaper than when the estimates were made, that a considerable saving in expense might be expected.”

Senator Crittenden said he had “a sincere disposition” to help the friends of the Cumberland Road on this point:

He explained the cost of making roads in Kentucky, with broken stone, which was about \$7,000 to \$8,000 a mile; while the cost of this road could not fall short of \$15,000, according to the lowest estimate of the gentlemen themselves. He believed, if the cost were not reduced, the road never would be finished, at least by the general government.

Senator James Semple of Illinois, a Democrat, said that if such a motion were made, he might be inclined to support it.

Senator Benjamin Tappan, an Ohio Democrat, moved to amend the bill to construct a bridge over the Ohio River at Wheeling “such as would not obstruct the navigation of the river.” The United States, he said, had never completed its contract to build the Cumberland Road to the State of Ohio; it ended in Virginia. He pointed out that “there was an island, also belonging to Virginia, between Wheeling and the Ohio shore, over which, and the river itself, the road should be carried, to reach Ohio.

Senator Spencer Jarnagin, a Whig from Tennessee, thought that the bridge should be included in a separate bill, subject to securing estimates of cost before the Senate was asked to vote on it.

Senator Tappan said that an estimate had been secured for the bridge and was available in House documents. He considered the present bill “peculiarly appropriate” to compensate for the lost tax revenue.

If the measure included the bridge, Senator Buchanan said he would have to vote against it. The Pennsylvania State Legislature “had adopted the resolution of instruction upon the gravest consideration.” He did not say so, but as noted earlier, Pennsylvania was strongly opposed to a bridge across the Ohio River at Wheeling because it might divert commercial traffic from a port closer to Pittsburgh.

Although Senator Buchanan agreed that a suspension bridge could be built high enough to allow river traffic to pass under it, he noted that the amendment called simply for a bridge that would not interfere with navigation. Senator Tappan asked if Senator Buchanan would vote for the amendment if the wording were changed to “suspension bridge,” but the answer was that he would not “because he did not consider it practicable, without interfering with the navigation of the river.”

Louisiana Senator Porter pointed out a report some years earlier had shown that “a suspension bridge would not answer, because it would have to be so high in the air that the greatest danger of its destruction would be from storms.

Senator White also hoped the amendment would be withdrawn, with “the matter to be disposed of by the bill now pending in another branch of Congress.”

The Senate rejected the Tappan Amendment.

Senator Breese informed his colleagues that covering the road in Illinois with stone had been abandoned in 1836:

There was no hope of ever being able to apply stone to the grading of the road in that State. All that was required was, to open the road 80 feet. Grade it 30 feet, and build bridges and culverts; the cost of which (yet to be incurred,) was estimated at \$810,000. \$742,445 had already been laid out on the road in Illinois. The expenditure in Ohio had been \$2,077,000; in Indiana, \$1,128,000. He read several extracts from the report on the subject, and sent to the table remaining portions, to be read by the secretary of the Senate.

After the secretary read the documents, the Senate agreed on a width of 16 feet for the travel lane.

Senator Semple moved an amendment to restrict the Illinois appropriation to opening and grading the road before stone shall be applied.

When Senator King objected to the “enormous expense” of adding 9 inches of stone on any part of the road that could increase the cost to \$3 million in Indiana, Senator Hannegan replied “with a view of showing that the lavishness of the expenditures on the Cumberland road, heretofore made, had been owing to the manner in which Congress itself had prescribed the doing of the work.” His bill guarded against such an outcome; he was confident the final cost in Indiana would be \$1,400,000.

The Senate then adopted the Semple Amendment before adjourning.

On May 6, the Senate voted, 23 to 12, on ordering the bill to be engrossed for a third reading. After that was done, the Senate passed the bill, 20 to 11. The bill was forwarded to the House of Representatives, which referred the bill to the Committee on Roads and Canals. The committee reported the bill to the House, without amendment, on May 15.

The House adjourned the first session of the 28<sup>th</sup> Congress on June 17 without acting on the Senate bill.

### **President Tyler’s Final Session**

The 28<sup>th</sup> Congress returned for a short session on December 2, 1844, with the session ending on March 3, 1845.

Outgoing President Tyler sent his final annual message to Congress on December 3, 1844. As usual, he discussed foreign relations, including efforts to secure the addition of the Republic of Texas, formed in 1836 after securing independence in a war with Mexico, to the union. The economy was rebounding, as was the general Treasury. The country had been forced to pay for its activities by securing loans and issuing bonds. However, the improved condition of the Treasury meant that “an estimated surplus of upward of \$7,000,000 over and above the existing appropriations will remain in the Treasury at the close of the fiscal year.” This milestone, he said, demonstrated that “under a well-regulated system of finance the Government has resources within itself which render it independent in time of need, not only of private loans, but also of bank facilities”

The anticipated surplus prompted him to warn Congress about the need to preserve “a sound and healthy condition”:

The dangers to be guarded against are greatly augmented by too large a surplus of revenue. When that surplus greatly exceeds in amount what shall be required by a wise and prudent forecast to meet unforeseen contingencies, the Legislature itself may come to be seized with a disposition to indulge in extravagant appropriations to objects many of which may, and most probably would, be found to conflict with the Constitution. A fancied expediency is elevated above constitutional authority, and a reckless and wasteful extravagance but too certainly follows.

Turning to internal improvements, he said he was not opposed to all such work:

The appropriations made by Congress for the improvement of the rivers of the West and of the harbors on the Lakes are in a course of judicious expenditure under suitable agents, and are destined, it is to be hoped, to realize all the benefits designed to be accomplished by Congress. I can not, however, sufficiently impress upon Congress the great importance of withholding appropriations from improvements which are not ascertained by previous examination and survey to be necessary for the shelter and protection of trade from the dangers of storms and tempests. Without this precaution the expenditures are but too apt to inure to the benefit of individuals, without reference to the only consideration which can render them constitutional – the public interests and the general good.

President Tyler ended his final message to Congress with these words:

Under these circumstances and with these anticipations I shall most gladly leave to others more able than myself the noble and pleasing task of sustaining the public prosperity. I shall carry with me into retirement the gratifying reflection that as my sole object throughout has been to advance the public good I may not entirely have failed in accomplishing it; and this gratification is heightened in no small degree by the fact that when under a deep and abiding sense of duty I have found myself constrained to resort to the qualified veto it has neither been followed by disapproval on the part of the people nor weakened in any degree their attachment to that great conservative feature of our Government.

The Senate, which had passed an appropriation bill for the Cumberland Road in the previous session that the House had not completed action on, was not done with the subject. On December 5, Senator White introduced a bill for continuation of the Cumberland Road in Ohio, Indiana, and Illinois. He reported on January 2 that the Committee on Roads and Canals approved the bill without amendment and with a recommendation that the Senate pass the bill. On January 20, the Senate ordered the bill to be engrossed and read a third time.

The Senate considered passage of the bill on January 22. Senator White informed his colleagues that the bill was the same as the bill passed in the first session of the 18<sup>th</sup> Congress, but that it had failed in the House when time ran out. "The appropriation proposed by the bill was recommended by the Secretary of War and chief of the topographical bureau."

Connecticut Senator Niles stated he wanted the ayes and the noes, and did not want to give a speech. "He had too much experience here, and had been too careful an observer of the action of this government, to consume the time of the Senate in the discussion of a constitutional question, or to oppose the passage of any bill [for] a constitutional objection":

This subject was an ancient one, almost as old as the government; yet the repeated action of Congress had not changed the question. A wrong, however often repeated, did not, by such repetition, become a right.

He pointed out that the bill did not contain the usual reference to reimbursement from the two-percent fund, an issue that he said had prompted vetoes and threats of vetoes in past years. He also questioned the national stature of the road:

Whatever it once may have been, this road now had become a mere local road, beneficial only to the States through which it passes. The public travel and trade had found other channels, and this road had become only a local one.

His colleagues recognized the value of attaching the word "national" to local interests:

We now have an instance of the kind before us: this road is called national, although, in fact, it is local; but it is attempted to attach to it the odor of nationality, so as to bring it within the pale of the constitution and give it a character of general interest.

When, he asked, would appropriations for this road end? Would it stop at the Mississippi River, the Pacific Ocean, or even the Oregon Territory? He continued:

It was some years since admitted by a distinguished senator, not now here, friendly to this object, and who believed that there was power in this government to prosecute works of internal improvement, that this road ought to have a limit; and that if appropriations were continued to be made, they should have a reference to a termination of the work. But now we have no limit, no prospect ahead of ever bringing these appropriations to a close.

He asked for the vote so he could record his vote against the bill.

Senator White felt he had to respond but not on the constitutional issue. He pointed out that the bill had passed the Senate in the first session by “a large majority, and it failed in the House merely for the want of time for its consideration”:

The Senate would recollect that, last session, the dimensions of the road were changed, as in the present bill, so as to contract it within a foot of one half of its former width, and that, too, in the portion comprising the most expensive item of its construction – the Macadamized portion. The road proposed to be finished by this bill had been long since commenced, and was in a dilapidated condition.

He then alluded to the lavish expenditure of money for improvements in the northern and middle portions of the country – particularly for stock in the Chesapeake and Ohio canal – and maintained that this appropriation for the West should not be withheld.

The Senate, by a vote of 25 to 14, approved the bill.

Two days later, on January 24, the House read the Senate bill for the first and second time and referred it to the Committee on Roads and Canals.

While the House would occasionally consider the bill, Representative John W. Tibbatts, a Kentucky Democrat, took an alternative approach on February 27. The House was considering a bill appropriating funds for improvement of navigation on specified rivers. Representative Tibbatts moved to strike the entire bill and insert a substitute with the addition of a single item of appropriation. Later, with the House in the Committee of the Whole, he moved to modify his substitute amendment. The substitute listed dozens of projects, mostly involving harbor and river projects, but including near the end of the list:

For continuing the work upon the Cumberland road through the States of Ohio, Indiana, and Illinois, in equal proportion in each of said States, three hundred thousand dollars;

The committee approved the Tibbatts Amendment, 85 to 35, and reported it to the full House.

The House approved the substitution on February 28, 102 to 92.

The bill was considered by the Senate late on March 1 without amendment, and returned to the House, where the bill had originated, for presentation to the President.

As the Senate and House moved to the end of the 28<sup>th</sup> Congress, some attempts were made, without success, to secure a separate Cumberland Road appropriation bill. The *Globe* reported on the final moments of the session, starting with Representative George Washington Jones, a Democrat of Virginia:

Mr. G. W. JONES inquired if the President had not signed all the bills presented to him. [Cries of “Not all of them.”] There were some he hoped he would not sign.

Next, the *Globe* reported on Representative Robert C. Schenck, a Whig from Ohio:

Mr. SCHENCK moved a suspension of the rules to take up the bill for the continuation of the Cumberland road, which had passed the Senate some time since.

Mr. Weller, from the committee to wait on the President of the United States, said they had discharged their duty, and that they had been instructed, by the President of the United States, to say that he had no further communication to make to Congress, and to express to the members of both Houses his ardent desire that they might reach their respective homes in safety

It was now ten minutes past two.

Following a thank you from the Speaker of the House, the House adjourned *sine die*.

As the comment from Representative Jones indicated, President Tyler had been presented with dozens of bill for his signature, as was traditional, on the last full day of his term. He signed nearly 40 such bills. However, as the cries of “not all” suggested, he neglected to sign one of them: the bill making appropriations for the improvement of navigation on certain harbors and rivers that included the amendment funding continuation of the Cumberland Road. By not signing the bill on March 3, he exercised a pocket veto that required no explanation of his reason. The next day, he would be out of office and the bill was dead.

A small final amount of funding for the Cumberland Road was included in “An Act making appropriations for the civil and diplomatic expenses of Government for the fiscal year ending the thirtieth day of June, eighteen-hundred and forty-five, and for other purposes.” The Act, signed by President Tyler on June 17, 1844, included an appropriation of \$1,359.81 for “arrearages on account of a survey for an extension of the National Road to Jefferson, Missouri.”)

Throughout his term, President Tyler had supported expansion of the United States across the continent. As he left office, he had nearly secured the inclusion of the Republic of Texas, but his successor would have to finalize the technical details of the deal.

On February 20, 1845, he issued a historic veto on a bill funding revenue cutters and steamers. The issue behind the veto was a contract dispute. Contracts had been let for construction of “two revenue boats, to be propelled by wind or steam, as occasion may require – the one for the coast of Georgia and the other for Mobile Bay, to be used as dispatch vessels if necessary.” The bill asserted “that no revenue cutter or revenue steamer shall hereafter be built (excepting such as are now in the course of building or equipment) nor purchased unless an appropriation be first made by law therefor.” Because the two revenue boats were contracted for but not under construction, President

Tyler wanted to avoid any ambiguity about their validity. He vetoed the bill to protect “the sanctity of contracts regularly entered into by the Government.”

On March 3, the House and Senate voted to override the veto, thus enacting the bill without the President’s signature. Thus, President Tyler became the first President to have a veto overridden by Congress.

After his eventful but unfulfilling single term as an “accidental” President whose principles and interpretation of the Constitution often clashed with the party that chose him for political balance but expelled him, he returned to Virginia.

At the start of the Civil War, former President Tyler sided with his State and the southern confederacy. He won a seat in the Provisional Confederate Congress, serving from August 1, 1861 until his death on January 18, 1862, at the age of 71.

### **President James K. Polk**

Annexation of Texas was one of the leading issues as the political parties chose their nominees for President in 1844 – with the issue blending with the central, divisive issue of the times: extension of slavery.

The Whig Party turned to its leading light, Henry Clay, as its nominee. Former Senator Theodore Frelinghuysen of New Jersey was his running mate. The party’s platform did not mention internal improvements, but did cite “the distribution of the proceeds of the sales of the public lands.” Clay had always advanced this idea as, in part, a way of encouraging internal improvements at the State level.

Initially, former President Van Buren was the leading candidate for the Democratic Party’s nomination, but his support diminished when he opposed the Tyler plan for Texas annexation because it might undermine the north-south base of the party over the slavery issue. At the party’s convention in Baltimore, an unexpected candidate emerged as a compromise nominee after eight ballots: James K. Polk. His running mate was former Senator and diplomat George M. Dallas of Pennsylvania.

Representative Polk had left the House and served as Governor of Tennessee (October 1839-October 1841). Undermined by the Panic of 1837, he had little success during his brief tenure. He lost his reelection bid in 1841 and lost again when he sought election in 1843. Thus, the party was taking a chance with the two-time home-State loser.

The party’s platform retained the essence of the first three tenets of the Harrison/Tyler election, including the statement that “the Constitution does not confer upon the General Government the power to commence or carry on a general system of internal improvements.”

A third party candidate, James G. Birney, would have an impact on the election. The Liberty Party candidate was a former Kentucky slave owner and a leader of the American Colonization Society, which advocated voluntary shipment of slaves to a colony in Africa. However, he renounced slavery, moved to Cincinnati, and became editor of the

antislavery newspaper *The Philanthropist*. Polk biographer Walter R. Borneman explained the impact on the election:

Polk managed to straddle the tariff issue and champion Texas; Clay badly fumbled the Texas issue. But the election of 1844 was also decided by party turnout, the increased abolitionist sentiment in the North that fueled the Liberty party, and the Whigs' last minute flirtation with nativism. [Borneman, Walter R., *Polk: The Man Who Transformed the Presidency and America*, Random House, 2008]

President Tyler, as a way of securing annexation of Texas, established the "Democratic-Republican Party," and became its presidential nominee (one slogan was "Tyler and Texas"). The party did not nominate a running mate. However, with sufficient assurances from Polk and former President Jackson that annexation would be a top priority, Tyler dropped out of the race, clearing the way for his supporters to turn to Polk.

With 138 electoral college votes needed to win, Polk won 26 States easily (111 electoral votes), while Clay secured 10 States (92 electoral votes). The remaining States (Michigan, Indiana, Louisiana, Tennessee, and New York) would determine the victor. Borneman wrote:

In three, Birney and the Liberty Party were on the ballot. It is not fair to suggest that *all* of Birney's votes would have gone to Clay if Birney had not been in the race; and even if most had, it probably would not have made any difference in Michigan and Indiana. Their seventeen electoral votes went to Polk by narrow margins.

Polk won Louisiana by 699 votes to secure the State's 6 electoral college votes (voter fraud was partly responsible for the victory).

His home State of Tennessee seemed vital to Polk's prospects, but he lost the State to Clay by a 113-vote margin, leaving Polk with 134 electoral votes and Clay with 105. New York's 36 electoral college votes would determine the result:

On the ballot in the thirteen northern states, James G. Birnie and the Liberty Party received 62,300 votes, or 2.3 percent of the total cast nationwide. More than a quarter of these votes, 15,812, came in New York. Polk bested Clay in the Empire State 237,588 to 232,482, a plurality of 5,106 votes.

Had a large percentage of those Birnie votes gone to Clay, he would have secured victory in New York and nationally by the electoral vote, 141 to 134, despite losing the popular vote. Borneman quoted Abraham Lincoln, a Whig who cited Clay as his political model, as saying, "If the Whig abolitionists of New York had voted with us, Mr. Clay would now be president."

Although the electoral college vote ended up a one-sided 170 to 105, the popular vote was close, with Polk receiving 1,339,494 votes to Clay's 1,300,004.

Borneman summarized the outcome:

While the loss of Tennessee clearly rankled Polk, this third statewide loss was different from his two previous defeats. This time, instead being a defeated gubernatorial candidate, James K. Polk – Tennessee with him or not – was the president-elect of the United States.

Nashville celebrated the victory at a reception on November 29. In response, he said:

I return to you, sir, and to my fellow citizens whose organ you are, my unfeigned thanks for this manifestation of the popular regard and confidence, and for the congratulations which you have been pleased to express to me, upon the termination and result of the late political contest. I am fully sensible, that these congratulations are not, and cannot be, personal to myself. It is the eminent success of our common principles which has spread such general joy over the land. The political struggle through which the country has just passed has been deeply exciting. Extraordinary causes have existed to make it so. It has terminated – it is now over – and I sincerely hope and believe, has been decided by the sober and settled judgment of the American people.

In exchanging mutual congratulations with each other upon the result of the late election, the Democratic party should remember, in calmly reviewing the contest, that the portion of fellow-citizens who have differed with us in our opinions, have equal political rights with ourselves; that minorities as well as majorities are entitled to the full and free exercise of their opinions and judgments, and that the rights of all, whether of minorities or majorities, as such are entitled to equal respect and regard.

By majorities he was referring to the Democratic Party, and by minority he meant the Whig Party:

In rejoicing, therefore, over the success of the Democratic party, and of their principles, in the late election, it should be in no spirit of exultation over the defeat of our opponents; but it should be because, as we honestly believe, our principles and policy are better calculated than theirs to promote the true interest of the whole country.

In the position in which I have been placed, by the voluntary and unsought suffrages of my fellow-citizens, it will become my duty, as it will be my pleasure, faithfully and truly to represent, in the executive department of the government, the principles and policy of the great party of the country who have elevated me to it; but, at the same time, it is proper that I should declare, that I shall not regard myself as the representative of a party only, but of the whole people of the United States; and, I trust, that the future policy of the Government may be such as to secure the happiness and prosperity of all without distinction of party. [Speech of James K. Polk, *The Baltimore Sun*, December 9, 1844; quoting *The Nashville Union*, November 30, 1844]

As he traveled to Washington, he would give variations of this speech in towns celebrating his passage through their community.

Before heading to Washington, President-elect Polk and his wife Sarah traveled to the Hermitage to see his mentor, former President Jackson. Among other things discussed during the 2-day visit, they agreed on the makeup of the Polk Cabinet.

After a reception in Nashville, the President-elect left for Washington on February 1, aboard the chartered steamboat *China*. Following the Cumberland River, the ship took the Polk party to the Ohio River. They arrived in Cincinnati on February 6. *The Baltimore Sun* reported on the stay:

His reception at Cincinnati was quite imposing. Four steamers, crowded with passengers, left [Louisville], according to announcement at eight o'clock, and proceeding down the river, they met the mail-boat about eight miles below, from which point they escorted the President to the city, arriving at the landing between ten and eleven o'clock, where an immense crowd had assembled to witness the spectacle.

The arrival of the boats was announced to the city, and surrounding country by the roar of artillery. Soon after, the President elect, accompanied by the member of Congress elect from the Cincinnati district, and two other gentlemen, entered a barouche and were escorted by the military through the greater portion of the city to the Henrie House, where a large crowd had assembled to witness the reception.

He was then addressed by Judge Reed, who is represented to have delivered a speech descanting on all the political topics of the day, and concluding by introducing His Excellency to the "veteran Democracy of Hamilton county." The reply of Mr. Polk is said to have been most appropriate, and whilst he avoided all allusion to political topics, he stated in substance that he was NOT *the President of a party*, but of the whole people of the United States, that he had been elected by the unsought suffrages of the people, that his only desire was, through the aid of an all-wise Providence, to be instrumental in promoting the prosperity, harmony and union of the United States.

Reaching Wheeling on February 9, the party transferred to lavish carriages for the next leg of their journey along the Cumberland Road.

In Washington, Pennsylvania, the party stayed at the Mansion House on the northeast corner of Main and Chestnut Streets. Searight quoted from the *Examiner's* account of the visit in the edition of February 15, 1845:

President Polk arrived in our borough on Monday evening last, about 5 o'clock, escorted by quite a respectable number of our citizens. The President was accompanied by his lady, J. Knox Walker, his private secretary, and Master Marshall Polk, comprising the President's family; also Colonel Butler, of Kentucky, Judge Hubbard, of Alabama, and Messrs. T. K. Stevenson, J. G. Harris

and J. N. Esselman. The arrival of the President having been sooner than was anticipated, and intelligence of the same having reached us on Sabbath last, the arrangements on the part of our citizens were not so complete or extensive as they would have been under other and more favorable circumstances.

Upon the arrival of the President at the Mansion House he was addressed by Dr. Wishart, as chairman of the committee of reception, in a spirited and appropriate manner, to which the President responded to the evident gratification of the large assembly of persons who were present. In the course of his remarks, Colonel Polk alluded to the unbounded feeling of gratitude which filled his bosom for the distinguished partiality which had been extended toward him by his fellow citizens; to the great responsibility which that partiality had devolved upon him; to his implicit confidence in that power which controls the destinies of individuals as well as nations; to his determination to act for the best interests of our beloved country, and the vital importance of freedom of opinion and contrariety of sentiment among a Republican people. In concluding his remarks, the President expressed a strong desire to interchange congratulations with as many of our citizens, of all parties, as time and circumstances would permit.

After the formal reception was completed the President was conducted into the Mansion House, and during the evening was waited upon by many hundreds of our citizens, from town and country, without party distinction. Many of the ladies of our borough, with the Principal, assistant teachers and young ladies of our Female Seminary, also, called upon Mrs. Polk, whose plain, dignified and fascinating deportment and intelligent conversation rendered her company exceedingly pleasant. Mrs. Polk has certainly not been too highly complimented, by the many notices which have been bestowed upon her, as a lady most admirably suited to the discharge of the peculiar duties which await her as the wife of the President.

On Tuesday morning at 9 o'clock the President and suite left our borough, in good health and spirits, for Uniontown, at which place they remained over night.

Searight wrote about the Polk party's stay in Uniontown:

James K. Polk, with his family and traveling companions, stopped over night at The National when on his way to the capital to be inaugurated President, in the spring of 1845. A large number of citizens assembled on the occasion to meet the coming President and were addressed by him from the high steps in front of the house.

Two miles west of Piney Grove, where the Cumberland Road and old Braddock Road coincide near Grantsville, Maryland, "James K. Polk dined at the Tomlinson house in the spring of 1845, on his way to Washington to be inaugurated President." Tomlinson Tavern at Little Meadows "is an old stand; as old as the National Road." Searight added, "The occasion brought together a large concourse of mountain people, who were addressed by the President-elect."

At Cumberland, the Polk party switched to the Baltimore and Ohio Railroad for the remaining trip to Washington. When the train reached Relay, Maryland, on February 13, the party was greeted by an artillery salute by a Baltimore delegation and 2,000 people. (The railroad company had built Relay, the first railroad city in the country, during the days when trains were pulled by horses. At this point, trains stopped to change horses. Steam engines soon replaced the horses, but stopped in Relay for refueling.) The party that greeted the President-elect had left from the Pratt Street depot in Baltimore in the late afternoon in an extra train that carried the 42 members of the welcoming committee sent to meet the presidential party at Relay House and invite him to the city. *The Baltimore Sun* reported:

The train consisted of six cars, which were crowded to excess. The number who went out in the extra, and previously in the Frederick train, was estimated at about four hundred, and large accessions were made by the surrounding country, in all sorts of vehicles and on horseback, and also by the regular train from Baltimore city to Washington.

When the train arrived in Relay from Cumberland, the committee met President-elect Polk on the railroad platform. The head of the committee, David Stuart, “made an eloquent and impressive address to President Polk, and tendered him the hospitalities of the people of Baltimore.” The President-elect “made a brief reply, happily conceived and well expressed”:

His thanks for the invitation were delivered in a tone of sincerity, and not less sincere appeared his exhibition of feeling in reference by implication, to the democratic fidelity of Baltimore. Yet he made no mention of any party topic, nor any direct reference to the matters, or any of them, upon which parties are at issue. He appeared to be perfectly self-possessed, he was evidently somewhat moved, and while he courteously declined the invitation to visit Baltimore now, on the ground that it would be inconsistent with the arrangements of his journey to the national metropolis, he promised to avail himself of some other opportunity to accept of its hospitality.

He shook hands “with a vast multitude of enthusiastic friends and admirers.” Soon Vice President-elect Dallas arrived on the regular train from Baltimore. He met with President-elect Polk for what was believed to be the first time since the election. Shortly after, the train to Washington was announced and the two leaders, with their parties, boarded the train. It departed Relay House “amid the cheers of the excited and enthusiastic multitude.” The Baltimore extra returned the committee and others to the city:

It is proper here to observe, that the arrival and departure of both the distinguished gentlemen, and of the Baltimore committee, were signaled by repeated discharges of artillery, and that Mrs. Polk, who remained in the cars, continued to be the centre of attraction to an admiring crowd, many of whom took her by the hand, shook it with an enthusiasm not inferior in intensity to that

which greeted her fortunate husband. ["Local Matters," *The Baltimore Sun*, February 14, 1845]

The party reached Washington in the evening of February 13. Representative John Quincy Adams, who did disparaged the President-elect, wrote of the arrival in his diary:

Mr. James Knox Polk arrived last night in this city. His arrival was notified by a Democratic cannonade upon the Capitol Hill, and a Democratic escort from the depot of the railroad-cars to his lodgings at Coleman's National Hotel. He brought with him his wife and a small retinue, and was accompanied by the Vice-President elect, George Mifflin Dallas, who, coming from his residence at Philadelphia, joined him at the Relay House, nine miles on this side of Baltimore. The parade of his reception was all partisan, and a display of one Democratic member of Congress to represent each State and the Territory of the Union formed a congenial part of the cortege from the cars to his lodgings. He had affected to speak, at Nashville and at Cincinnati, of being the President of the nation, and not of a party; but he is sold soul and body to that grim idol, half albino, half negro, the compound of Democracy and of slavery, which, by the slave-representation in Congress, rules and ruins the Union. [February 14, 1845]

(President-elect Polk had been in Baltimore for the Democratic Party's nominating convention in May 1844. Candidates in that era did not attend political conventions or express an interest in the position, but Polk had not sought the nomination and did not expect to be nominated, much less selected. He attended as a member of the party. He would visit the city as President in October 1847 at the start of a tour by railroad of the Northeast.)

By 1845, the idea of an inaugural parade that had begun just 4 years earlier, was on its way to becoming traditional. The *Sun* described the scene:

Our whole population, with the mighty multitude which have assembled from every part of the Union – and from Texas too – have poured themselves out to unite in the general joy. Nor is the beautiful harmony of the occasion impured by the slightest demonstration of party predilections – men of all political preferences associate together – forget all the differences of the past – and cherish for each other an honorable friendship . . . .

The advent of the day was announced by a National salute from Capitol Hill – the aspect of the weather was unpromising, but the streets and avenues were soon thronged with persons of all sexes and classes . . . . All business was suspended – the National banner waved from all the public buildings, and many private residences were decorated with beautiful emblems of various kinds.

Signal guns at 8 a.m. summoned the troops and associations to report to their assigned spots. At 10, a burst of cannons started the troops and bands moving down Pennsylvania Avenue. Rain began to fall:

The appearance of this fine body of brave volunteers, as they were drawn up in line in front of Coleman's Hotel [the National], on Pennsylvania avenue, awaiting the embarkation of the President-elect, in his carriage, could not be surpassed by the volunteers of our own or any other country. Their beautiful uniforms, bright arms, and soldier-like deportment, strengthened the conviction of every mind, that with such soldiers, the Republican need never fear a foreign foe.

President Tyler and President-elect Polk joined the procession along the avenue. The President-elect stood most of the way, waving to the cheering crowd, which greeted them with "frequent bursts of enthusiasm." The parade included a small troop of "veteran soldiers of the Revolution, with hoary locks, and steps apparently unflinched by age"; clergy from the District and neighboring States; the members of President Tyler's Cabinet who "received many indications of the people's regard"; members of the Supreme Court; the diplomatic corps of many countries (their "various costumes were exceedingly rich and superb, and made the eye of many a gay lady assume additional brilliancy"); professors and students of Georgetown College; representatives from Alexandria (then still part of the District of Columbia); members of the 29<sup>th</sup> Congress, all preceding "citizens of the District, followed by a large cavalcade of horsemen."

Dignitaries entered the Senate chamber, with Polk, Tyler, and Dallas arriving at 11:40. First, Vice President-elect Dallas took the oath of office and addressed the Senate. Author Robert W. Merry, in his biography of President Polk, described the Vice President's statement:

At around eleven-forty five, the Senate's president pro tempore, Willie P. Mangum of North Carolina, administered the oath of office to Dallas, who then delivered a brief speech marked by appropriate democratic platitudes mixed with appropriate expressions of humility. "The citizen who it has pleased a people to elevate by their suffrages from the pursuits of private and domestic life," he intoned, "may best evince his grateful sense of the honor . . . by devoting his faculties, moral and intellectual, resolutely to their service. This I shall do; yet with a diffidence unavoidable to one conscious that almost every step in his appointed path is to him new and untried."

History doesn't record whether, as Dallas droned on, some in the audience perhaps found their minds wandering to thoughts of forthcoming political battles.

After Vice President Dallas's remarks, the dignitaries moved to the temporary platform erected over the east portico of the Capitol. Merry described the scene:

First to emerge, to "cheers of welcome," were Tyler and Polk, walking side by side but with the president-elect occupying the ceremonial position to the left of the outgoing president. A British journalist in attendance described Polk as "looking well, though thin and anxious in appearance." Behind them were their wives and behind them various dignitaries. Sarah Polk, though not a true beauty, possessed a magnetism that had served her well as a politician's wife.

At the appointed time, President-elect Polk began his Inaugural Address in a rain, looking out at a sea of umbrellas. A servant held an umbrella over the incoming President. Polk, nicknamed “Young Hickory” for his close association with the former President, explained one of the principles that would guide his administrative policy:

The Constitution itself, plainly written as it is, the safeguard of our federative compact, the offspring of concession and compromise, binding together in the bonds of peace and union this great and increasing family of free and independent States, will be the chart by which I shall be directed. It will be my first care to administer the Government in the true spirit of that instrument, and to assume no powers not expressly granted or clearly implied in its terms.

He added:

Ours was intended to be a plain and frugal government, and I shall regard it to be my duty to recommend to Congress and, as far as the Executive is concerned, to enforce by all the means within my power the strictest economy in the expenditure of the public money which may be compatible with the public interests.

He did not mention internal improvements, but these words made clear that his views had not changed since his days in the House of Representatives.

He also stated his views on tariffs, always one of the most controversial issues in the 19<sup>th</sup> century – finding the balance between the level of tariff revenue that would support government activities and the higher level that would impose sufficient protective barriers to imported goods to encourage domestic production:

I have also declared my opinion to be "in favor of a tariff for revenue," and that "in adjusting the details of such a tariff I have sanctioned such moderate discriminating duties as would produce the amount of revenue needed and at the same time afford reasonable incidental protection to our home industry," and that I was "opposed to a tariff for protection merely, and not for revenue."

He also made clear that his continental ambitions included Texas, which he discussed at length, and the territory beyond the Rocky Mountains:

The jurisdiction of our laws and the benefits of our republican institutions should be extended over them in the distant regions which they have selected for their homes. The increasing facilities of intercourse will easily bring the States, of which the formation in that part of our territory can not be long delayed, within the sphere of our federative Union. In the meantime every obligation imposed by treaty or conventional stipulations should be sacredly respected.

Chief Justice Taney administered the oath of office. “Then he was president, and another 28-gun salute roared its affirmation.” At 49, he was the youngest man to hold the office to that date. Merry continued:

The new president and the man he had just replaced left the platform, again side by side. But this time Polk occupied the ceremonial position at Tyler's right. The official parade formed up once again . . . and the president and first lady were escorted back to the White House, where they greeted visitors through much of the afternoon. The evening agenda included two inaugural balls – one at Carusi's Hall, at ten dollars a ticket; another at the National Theatre at five dollars.

History was made in another way during the ceremony. It was the first time the Inauguration was transmitted by "magnetic telegraph." Samuel F. B. Morse had strung telegraph wires from Baltimore to Washington in 1844 in time for the Democratic Party's nominating convention. As Merry explained, Washingtonians were thrilled "with the latest news of developments there":

On that rain-soaked day of Polk's inauguration, Morse had been on the platform, hunched over his little gadget, clanking out detailed descriptions of the inaugural events for an expectant crowd in Baltimore and for subsequent readers of newspaper extras rushing to the streets with unprecedented immediacy.

Senator Benton said of the device that it was "the improvement that annihilates distance."

Invitations to the inauguration had gone to ex-Presidents, but none attended. Representative John Quincy Adams, who lived in Washington, wrote in his diary that he had received the invitation, but "I did not avail myself of the Invitation" [March 4, 1845]

["Proceedings of the Inauguration of President Polk," *The Baltimore Sun*, March 4, 1845; "The Inauguration (2)," *The Baltimore Sun*, March 6, 1845; Merry, Robert W., *A Country of Vast Designs: James K. Polk, the Mexican War, and the Conquest of the American Continent*, Simon and Schuster Paperbacks, 2010]

According to *The Baltimore Sun* account, former President Tyler and his family were to leave Washington on March 5 on the steamship *Osceola*, but did not reach the pier in time. They instead traveled to Baltimore to catch a steamship out.

### **President Polk on Internal Improvements**

Before the election, Polk stated that he would serve only one term, which he thought would be enough to achieve his domestic and foreign goals. As it happened, he was largely correct. For example, the Independent Treasury Act of 1846, which President Polk signed on August 6, provided for the Treasury to hold the government's money instead of in banks, as implemented by President Jackson, or corporations, as in the national banks. Borneman summarized:

In retrospect, it was somewhat ironic that a subject that had been Andrew Jackson's leading domestic issue for a decade, and that had caused John Tyler to split with the Whig party, should now be passed with so little emotion. In the end, the tariff and other legislation overshadowed it, and even some Whigs were

said to be in favor, although they dared not vote as such. Polk did not even record its passage in his usually thorough diary. Nonetheless, the Independent Treasury Act of 1846 remained in effect until 1913, when the current Federal Reserve System was created.

As seen during House debates on the Cumberland Road, President Polk believed the Federal Government had limited authority on internal improvements:

As with the issue of a national bank, Polk had allied himself early on with Old Hickory on the issue of internal improvements. Government support for such projects as roads, canals, and railroads was anathema to Jacksonian Democrats. That was the way that Henry Clay and his Whigs proposed to spend the common man's money.

The river and harbor bills were, as Borneman wrote, "the largest pieces of pork barrel legislation yet to come before the American Congress." Nevertheless, political reality caused many Democrats to believe they were "due some assistance from the public trough." Borneman quoted Representative John Wentworth of Illinois for an oft-repeated quote on the subject:

Congress should initiate as many projects as possible, thus forcing later Congresses to complete them in order to prevent the earlier appropriations going to waste.

In 1846, the House passed a rivers and harbors bill, 109 to 90, appropriating \$1,378,450 for 40 projects "many of them small harbors on the Great Lakes." Borneman pointed out that this was "an enormous amount, considering that the entire national debt was only about \$17 million." The Senate approved the bill, 34 to 16, on July 24. Four days later, the Senate approved President Polk's tariff bill securing tariffs for revenue, rather than protection. He considered the tariff bill "vastly the most important domestic measure of my administration."

But that left the rivers and harbors bill awaiting his signature. On August 3, 1846, he vetoed the bill titled "An act making appropriations for the improvement of certain harbors and rivers." He began his veto message with a summary of the projects:

On examining its provisions and the variety of objects of improvement which it embraces, many of them of a local character, it is difficult to conceive, if it shall be sanctioned and become a law, what practical constitutional restraint can hereafter be imposed upon the most extended system of internal improvements by the Federal Government in all parts of the Union. The Constitution has not, in my judgment, conferred upon the Federal Government the power to construct works of internal improvement within the States, or to appropriate money from the Treasury for that purpose. That this bill assumes for the Federal Government the right to exercise this power can not, I think, be doubted. The approved course of the Government and the deliberately expressed judgment of the people

have denied the existence of such a power under the Constitution. Several of my predecessors have denied its existence in the most solemn forms.

The general proposition that the Federal Government does not possess this power is so well settled and has for a considerable period been so generally acquiesced in that it is not deemed necessary to reiterate the arguments by which it is sustained. Nor do I deem it necessary, after the full and elaborate discussions which have taken place before the country on this subject, to do more than to state the general considerations which have satisfied me of the unconstitutionality and inexpediency of the exercise of such a power.

The Federal Government was “one of limited powers” expressly granted by the Constitution “or are properly incident to the expressly granted powers and necessary to their execution.” The first question to consider, according to James Madison, was whether the power was expressed directly in the Constitution. If not, the second question was whether it is incident to that power and necessary to its execution. If not, Congress cannot adopt laws exercising that power. President Polk supported appropriations for lighthouses, beacons, and other devices for improving the bays, inlets, and harbors “on our ocean and lake coasts immediately connected with our foreign commerce.” When Congress seeks improvements in the interior, unconnected with foreign trade and not needed for the Navy and commercial marine activities, “the difficulty arises in drawing a line beyond which appropriations may not be made by the Federal Government”:

One of my predecessors, who saw the evil consequences of the system proposed to be revived by this bill, attempted to define this line by declaring that “expenditures of this character” should be “confined below the ports of entry or delivery established by law.”

Acting on this restriction, he withheld his sanction from a bill which had passed Congress “to improve the navigation of the Wabash River.” He was at the same time “sensible that this restriction was not as satisfactory as could be desired, and that much embarrassment may be caused to the executive department in its execution, by appropriations for remote and not well-understood objects.

The predecessor in question was, of course, President Jackson, but President Polk found that the distinction made in his predecessor’s Wabash River veto “was subject to be evaded and rendered comparatively useless in checking the system of improvements which it was designed to arrest.” In trying to make that distinction, he said:

To sanction the bill with such provisions would be to concede the *principle* that the Federal Government possesses the power to expend the public money in a general system of internal improvements, limited in its extent only by the ever-varying discretion of successive Congresses and successive Executives. It would be to efface and remove the limitations and restrictions of power which the Constitution has wisely provided to limit the authority and action of the Federal Government to a few well-defined and specified objects. Besides these objections, the practical evils which must flow from the exercise on the part of the Federal Government of the powers asserted in this bill impress my mind with a

grave sense of my duty to avert them from the country as far as my constitutional action may enable me to do so.

It not only leads to a consolidation of power in the Federal Government at the expense of rightful authority of the States, but its inevitable tendency is to embrace objects for the expenditure of the public money which are local in their character, benefiting but few at the expense of the common Treasury of the whole. It will engender sectional feelings and prejudices calculated to disturb the harmony of the Union. It will destroy the harmony which should prevail in our legislative councils.

Aside from the constitutional objections, President Polk made clear he had other objections “of a serious nature.” The bill appropriated between \$1 million and \$2 million for projects that were “of no pressing necessity, and this is proposed at a time when the country is engaged in a foreign war,” namely the war with Mexico. Under such circumstances, he did not want to “waste” financial resources “on comparatively unimportant objects.” He also wanted to “avoid the accumulation of a large public debt, the existence of which would be opposed to the interests of our people as well as to the genius of our free institutions.”

Further, if he approved the bill, it would “inevitably lead to large and annually increasing appropriations and drains upon the Treasury, for it is not to be doubted that numerous other localities not embraced in its provisions, but quite as much entitled to the favor of the Government as those which are embraced, will demand, through their representatives in Congress, to be placed on an equal footing with them.”

The bill’s supporters tried to overturn the veto, but were unsuccessful.

In an 1892 history of river and harbor acts, Professor Emory R. Johnson wrote:

President Polk’s war on the river and harbor bill was more bitter than President Tyler’s had been . . . . He favored and advocated at length a return to the policy pursued previous to 1822. This ended river and harbor legislation till 1854, when a bill passed by Congress received the veto of President [Franklin] Pierce. [Johnson, Emory R., “River and Harbor Bills,” *The Annals of the American Academy of Political and Social Sciences*, Vol. 2 (May 1892)]

On internal improvements, President Polk was aligned with President Jackson’s views, namely opposed. Professor Larson explained:

According to his own lights Polk never had embraced the thinly veiled excuses by which good Democrats delivered pork while clinging to the strict Jacksonian creed. Increasingly buffeted by factional tensions, East-West jealousies, and the rise of a northern antislavery or “free soil” wing, the Democratic Party had both nominated Polk and tried to clarify its principles at the 1844 Baltimore Convention. Out of a timeless opposition to Henry Clay and his American System had emerged at that convention a blanket condemnation of the power “to commence or carry on a general system of internal improvements,” a rule potentially more exacting than Jackson’s or Calhoun’s.

Nevertheless, members of Polk's party, as well as the Whigs, believed in the value of internal improvements, whether to help development of the western States, to pull the diverse country together, or as Borneman had noted, for political advantage in upcoming elections.

During his 4 years in office, President Polk vetoed only three bills, two of which involved internal improvements.

On March 3, 1847, the final day of the 29<sup>th</sup> Congress, H.R. 84 was passed appropriating funds to continue works in the territory of Wisconsin and over half a million dollars for harbor and river projects in several States. President Polk pocket vetoed the bill.

When Congress returned later that year, President Polk sent a veto message to Congress on December 15, 1847, explaining his pocket veto of "An act to provide for continuing certain works in the Territory of Wisconsin, and for other purposes." He began by summarizing the bill:

Although from the title of the bill it would seem that its main object was to make provision for continuing certain works already commenced in the Territory of Wisconsin, it appears on examination of its provisions that it contains only a single appropriation of \$6,000 to be applied within that Territory, while it appropriates more than half a million of dollars for the improvement of numerous harbors and rivers lying within the limits and jurisdiction of several of the States of the Union.

At the preceding session of Congress it became my duty to return with my objections to the House in which it originated a bill making similar appropriations and involving like principles, and the views then expressed remain unchanged.

In pocket vetoing the new bill, the former chairman of the Committee of Ways and Means pointed out:

The policy of embarking the Federal Government in a general system of internal improvements had its origin but little more than twenty years ago. In a very few years the applications to Congress for appropriations in furtherance of such objects exceeded \$200,000,000. In this alarming crisis President Jackson refused to approve and sign the Maysville road bill, the Wabash River bill, and other bills of similar character. His interposition put a check upon the new policy of throwing the cost of local improvements upon the National Treasury, preserved the revenues of the nation for their legitimate objects, by which he was enabled to extinguish the then existing public debt and to present to an admiring world the unprecedented spectacle in modern times of a nation free from debt and advancing to greatness with unequalled strides under a Government which was content to act within its appropriate sphere in protecting the States and individuals in their own chosen career of improvement and of enterprise.

The present bill did not appropriate funds for a road or canal, but he could see that if it became law, "it is not easy to perceive the difference in principle or mischievous tendency between appropriations for making roads and digging canals and appropriations

to deepen rivers and improve harbors.” The history of congressional involvement in internal improvements was “full of eloquent warnings.” Several States embarked on systems of roads and canals, not by taxing residents, but through debt to “ruinous” effect, particularly during economic panics:

If the abuse of power has been so fatal in the States, where the systems of taxation are direct and the representatives responsible at short periods to small masses of constituents, how much greater danger of abuse is to be apprehended in the General Government, whose revenues are raised by indirect taxation and whose functionaries are responsible to the people in larger masses and for longer terms.

By the time President Jackson put a check on the practice, “it had begun to be considered the highest merit in a member of Congress to be able to procure appropriations of public money to be expended within his district or State, whatever might be the object.” He added:

We should be blind to the experience of the past if we did not see abundant evidences that if this system of expenditure is to be indulged in[,] combinations of individual and local interests will be found strong enough to control legislation, absorb the revenues of the country, and plunge the Government into a hopeless indebtedness.

One example of the abuse was how Congress stretched terms such as “harbors” and “rivers” to secure funds for bodies of water that in no other context than a Federal appropriations act would be so called. This illustrated how appropriations for internal improvements could be “perverted to the accomplishment of the worst of political purposes.” He continued:

During the few years it was in full operation, and which immediately preceded the veto of President Jackson of the Maysville road bill, instances were numerous of public men seeking to gain popular favor by holding out to the people interested in particular localities the promise of large disbursements of public money. Numerous reconnoissances and surveys were made during that period for roads and canals through many parts of the Union, and the people in the vicinity of each were led to believe that their property would be enhanced in value and they themselves enriched by the large expenditures which they were promised by the advocates of the system . . . . Whole sections of the country were thus sought to be influenced, and the system was fast becoming one not only of profuse and wasteful expenditure, but a potent political engine.

Inevitably, Congress would be called on “under the cloak of public good” for all sorts of improvements. “To enrich neighborhoods by spending within them the moneys of the nation will be the aim and boast of those who prize their local interests above the good of the nation . . . .” No such system could be administered “with any approach to equality among the several States and sections of the Union.”

Further, “a greater practical evil” would arise in how the projects were chosen:

The most artful and industrious would be the most successful. The true interests of the country would be lost sight of in an annual scramble for the contents of the Treasury, and the Member of Congress who could procure the largest appropriations to be expended in his district would claim the reward of victory from his enriched constituents. The necessary consequence would be sectional discontents and heartburnings, increased taxation, and a national debt never to be extinguished.

Considering “these portentous consequences,” he thought “this course of legislation should be arrested, even were there nothing to forbid it in the fundamental laws of our Union.”

If practical considerations did not argue against approval, he would have vetoed the bill because the Constitution indicates a process for improving rivers and harbors within the States, “a process not susceptible to the abuses necessarily to flow from the assumption of the power to improve them by the General Government.” He was referring to the provision of the Constitution providing that “no State shall, without the consent of Congress, lay any duty of tonnage.” President Polk wrote, “Here is a safe provision for the improvement of harbors and rivers in the reserved powers of the States and in the aid they may derive from duties of tonnage levied with the consent of Congress.” He cited the many examples of congressional consent, the first being for Rhode Island in 1790 and the most recent in 1843 for Maryland. “That the power was constitutionally and rightfully exercised in these cases does not admit of a doubt.”

Previous Presidents had sometimes approved appropriations for internal improvements that they did not believe were permitted under the Constitution, but President Polk believed the government should return “to the early and approved construction of the Constitution.”

He recalled that he had been in the House when the Maysville bill was considered:

When the bill authorizing a subscription on the part of the United States for stock in the Maysville and Lexington Turnpike Company passed the two Houses, there had been reported by the Committees of Internal Improvements bills containing appropriations for such objects, inclusive of those for the Cumberland road and for harbors and light-houses, to the amount of \$106,000,000. In this amount was included authority to the Secretary of the Treasury to subscribe for the stock of different companies to a great extent, and the residue was principally for the direct construction of roads by this Government. In addition to these projects, which had been presented to the two Houses under the sanction and recommendation of their respective Committees on Internal Improvements, there were then still pending before the committees and in memorials to Congress presented but not referred[,] different projects for works of a similar character, the expense of which can not be estimated with certainty, but must have exceeded \$100,000,000 . . . .

President Jackson’s powerful and disinterested appeals to his country appear to have put down forever the assumption of power to make roads and cut canals, and to have checked the prevalent disposition to bring all rivers in any degree navigable within the control of the General Government. But an immense field

for expending the public money and increasing the power and patronage of this Government was left open in the concession of even a limited power of Congress to improve harbors and rivers . . . .

He pointed out that Madison's report on the debates during the Constitutional Convention, published in 1840, did not contain any evidence that the founders intended to grant the General Government the power to build and maintain internal improvements within the States. The founders saw themselves as protecting the rights of their States and did not wish to concede any right of jurisdiction to the General Government over their soil:

A proposition was made in the Convention to provide for the appointment of a "Secretary of Domestic Affairs," and make it his duty, among other things, "to attend to the opening of roads and navigation and the facilitating [of] communications through the United States." It was referred to a committee, and that appears to have been the last of it. On a subsequent occasion a proposition was made to confer on Congress the power to "provide for the cutting of canals when deemed necessary," which was rejected by the strong majority of eight States to three. Among the reasons given for the rejection of this proposition, it was urged that "the expense in such cases will fall on the United States and the benefits accrue to the places where the canals may be cut."

During the consideration of this proposition a motion was made to enlarge the proposed power for "cutting canals" into a power "to grant charters of incorporation when the interest of the United States might require and the legislative provisions of the individual States may be incompetent;" and the reason assigned by Mr. Madison for the proposed enlargement of the power was that it would "secure an easy communication between the States, which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones, as far as possible, ought to follow."

The original proposition and all the amendments were rejected, after deliberate discussion, not on the ground, as so much of that discussion as has been preserved indicates, that no direct grant was necessary, but because it was deemed inexpedient to grant it at all. When it is considered that some of the members of the Convention, who afterwards participated in the organization and administration of the Government, advocated and practiced upon a very liberal construction of the Constitution, grasping at many high powers as implied in its various provisions, not one of them, it is believed, at that day claimed the power to make roads and canals, or improve rivers and harbors, or appropriate money for that purpose. Among our early statesmen of the strict-construction class the opinion was universal, when the subject was first broached, that Congress did not possess the power, although some of them thought it desirable.

President Jackson had acknowledged the precedents established by earlier Presidents and Congresses, but his veto of the Maysville bill and other internal improvement measures had "reversed the precedents which existed prior to that time on the subject of internal improvements."

President Polk also rejected the views of those who thought internal improvement appropriations could be justified because the Constitution granted Congress the “power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.” The authority to “regulate,” he said, “presupposes the existence of commerce, and, of course, the means by which and the channels through which commerce is carried on.” He added that the term did not confer “creative power”:

If the definition of the word “regulate” is to include the provision of means to carry on commerce, then have Congress not only power to deepen harbors, clear out rivers, dig canals, and make roads, but also to build ships, railroad cars, and other vehicles, all of which are necessary to commerce. There is no middle ground.

In President Washington’s first administration under the Constitution, the provision was applied “by prescribing general rules by which commerce should be conducted,” for example by treaties with other countries and among the States by laws involving “the coasting trade and the vessels employed therein, and for the better security of passengers in vessels propelled by steam, and by the removal of all restrictions upon internal trade.” From the earliest years to the present, President Polk explained, that is how the constitutional grant of power had been administered.

If a power to appropriate funds for internal improvements was desirable, a constitutional amendment was the appropriate means for conveying that power to the Congress. “This course has been recommended successively by Presidents Jefferson, Madison, Monroe, and Jackson, and I fully concur with them in opinion.”

At the time, Abraham Lincoln of Illinois was a Whig Party member of the House of Representatives serving on the Committee on Post Offices and Post Roads (1847-1849). As a Whig, he supported internal improvements, which put him at odds with President Polk. On June 20, 1848, Representative Lincoln took to the floor of the House to deliver an address on internal improvements in response to President Polk’s explanation on December 15, 1847, of his veto of the Wisconsin bill of December 15, 1847. The story of Lincoln versus Polk is told on this Web site at <https://www.fhwa.dot.gov/highwayhistory/lincolnvpolk.pdf>.

President Polk’s third veto occurred on August 8, 1846. He vetoed S. 68, a bill to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to July 31, 1801. The veto was sustained.

### **The Incomplete Veto**

Like President Monroe, President Polk anticipated that he would have another opportunity to address congressional abuses of internal improvements legislation. The issue was sufficiently important to him that he began working on a veto message in 1848 that he would have in place when the next internal improvements bill arrived. That opportunity never arrived, leaving a partial draft in his handwriting. He appended this note for the record:

These sheets were prepared in July 1848, in the expectation that Congress would pass some one of the numerous internal improvement bills which were before them, and which if passed I could not approve and sign. I intended to veto any such Bill, and with a view to be prepared these sheets were written. Other views were to be added. Congress however adjourned without passing such a bill, and this paper was therefore not used.

In the draft, he pointed out that the Constitution was “silent on the subject. It is not pretended that there is any express grant of this power in its provisions.” As a result, he “came to the conclusion that the assumption of such a power by the general Government was of modern invention[,] a dangerous and unwarrantable interpolation upon the Constitution.”

For proof, he looked to the first Congress, meeting in the temporary capital of New York City in 1789. The Congress included many members who had participated in the Constitutional Convention “and must be presumed to have understood its true intent and meaning.” He added, “These proceedings afford evidence, both positive and negative, that not a member of that body conceived that they possessed any such power.”

To back this assertion, he discussed the debate on selecting a permanent seat of the country’s capital, with the leading candidates being a location along the Susquehanna River in Pennsylvania and one along the Potomac River. The House initially favored a location along the Susquehanna River, but an amendment was moved that the law designating the site would not take effect “until the States of Pennsylvania and Maryland shall pass acts providing for the removing of the obstructions” from the river below the site:

A discussion ensued which shows as clearly as language can show that Congress did not then consider themselves authorized to improve a river, even for the important purpose of opening the navigation between the seat of Government and the ocean . . . .

The amendment became part of the bill, which passed the House on September 22, 1789, 31 to 17, but was postponed in the Senate and not approved as the Potomac River location was selected:

The consideration and discussion of this bill proves conclusively that no member of Congress, being the first that ever met under the Constitution, intimated or expressed an opinion that under the grant of power “to regulate commerce,” or any other grant, Congress had the power to provide for the removal of the obstructions in the Susquehanna by its own legislation. On the contrary, every member either expressly or silently conceded that the power rested entirely and exclusively with the States, and that the highest interests of the United States would be at their mercy, unless removed by an express stipulation, such as was incorporated in the bill as it passed the House of Representatives.

The idea now so extensively entertained that in “regulating commerce among the States” Congress might assume the power and seize upon and exercise

jurisdiction over the harbours and rivers of the States had not then occurred to the most latitudinarian constructionist.

He summarized his argument on this point by saying:

It is not to be conceived, if the First Congress entertained the opinion that the General Government possessed the power to remove obstructions in rivers, that this provision requiring the States within those limits [of] the Susquehanna run to do it, would have been proposed and inserted in this bill . . . .

The first Congress did pass “An act for the establishment and support of Light Houses, Beacons, Buoys and Public Piers,” which President Washington signed on August 7, 1789, but it provided that before work could commence, the States must cede the land to the general government. This restriction “proves that Congress did not then feel at liberty to exercise these powers over any territory but its own, over places where not only the right of soil but the jurisdiction over it had been ceded to the United States.”

All subsequent bills covering activities of these types through the early 1820s contained a similar restriction. By the mid-1820s, Congress passed similar legislation for actions “without possessing a title to the lands, and without obtaining from the States a cession of jurisdiction over them.” The first such legislation without that distinction had been “An act for improving certain harbors and the navigation of certain rivers and creeks, and for authorizing surveys to be made of certain bays, sounds, and rivers therein mentioned.” President Adams signed the bill on May 20, 1826:

But from whatever grant of power in the Constitution the First Congress deduced the right to construct “light-houses, beacons, buoys and public piers” on their own soil, they would doubtless have been much surprised had they been told that the power thus exercised was identical with the power to improve harbours, remove obstructions from rivers, dig canals and make roads upon the soil of the States, without the grant of either the title to the land on which these improvements were made, or the cession of jurisdiction over it.

He added, “this interpretation has since that time been attempted to be confirmed by a latitudinous and unwarranted construction of the language employed in the grants of power to the Federal Government contained in the Constitution . . . .”

The paper then went through some of the justifications for internal improvements such as the annual appropriations for improvements of rivers and harbors. He began with the clause granting Congress the power to “regulate commerce with foreign nations, among the several States, and with the Indian tribes.” He mentioned that his veto message of December 15, 1847, had shown “the true meaning of the terms employed in that grant”:

I showed from the import of the terms themselves as well as from the authority of our most distinguished statesmen that upon no fair construction could they convey by implication the enormous, corrupting and dangerous power now claimed.

If the phrase did convey an incidental or implied power of “excavating the channels of rivers or harbours, digging canals or making roads within the jurisdiction of the States,” it necessarily implied:

. . . that this Government has not only the . . . right to appropriate money but to employ workmen to execute the proposed improvement, and as an incident to that again to protect their workmen by their own laws from the interference of State jurisdiction over them; and, if a criminal offense be committed by them or by citizens of the State against them, to try and punish the offender in the federal courts, to the exclusion of the jurisdiction and rightful authority of the States over them.

He observed what “a mighty power” the Constitution had conveyed from “the plain and simple words to ‘regulate commerce.’” And from that incidental power, another was derived “until incident is piled on incident, engulfing in the general Government powers which were reserved to the States and totally sweeping down and destroying all State power and jurisdiction over all such rivers, harbours and other places where the U.S. choose to direct improvements to be made . . .”:

To say that the power to “regulate commerce among the States” conveys the power to enter upon their rivers and harbours, and break up their soil, by roads and canals, is as inaccurate as to say that the power to “regulate commerce with foreign nations” conveys to our Congress the power to improve the Thames, or deepen the harbour of Liverpool, or make roads and canals in Germany.

After all, the power to regulate commerce with foreign nations was in the same clause of the Constitution as the phrase about regulating commerce among the States, and should be interpreted in the same way. “This latitude of construction would bring within the scope of the power of our Congress the improvement of all the harbours and rivers on the Globe.” As he put it, “What a mighty power is thus attempted to be fixed upon the Constitution by this system of constructive or implied powers!”

Next, President Polk explored the justification for river and harbor improvements based on Section 10 of Article II: “No state shall, without the consent of the Congress, lay any imposts on imports or exports, except what may be absolutely necessary for executing its inspection laws . . .” As he pointed out, he had discussed this provision in his veto message of December 15, 1847. The original 13 States had exercised this power, with congressional consent, repeatedly:

While for more than thirty years after the adoption of the Constitution Congresses were “regulating commerce,” by a species of legislation altogether different, the States were opening and improving the channels of commerce within their limits by their own means, and among these by the tonnage duties which many of them levied with the consent of Congress . . . .

However, enabling acts for new States required those States to surrender this right, contrary to the intent of the Constitution:

But the objection to the levying of tonnage duties by the new States proceeds upon the broad assumption of the absolute and total immunity of the Western Territory by compact from any tax, impost or duty under any authority, national, state or both combined.

If the objection be a sound one, . . . then those States themselves are prohibited from improving their own rivers and “the carrying places between the same” and of charging any toll or tax for the use of such improvements, because these rivers and portages or “carrying places” between them are declared by these compacts to be “common highways and forever free,” and not subject to any “tax, impost, or duty” for their use . . . .

Nevertheless, the States had improved rivers, then imposed a toll or tax for the use of these improvements, as was their right. “This is the settled construction and the practice under it by these States”:

If the Legislatures of these States can “with the funds of the States” make these improvements, and impose a “tax impost or duty” for their use, there can be nothing to restrain or prevent them from “laying a tonnage duty,” with the consent of Congress, on vessels which use them, to aid the State in defraying the cost of making the improvements . . . . They may not wish to exercise their undoubted right to lay a tax by means of tonnage duties, but they cannot be deprived of that right, if they choose to exercise it, and Congress shall give its consent, as provided by the Constitution . . . .

Next, President Polk considered whether the clause to “provide for the . . . general welfare” could support harbor and river internal improvements:

Arguments in favour of enlarging the powers of the Federal Government which are derived not from the constitution itself but from considerations of convenience and expediency are not only of alarming and dangerous tendency, but if they shall prevail, must soon convert the Government into one of absolute and unlimited powers.

Invoking “general welfare” would “sweep down, abrogate and render nugatory all the limitations of power by which the federal Government is fenced in and restricted by the Constitution itself”:

The Government formed by the Constitution is one of definite, enumerated and specified powers . . . . If it be established that the power over internal improvements has not been granted by the Constitution, all arguments to prove its utility are vain, and the only remedy for any defect of power which may exist is an amendment of the Constitution . . . .

This is the remedy which has been recommended by several of the ablest and wisest of my predecessors, who have denied the power of the General Government to exercise the power of making internal improvements. It may be useful to refer to their opinions and recommendations on the subject, more particularly than was done in a former message . . . .

This is where President Polk’s unused hand-written veto message ended. David P. Currie and Emily E. Kadens, in their article reprinting the message, suggested:

Both Jefferson and Madison, Polk was about to remind us, had urged that the Constitution be amended to authorize Congress to make internal improvements,

but without success; Congress had no greater power in the premises in 1848 than it had possessed in 1789. [Currie, David P., and Kadens, Emily E., "President Polk on Internal Improvements: The Undelivered Veto," *From the Bag*, Autumn 2004]

Before the election, Polk stated that he would serve only one term, which he thought would be enough to achieve his domestic and foreign goals. As it happened, he was largely correct.

President Polk, having embraced Manifest Destiny, is perhaps best remembered for completing expansion of the country to its continental limits. His actions included finalizing plans for the Republic of Texas to join the Union, securing victory in the Mexican-American War in 1848 to incorporate the Southwest and California, and resolving the "Fifty-Four or Fifty or Fight" dispute with Great Britain over the northern boundary of the Oregon Territory (Oregon and Washington). Historians generally consider Polk the "strongest man in the White House between Jackson and Lincoln," as Herbert Agar put it in his classic survey, *The Price of Union* [Sentry Edition, Houghton Mifflin Company, 1966]:

He consolidated the Jacksonian changes in the presidency and made certain that they would endure. There have been many weak Presidents since his day, who dared not use the formidable power that had been handed them; but for all who wished to use it, the Power was there.

After attending the inauguration of his successor, former President Polk and his wife Sarah left Washington by boat for a tour of the South, instead of the more direct northern route to their home in Columbia, Tennessee. They would travel mainly by steamship and railroad, with only one stretch in a stagecoach, reaching Nashville on April 2, 1849. It had been a triumphal trip, with celebrations and honors at every stop along the way.

He had left office physically weakened and exhausted. The trip through the South had weakened him further. Just as he seemed to be returning to health, however, former President Polk died 3 months after leaving office, at the age of 53, on June 15, 1849. Borneman wrote:

His ex-presidency of 103 days remains the shortest in history. In the end, cholera was the likely cause of death, but the stress and strain of the presidency had lowered his resistance to any foe.

### **President Zachary Taylor**

In 1848, President Polk's Democratic Party nominated Lewis Cass, the former Governor, Senator, and Secretary of War, for President. He had been born in New Hampshire in 1782, moved with his family to Marietta, Ohio, in 1800. He opened a law practice in Zanesville and served in the Ohio House of Representatives before President Jefferson appointed him U.S. Marshall for Ohio. During the War of 1812, he attained the rank of Brigadier General. In 1813, President Madison appointed General Cass to be Governor

of the Michigan Territory, a post he held until 1831, when President Jackson appointed him Secretary of War. He supported slavery, and owned at least one, and was a strong advocate of Indian removal from the land east of the Mississippi River.

Former Representative William O. Butler of Kentucky (1839-1843) was the nominee for Vice President. General Butler, a hero of the War of 1812, had fought in the Mexican war as well. The party platform retained the three principles from past elections about limited government, including: "That the Constitution does not confer upon the General Government the power to commence and carry on a general system of internal improvements."

Former President Van Buren sought the nomination, but when he didn't secure it, became the nominee of the Free Soil Party, formed that year to oppose expansion of slavery into the new territories.

The Whig Party nominated General Zachary Taylor, the hero of the war with Mexico (nicknamed "Old Rough and Ready"). Born in Virginia, Taylor had been raised in Kentucky. Following a reassignment, he was living at Cypress Grove, his plantation in Baton Rouge, Louisiana, at the time of the election. He owned 150 slaves on his plantations in Kentucky, Mississippi and Louisiana. He had never expressed interest in politics or discussed any views he may have had. However, Whig Party leaders thought his military fame would appeal to voters in the same way as General Jackson's fame propelled him to the presidency.

The party balanced the ticket with New York's Millard Fillmore, a former member of the U.S. House of Representatives from Buffalo (1839-1843) who had taken office as Comptroller of the State in January 1848. He had served as chairman of the Committee of Ways and Means during his final term (1841-1843), occasionally participating in debates on the Cumberland Road, as discussed earlier.

The Whig Party platform addressed the concern that General Taylor did not share the party's ideals or had any ideas of his own on the issues:

That General Taylor, in saying that, had he voted in 1844, he would have voted the Whig ticket, gives us the assurance – and no better is needed from a consistent and truth-speaking man – that his heart was with us at the crisis of our political destiny, when Henry Clay was our candidate and when not only Whig principles were well defined and clearly asserted, but Whig measures depended on success. The heart that was with us then is with us now, and we have a soldier's word of honor, and a life of public and private virtue, as the security.

The rest of the platform endorsed the military and extolled General Taylor's successful military career.

In the election, General Taylor received 1,361,393 votes and 163 electoral college votes, with 146 needed to win. Cass received 1,223,460 votes (127 electoral college votes). Former President Van Buren secured 291,501 vote (no electoral votes).

Professor Holman Hamilton, in his biography of General Taylor, described the President-elect's trip from Baton Rouge to Washington. One of his last official military acts was to resign his command on January 23, 1849. He had retained the commission, and the salary that came with it, until nearly the last minute.

When his neighbors and friends arrived to wish him well, he told them:

It is with feelings of no ordinary character that I meet with my fellow-citizens on this occasion, many of whom I have been associated with . . . more than a quarter of a century . . . . I should have much preferred to retain the office I am now about to vacate, and have remained among you; but the people have, without my solicitation, seen fit to elevate me to another, and although I fear I am not qualified to discharge the . . . duties imposed upon me, yet . . . I shall endeavor to fulfil them . . . . Permit me . . . to invoke God's blessing upon you all! May he grant that you and your families may enjoy long life and prosperity – Farewell.

After a week at his plantation, President-elect Taylor left on February 16 on the *Sea Gull*, north on the Mississippi River. He stopped at Vicksburg, Mississippi; Memphis and Nashville, Tennessee; and Louisville, Kentucky. “Large and enthusiastic crowds greeted the President-elect and entertained him royally, the loudest cheering and most lavish banquet awaiting him at Louisville.”

The steamship trip was not without incidents. The ship experienced a rudder accident near Memphis, temporarily halting progress. Leaving Madison, Indiana, President-elect Taylor sustained an injury when a trunk in the gangway rolled over on him, bruising his left arm and side.

Continuing north on the Kentucky River, the Taylor party arrived in the Kentucky capital of Frankfort, where he met with former Senator Crittenden, who had become Governor on September 6, 1848. They discussed the makeup of the incoming Cabinet. The Taylor party left Frankfort on the *Blue Ridge*, transferring at Carrollton to the *Ben Franklin* and *Telegraph No. 2* (the two ships lashed together), which would take him to Cincinnati, where he would connect with the Ohio River.

Upon his arrival in Cincinnati, he was pushed by crowds against the guard of the boat, adding his right hand to his list of injuries, which now included a cold:

Despite the Queen City's high winds and low temperature men, women and children packed the levee and the streets to an extent “witnessed on no former occasion.” As the parade moved up Broadway, “house-tops, windows, balconies . . . were thronged with ladies, waving scarfs to the man of the people.” At Masonic Hall, “the crowd being so great, the Mayor's speech was interrupted, and, owing to an accident which Gen. Taylor met with on the boat, the formality of a reply was dispensed with. After exchanging . . . congratulations with the ladies, the General retired to the Pearl Street House, where rooms had been prepared for him.”

Aboard the Telegraph, the Taylor party continued past Pomeroy, Ohio, and Parkersburg, Virginia:

The river was full of floating ice, and five miles above Marietta the steamboat ran aground. After an hour's detention the boat was freed, but it later yielded to gorged ice and low water at Captina Island, seven miles below Moundsville. A messenger procured sleighs and coaches, the passengers abandoned the vessel, and went to Moundsville and on to Wheeling on February 20.

At Wheeling a "grand and imposing" parade led Taylor to the United States Hotel. Ladies waved from every window. "Snowy white banners and hearty cheers given by 10,000 citizens . . . formed a picture which we acknowledge our inability to portray." A formal address of welcome was delivered on the steps of the hotel. After the General responded, a "pure . . . democratic shout . . . went up." Taylor, escorted to his chamber, at a later hour was "introduced . . . to . . . his fellow citizens."

The frozen river blocked President-elect Taylor's plan to visit Pittsburgh. Instead, his party left Wheeling on February 21 for Cumberland, guided by Thomas Shriver, "one of Cumberland's most indefatigable Whigs," who operated a stage line along the road:

At the Old Globe Inn in Washington, Pennsylvania, a reception was held and luncheon served. Taylor spent Wednesday night in Uniontown and Thursday night in Cumberland, where he planned to take a train Friday.

The ride on the Cumberland Road had been a source of wonder for the President-elect:

"The road was a perfect glare of ice, and everything . . . plated with sleeted frost. The scenery was beautiful; to . . . mountaineers too common to be of much interest, but to a Southerner like General Taylor . . . it was a phenomenon." Descending a spur of Meadow Mountain . . . the presidential coach danced on the polished road with every sign of capsizing. "Shriver was in the rear, and in the greatest trepidation" for Taylor's safety. "Down each hill and mountain his bare head could be seen protruding through the window of his coach to discover if the President's coach was still upon wheels. The iron gray head of the General" frequently appeared outside his window, "not to see after anybody's safety, but to look upon what seemed to him an arctic panorama. At length the last long slope was passed. "At twilight the narrows were reached, two miles west of Cumberland, one of the boldest and most sublime views on the Atlantic slope. General Taylor . . . ordered a halt . . . . Out he got in the storm and snow and looked . . . until he had taken in the grandeur . . . . The President-elect was tendered a reception . . . at Cumberland, and the next morning he and his party left on the cars for Washington."

As he entrained at Cumberland, a party of miners came along to see him:

In a few remarks . . . he said they were the men who developed the wealth of the country, and added that good roads and good laws were all that we wanted, for the American people knew how to take care of themselves.” Taylor displayed a lively interest in the country through which the railway led him. Ellicott’s Mills made a particular impression, and he ventured the prediction that the place might become “the Lowell of Maryland.”

He was referring to Lowell, Massachusetts, a leading city in the country’s industrial revolution.

At the Relay House, committees from Washington and Baltimore were among the 3,000 people greeting the President-elect:

Taylor was his usual modest self. “He . . . said that the battles attributed to his valor were won by the bravery of the soldiers . . . . He intended to do all in his power to benefit the American People; but if he should commit errors, as he necessarily must, he would depend upon the magnanimity of those who had placed him in office.”

When the train arrived in Washington, President-elect Taylor was greeted loudly:

Bonfires blazed. Cannon boomed. The flight of rockets in the night added man-made brilliance to the star-swept sky. The *National Intelligencer* reported that spectators, blocking the route from the station to Willard’s Hotel, were more numerous than any previously witnessed. When Taylor stepped out on the balcony and returned thanks for the enthusiasm, he was welcomed by “deafening huzzas.”

. . . When Taylor reached Willard’s that Friday night he was obviously weary. His wrinkled face was patched with pallor. His injured arm hung limp at his side. With characteristic common sense, he refused to see callers on Saturday and Sunday, devoting the week end to recuperation.

On Monday, the 64-year old President-elect visited President Polk at the White House, the first time the two had met.

President-elect Taylor’s wife Margaret "Peggy" Mackall Taylor had not accompanied him on the arduous trip. She traveled to Washington separately. In Washington, however, she shunned the traditional role of the First Lady, deferring to their young and lively daughter, Elizabeth “Betty” Taylor Bliss, for the President’s social events, including the inaugural balls. [Hamilton, Holman, *Zachary Taylor: Soldier in the White House*, Bobbs-Merrill, 1951; Eisenhower, John S. D., *Zachary Taylor*, The American Presidents Series, Times Books, 2008]

President-elect Taylor chose not to be inaugurated on March 4, a Sunday. Instead, he was inaugurated on Monday, March 5. Borneman described the scene:

[On] a cold and blustery Washington morning, March 5, 1849, with a stiff wind blowing in from the Potomac, Zachary Taylor left Willard's Hotel. In an open carriage drawn by four matched grays, he drove to collect James K. Polk from his rooms at the Irving Hotel, and they rode together down Pennsylvania Avenue to the Capitol.

During the ride, President-elect Taylor expressed doubt that the western territories, California and Oregon, would become States. They "were too distant to become members of the Union." Although these statements raised President Polk's alarm, President Taylor did not act on these views.

The new President read his Inaugural Address in what Polk described in his diary as "a very low voice and very badly as to his pronunciation and manner." In the speech, he promised to be guided by the Constitution as interpreted by judicial opinions "and to the practice of the Government under the earlier Presidents, who had so large a share in its formation." He further promised to fulfill the policies of the Whig Party, without mentioning the party, including:

It shall be my study to recommend such constitutional measures to Congress as may be necessary and proper to secure encouragement and protection to the great interests of agriculture, commerce, and manufactures, to improve our rivers and harbors, to provide for the speedy extinguishment of the public debt, to enforce a strict accountability on the part of all officers of the Government and the utmost economy in all public expenditures; but it is for the wisdom of Congress itself, in which all legislative powers are vested by the Constitution, to regulate these and other matters of domestic policy. I shall look with confidence to the enlightened patriotism of that body to adopt such measures of conciliation as may harmonize conflicting interests and tend to perpetuate that Union which should be the paramount object of our hopes and affections. In any action calculated to promote an object so near the heart of everyone who truly loves his country I will zealously unite with the coordinate branches of the Government.

Representative Abraham Lincoln had worked tirelessly for the nomination and election of General Taylor. After serving one term in the House, he chose not to run for reelection in accordance with the Illinois tradition of stepping aside for the colleague whose "turn" it was for the next term in Washington. While still in Washington, he hoped his efforts to support General Taylor's election would earn a patronage post as Commissioner of the General Land Office or a post in Illinois, but that was not to be. He returned to Springfield, Illinois, to resume his practice of law.

### **Reasons for the Decline in Internal Improvements**

Professor Hill summarized the period after President Jackson regarding internal improvements. Congress often designated surveys and appropriated funds for improvements that had not been studied by the engineers, "and it passed numerous river and harbor bills with numerous items." With States and cities clamoring for projects, the "inevitable tendency was to grant funds for many small, local projects." This process

resulted in the frequent invocation of the epithet “logrolling” as members secured inclusion of their district projects in exchange for supporting the district projects of others:

Since there was never a consensus in Congress after 1838 regarding the constitutionality or expediency of these improvements, such unsatisfactory results were inevitable. Despite widespread agreement that the government should make improvements of a clearly national character, Congress could never agree on the scope of the river and harbor category, the distinction between national and local works, and the exact constitutional basis of its power to appropriate for these improvements.

Questions of the expediency and legality of river and harbor improvements became involved in such issues as the protective tariff and disposal of the revenue surplus, which increasingly assumed a sectional character. The Whigs commonly supported and the Democrats opposed large river and harbor bills . . . .

Attitudes of the Executives were also of strategic importance in the river and harbor activities of the army engineers. After 1838 there was a major change in national policy toward river and harbor improvements. All Presidents after Jackson except Taylor and Fillmore, who were Whigs, followed such a strict interpretation of the Constitution that Jacksonian policies were later regarded as liberal by comparison. There was increased hostility toward these policies from term to term with Van Buren, Tyler, Polk, Pierce, and Buchanan. These five presidents either submitted estimates for only a few strictly national improvements or presented none at all. They urged execution of minor works by state or local government and vetoed several river and harbor bills on the premise that they authorized local works which were unrelated to delegated federal powers and thus unconstitutional.

Professor Johnson, in his 1892 article about river and harbor legislation, also discussed the reasons for the decline:

In 1822 . . . internal improvements by the general government meant appropriations for turnpikes, canals, rivers and harbors. Clay now linked internal improvements and the tariff together and named the union “The American System.” The internal improvement part of the American System went by the board during the decade, 1830-1840. The causes of this were mostly economic, though partly the political one of Democratic strict constructionism . . . .

The real causes of the abandonment of Congressional aid to road and canal building lay neither with President Jackson nor with strict construction. The building of turnpikes practically ceased with the advent of the railroad in 1830. The causes that led to the cessation of canal building were, first, the opposition to the tariff. The bitter struggle against the tariff of 1828 naturally included opposition to internal improvements – the other half of the American System.

The second cause – a somewhat complex one – is found in the land policy of the United States. The large revenues from the tariff and more especially from the land sales caused a treasury surplus to exist during the years from 1830 to 1836; this surplus led to distribution, and distribution did much to put an end to internal improvements by the federal government. This large surplus could not be lessened by altering the tariff because of the compromise of 1833; and the opposition to cheap lands was so strong that no measure decreasing the price of lands could be passed. In view of the existence of this surplus and in view of Jackson's opposition to Congressional aid to local works of improvement, the Whigs changed front in the midst of the battle. They began advocating the distribution of the surplus arising from land sales among the states, and the surrender to the states of the prosecution of works of internal improvement. President Jackson had favored this plan in 1829 and afterwards also; but in 1836 he abandoned distribution. The Whigs then very naturally clung to the idea all the more tenaciously. Distribution came in 1836 and with results so disastrous that there was soon no money to distribute. The odium attaching to distribution did much to bring into disrepute internal improvements, to foster which works the national funds had left the treasury.

The third cause for the overthrow of the canal, and the strongest one, was the railroad. The extension of railroads during the decade from 1830 to 1840 was rapid, and the superiority which they possess over canals as agents of most kinds of traffic was quickly recognized.

Professor Johnson discussed the attempt of the Whigs to include distribution in tariff legislation that President Tyler vetoed. "Had they succeeded the promotion of such works would probably have entirely ceased to be a national enterprise." As noted, when he signed protectionist tariff legislation in 1842, it had such a negative impact on the economy that it became known as the Black Tariff. Most appropriations for river and harbor projects from 1830 to 1870 were due to riders attached to other bills.

Congress took an interest in development of railroads, although it did not provide appropriations for their construction, as it had for roads, canals, and other internal improvements. The engineers acting under the General Survey Act of 1824 undertook numerous surveys for railroads. Congress removed import duties on railroad iron (1830-1841). As *America's Highway 1776-1976* explained, "The total duties remitted in this period – almost \$6 million – gave the infant railroad industry a much-needed boost at a critical time in its history . . . ." Further, by Act of July 7, 1838, Congress designated the railroads as "post roads" eligible to carry the mail. "Strictly speaking, this was not a subsidy, but it opened to the railroads a valuable source of income." In earlier years, the revenue from carrying the mail had boosted the stagecoach companies.

Railroads usually were private speculations that were chartered by the States. Although Congress did not appropriate funds to promote railroad construction, the Federal Government had substantial public lands at its disposal to aid in their development. These lands had been used as grants to a number of States planning internal improvements such as canals. *America's Highways* continued:

The first Federal land grants for railroads were made to Illinois, Mississippi, and Alabama in 1850 and totaled 3,736,000 acres of land which the States transferred to the Illinois Central Railroad and the Mobile and Ohio Railroad. With these grants as a precedent, Congress in the period 1850 to 1871 aided some 50 other railroads by similar grants of public land to nine other southern and western States for a total of about 36,466,000 acres. Even larger grants were to come in connection with the Pacific railroads. Eventually, Federal land grants to subsidize railroads amounted to 130.3 million acres, to which should be added 48.9 million acres of State land grants.

### **The Last Whig Presidents**

As it turned out, the only two Presidents to win on the Whig Party ticket – Presidents Harrison and Taylor – died before completing their term. General Taylor, the last President to own slaves while in office, died on July 9, 1850, apparently of cholera, at the age of 63 (the cause of his death has been a subject of speculation), as the country neared the breaking point in the slavery debate.

Vice President Millard Fillmore, elevated to the presidency, would be the last Whig Party President.

Author Bordewich, in his book about the slavery debate, discussed the transfer of power:

By 1848, Fillmore had been a presence in New York politics for most of twenty years . . . . Fillmore had naturally expected to assert considerable influence in the Taylor administration. Instead, he was humiliated to a degree that few men who have served in that notoriously unsatisfying job have ever been. It was obvious to everyone that his rival, [New York Senator William H.] Seward, had the president's ear, and that Fillmore was barely even welcome at the White House. "Where is Fillmore?" the *Albany Express* wondered, in May 1849. "He is nowhere." Apart from presiding, for the most part silently, over the Senate, he had nothing to do. To make matters worse, his wife, Abigail, loathed Washington, and remained mostly in New York. "How lonesome this room is in your absence," he wrote to her from his bachelor digs at the Willard Hotel in April 1850, sighing that he didn't even have anyone to play backgammon with. "I can hardly to bear to sit down."

Fillmore was numbed at the news of Taylor's death. "I have no language to express the emotions of my heart," he told the cabinet. "The shock is so sudden and unexpected that I am overwhelmed." On July 10, looking profoundly exhausted, he took the oath of office in a gloomy little ceremony in the House chamber. It was only the second time that a vice president had been thrust into the nation's highest office as a result of the chief executive's death, and the first time in the midst of a national crisis. He had barely slept, worrying that he might not be fitted for the job that was now his. Prayed one fearful Democrat, who in a letter to Fillmore wrote that he had never supported the Whigs, "May you be the instrument, in the hand of God, to save your country from ruin."

The new President's greatest accomplishment took place in September 1850 when he signed the series of bills known as the Compromise of 1850. With the slave States nearing secession, Senator Henry Clay, who had returned to office in March 1849, worked out a compromise with Senator Stephen Douglas of Illinois that balanced the slavery interests with those of abolitionists in the District of Columbia and the western territories. President Taylor had opposed the compromise, but President Fillmore signed them:

President Fillmore signed all the bills in quick succession, except for the Fugitive Slave Act, over which he hesitated – some said agonized – for two days. He had no fondness for slavery, though he had never expended any political capital to oppose it. He also expected to run for reelection in 1852, and had to consider whether he would lose more by offending the North or the South . . . . In the end, he threw in his lot with southern sentiment and, encouraged by [Senator] Webster and by Attorney General Crittenden, swallowed his inhibitions, draped himself in the Constitution, promised to enforce the law, and signed the bill . . . .

The compromise would hold the union together, but only temporarily.

President Fillmore's term ended on March 3, 1853.

The two last Whig Presidents were an aberration in the thinking of Presidents on internal improvements after 1838. Professor Hill wrote of them:

President Taylor, whose friendly attitude toward river and harbor improvements caused estimates to be presented, recommended without success that Congress consider new as well as old projects.

The story was much the same in 1850 and 1851. Practically the same estimates were again presented, but no appropriations were made. President Fillmore approved of plans for resuming these improvements, particularly of the Mississippi, its tributaries, and major lake harbors. He stated that improvements which were local in position, as the proposed ship canal at Sault Ste Marie, were nevertheless general in their benefits. He proposed to complete projects already begun and to commence such new ones "as may seem to the wisdom of Congress to be of public and general importance."

River and harbor improvement was finally resumed in 1852. Congress appropriated over \$2,000,000 for more than one hundred projects . . . .

President Fillmore assured Congress that economical and efficient arrangements had been made for executing river and harbor work on what he hoped would be a continuing basis. He explained that further appropriations were needed for their completion and that projects once begun should never be discontinued. He cautioned against commencing any work "which is not of sufficient importance to the commerce of the country to be viewed as national in its character."

Agar described President Taylor as an “amateur” who did not understand the role of politics in securing party loyalty. His early death left open what he might have achieved:

It is possible that his death was a blessing both to himself and to his country, for he was on the verge of a Cabinet scandal involving a lighthearted attitude toward the public funds on the part of the Attorney General, the Secretary of the Treasury, and the Secretary of War, and he was also on the verge of a sectional conflict which might well have led to fighting.

He described Fillmore as “an obscure ex-Congressman from New York State, [who] had been nominated for the vice-presidency in 1848 as a concession to the friends of Henry Clay, who were in a vengeful mood when General Taylor was given the first place on the ticket”:

Since hardly anyone had heard of Fillmore it was assumed that he would not lose the party many votes. He was a large man with a big, smooth, kindly face and impressive manners. He looked like a President and much to his surprise he had become one . . . .

Like President Taylor, Fillmore, unfortunately, “was not gifted with political insight.” He sought the Whig Party nomination in 1852, but after the convention deadlocked between him and Senator Webster on 52 ballots, the party turned to General Winfield Scott, a hero of the Mexican-American War, as the nominee.

### **President Franklin Pierce**

The Whig Party collapsed after the 1852 presidential election. Its nominee, General Scott (nicknamed “Old Fuss and Feathers” for his age and insistence on military etiquette) was defeated by the Democrats’ Franklin Pierce, a former member of the U.S. House of Representatives (1833-1837) and the Senate (1837-1842) from Concord, New Hampshire. He had served in the Mexican-American War, rising to the rank of Brigadier General. The Democratic Party convention in Baltimore was deadlocked among several candidates before finally choosing Pierce on the 49<sup>th</sup> ballot. To balance the ticket, delegates then selected Senator William Rufus de Vane King of Alabama as the Vice Presidential nominee.

The Democratic Party platform emphasized that the Federal Government was “one of limited powers, derived solely from the constitution, and the grants of power made therein ought to be strictly construed by all the departments and agents of the government; and that it is inexpedient and dangerous to exercise doubtful constitutional powers.” With that in mind, the platform made clear that, “That the constitution does not confer upon the general government the power to commence and carry on a general system of internal improvements.”

General Pierce secured 1,607,510 votes and 254 electoral college votes, with 149 needed to win. General Scott received 1,386,942 votes and only 42 electoral votes. The Democrats also secured large majorities in the Senate and House.

General Scott, as it turned out, was the last Whig Party candidate. The party found that its policies were no longer aligned with the American people. The man who best embodied the philosophy of the party, Henry Clay, died on June 29, 1852.

On January 6, 1853, before heading to Washington for the inauguration, the Pierce family suffered a tragic loss. They were returning home from Boston by railroad after attending a funeral when the train derailed and overturned near Andover and rolled down a 20-foot embankment. Although President-elect Pierce and his wife Jane survived, their 11-year old son Benjamin was nearly decapitated. His death shook Jane, who wondered if it was divine punishment for her husband's pursuit of high office. She was too devastated to travel with her husband to Washington, and did not make a social appearance in Washington until January 1, 1855.

According to *The Baltimore Sun's* account of the inauguration:

Instead of rain, snow commenced slightly falling, but the frozen vapor presented no obstacle to the people. The rotunda of the Capitol was crowded to excess by the ladies, thousands of whom waited there from three to four hours to be present at the service in the Senate and at the east front of the Capitol; whilst Pennsylvania avenue was so densely thronged that pedestrian progress in either direction was almost impossible.

The Inaugural parade made its way down Louisiana Avenue to Pennsylvania Avenue, stopping at 16<sup>th</sup> Street, NW., to await President-elect Pierce's departure from Willard's Hotel. President-elect Pierce, accompanied by President Fillmore, emerged from the hotel to take his place in the procession. They were accompanied by members of the Cabinet and Judiciary, and other officials, "all in carriages; and here the magnificent coach and horses presented by the Bostonians to General Pierce, were generally noticed and admired."

President-elect Pierce's Democratic friends in Boston had presented the carriage and horses to him. The carriage, which was designed for open or closed use, weighed 1,300 pounds and had been manufactured by Jason Clapp & Son of Pittsfield, Massachusetts entirely of materials from the United States. ["The Inauguration of President Pierce," *The Baltimore Sun*, March 5, 1853; Collins, Herbert Ridgeway, *Presidents on Wheels: The Complete Collection of Carriages and Automobiles Used by Our American Presidents*, Acropolis Books, 1971]

Vice President-elect King was not in Washington. Ill with tuberculosis, he had gone to Cuba in the hope that the warmer climate would restore his health. By Act of March 24, 1853, he was allowed to take his oath of office in Cuba, the only Vice President to take the oath of office in a foreign country. He died there on April 18, 1853. Because, as previously noted, the Constitution did not cover replacement of the Vice President, President Pierce would be without a Vice President for the remainder of his term. (Approval of the 25<sup>th</sup> Amendment to the Constitution in 1967 addressed replacement of the Vice President.)

At 48 years old, President Pierce replaced President Polk as the youngest President to that date. (Today, the youngest President at the time of inauguration was Theodore Roosevelt, who was 42 when he became President following the death of President William McKinley in 1901.) In other firsts, President Pierce was the first and only President, to date, to deliver his Inaugural Address from memory. In addition, with his son's death in mind, he also was the only President who did not take his oath by swearing on a Bible; he affirmed his oath.

He began his Inaugural Address humbly:

It is a relief to feel that no heart but my own can know the personal regret and bitter sorrow over which I have been borne to a position so suitable for others rather than desirable for myself . . . . You have summoned me in my weakness; you must sustain me by your strength.

He stressed the foundation of the Democratic Party:

In the administration of domestic affairs you expect a devoted integrity in the public service and an observance of rigid economy in all departments, so marked as never justly to be questioned . . . . The dangers of a concentration of all power in the general government of a confederacy so vast as ours are too obvious to be disregarded. You have a right, therefore, to expect your agents in every department to regard strictly the limits imposed upon them by the Constitution of the United States . . . . If the Federal Government will confine itself to the exercise of powers clearly granted by the Constitution, it can hardly happen that its action upon any question should endanger the institutions of the States or interfere with their right to manage matters strictly domestic according to the will of their own people.

For Secretary of War, President Pierce selected Jefferson Davis of Mississippi. Davis, whose first wife, Sarah Knox Taylor, was the daughter of General Taylor (she died of malaria at age 21), was a graduate of West Point who had served in the Army before winning election to the House of Representatives in 1844 as a Mississippi Democrat. He resigned in 1846 to serve in the Mexican-American War. (Although Davis is known today primarily as the traitorous president of the Confederate States of America (1861-1865), at the time of his nomination as Secretary of War, he was considered a loyal American from a slave State who had a long career in service to the United States government.)

Professor Hill discussed the impact of this choice:

Although the Pacific railroad surveys made heavy demands on the army engineers in 1853, river and harbor projects were executed on a large scale. The two boards of engineers for river and harbor improvements inspected these works and reviewed plans and estimates for new projects. A major change took place, however, in the manner in which improvements were planned and executed. Jefferson Davis, President Pierce's secretary of war, ruled that individual projects

must be planned so as to be completed with existing appropriations. He noted that most plans approved previously had been based on a different principle – the assumption that further grants would be made. Plans had sometimes been adopted which necessitated funds ten times as large as the original appropriations to complete them. He stated his new policy as follows:

The general provision in regard to these works is a simple direction to apply a certain sum to a specified object, without any intimation of an intention on the part of Congress to make further appropriations, and I deemed it to be improper to expend those appropriations in commencing works on a scale which the department has not means to complete, and which must in a great measure be lost, unless Congress make further appropriations for them.

Many projects had been started without adequate appropriations. Local officials were willing to raise funds or secure donated goods to finish the projects, but the War Department was not willing to accept the aid:

On June 4, 1853, Davis issued a War Department regulation stating that local funds could be used to continue unfinished river or harbor works for which Congress had previously made appropriations if certain conditions were met. These were that such projects must be continued according to original War Department plans, that an army engineer must supervise operations, that this officer must not handle or be responsible for the disbursing of funds, and that his supervisory work must not be construed to imply any claim for reimbursement or any expectation of further appropriations by Congress.

President Pierce, based on his interpretation of the Constitution, objected to appropriations for local projects; he refused to provide estimates of such proposals, as Professor Hill explained:

President Pierce insisted on strict interpretation of the power to improve harbors and rivers. He vetoed a river and harbor bill on the grounds that it contained purely local items and constituted a general system of improvements which the government lacked power to execute. He proposed that each appropriation be in a separate bill to aid determination of its national or local character and its relation to the exercise of delegated powers. He approved of harbor improvement by individual states and noted that the Constitution permitted states to levy tonnage duties with the consent of Congress.

President Pierce vetoed nine bills, including six of internal improvements bills. Congress overrode five of the six:

- H.R. 392 – Making appropriations for the repair, preservation, and completion of certain public works, heretofore commenced under authority of law. Sustained
- S. 1 – Making an appropriation for deepening the channel over the St. Clair Flats, in the State of Michigan. Overridden

- S. 2 – Making an appropriation for deepening the channel over the flats of the St. Mary’s River, in the State of Michigan. Overridden
- S. 14 – To remove obstructions to navigation in the mouth of the Mississippi River, at the Southwest Pass and Pass a l’Oudre. Overridden
- S. 53 – For the improvement of the navigation of the Patapsco River, and to render the port of Baltimore accessible to the war steamers of the United States. Overridden
- H.R. 12 – For continuing the improvement of the Des Moines Rapids, in the Mississippi River. Overridden

Although the Compromise of 1850 had postponed a civil war, the country was strongly divided on the issue of slavery as President Pierce took office. As Agar explained, President Pierce’s Cabinet choices became his first problem:

Instead of insisting on men who upheld the Union and the election promises, Pierce put into his Cabinet able and forceful representatives of every diverse opinion. So his Administration was doomed to become a minor civil war within itself. And if one side conquered in the family quarrel, it would impose fresh disturbances at a time when the country craved and deserved a rest.

Much of the Cabinet “was of light weight”:

Its importance lay in the fact that it was disunited, and that the men who stood by the Union were no match for the men who stood by the South. Benton said that the subsequent four years should not be known as the Pierce Administration, since Pierce could never control his own followers. It was an Administration in which he was inoperative, and in which nullifiers, disunionists, and renegades used his name and his power for their own audacious and criminal purposes.

Professor Hill summed up the internal improvement legacy of President’s Van Buren through Pierce:

River and harbor improvements were brought to a standstill on three occasions under Van Buren, Polk, and Pierce. Failure to agree on the question of constitutionality in a period of increasing sectional antagonism prevented continuous execution even of major improvements admitted by all parties to be of a national character and within the government’s power. Under these conditions the government was unable to formulate an effective system for administering these improvements, and the army engineers failed to achieve extensive or lasting benefits.

### **President James Buchanan**

President Pierce hoped to secure the Democratic Party’s nomination for a second term, while Senator Stephen Douglas of Illinois was a strong candidate. However, after seventeen ballots, the party selected James Buchanan as its nominee. He was joined on the ticket by John C. Breckinridge of Kentucky, a member of the U.S. House of

Representatives (1851-1855). The Democratic Party platform included the usual restrictions, including on development of a general system of internal improvements.

With the collapse of the Whig Party, a new Republican Party formed in time for the 1856 election. The party nominated the popular "Pathfinder," John C. Frémont of California, for President and William L. Dayton of New Jersey, a former Senator (1842-1851) for Vice President. The new party's platform opposed the expansion of slavery into free territory; denied the authority of Congress or a territory to give legal existence to slavery in any territory "while the present Constitution shall be maintained; favored a railroad to the Pacific Ocean, with immediate Federal assistance, "and as an auxiliary thereto, to the immediate construction of an emigrant road on the line of the railroad"; and:

Resolved, That appropriations by Congress for the improvement of rivers and harbors, of a national character, required for the accommodation and security of our existing commerce, are authorized by the Constitution, and justified by the obligation of the Government to protect the lives and property of its citizens.

One of the party's slogan was: "Freedom, Frémont, and the Railroad."

The race had a distinguished third candidate, former President Fillmore. He was the candidate of the Know Nothing Party (originally the Native American Party but called the American Party beginning in 1855). His running mate was Andrew J. Donelson, who as noted earlier, was a member of President Jackson's family. Agar said of the former President's effort:

In 1856 poor harmless Millard Fillmore became the presidential candidate of the Southern Know-Nothings. He received 875,000 votes and carried only the state of Maryland. Thus ended the party of intolerance, the party described by one indignant Southern believer in freedom of religion as a "stupendous and far-reaching leprosy."

The year 1856 also saw the end of the Whigs, whose dejected remnant had held a convention in Baltimore in September and had endorsed Fillmore as the candidate least likely to disturb the peace of the nation. In the election some of the Whigs voted for Fillmore, some for Buchanan (the Democratic candidate), and many for the new Republican Party. Fillmore's utter defeat meant that in the future such Whigs as wished to play a serious part in politics must join the Democrats or the Republicans.

Buchanan was an easy victor, securing 1,836,072 votes, compared with 1,342,345 for

Frémont and 873,053 for Fillmore. With 149 electoral votes needed to win, Buchanan received 174, while Frémont received 114 and former President Fillmore only 8.

If ever a President had credentials promising accomplishment, if not greatness, it was James Buchanan. He had practiced law in Lancaster, Pennsylvania, and volunteered in the War of 1812. He served in the State House of Representatives (1814-1816) and in the U.S. House of Representatives (1821-1831). He was Minister to Russia (1832-1834), a

United States Senator (1834-1845), Secretary of State under President Polk (1845-1849), and Minister to Great Britain (1853-1856).

With that background, he had understandable presidential ambitions, but in the tradition of the times, he did not work publicly for this goal. In the background, however, he and his allies quietly sought the Democratic Party's nomination without success through several election cycles, until finally reaching their goal in 1856.

In January 1857, President-elect Buchanan left his estate, called Wheatland, near Lancaster, for a railroad trip to Washington where he intended to plan for his inauguration and presidency. While staying at the National Hotel, however, he was one of many guests who became seriously ill. A contemporary account in the *Lancaster Express*, dating to his departure from Wheatland for his inauguration, explained what happened:

It appears that this hotel has been terribly infested with rats of late, and one of the boarders – as the story goes – conceived the idea that they ought to be disposed of effectually before the day of inauguration. Accordingly, he procured extra doses of arsenic, which he disposed of in the most tempting manner about the house. The rats ate the poison. It is well known that when rats partake of arsenic they put directly for water. There is a large tank of water in the upper part of the hotel referred to, and into this the host of rats plunged, drank, bursted and died. From the tank the house is supplied with water for drinking and cooking purposes.

Twenty or thirty of the guests were suddenly and some of them severely affected, from the use of water thus impregnated with the poison. Mr. Buchanan left suddenly for Wheatland, where he arrived suffering severely from diarrhea. He was, however, less severely affected than the others, and in a short time recovered sufficiently to receive visitors – but the fatigue incident to entertaining two or three hundred persons, made it absolutely necessary for him to husband his strength by refusing to see any but his most intimate personal friends – a rule which was rigidly observed up to the hour of his departure this morning.

The illness was soon nicknamed as “National Hotel Disease.” Although the cause is still a subject of debate, the disease caused as many as three dozen deaths. The disease was still strong in March during the inauguration.

On March 2, a bitter cold day with considerable snow that had fallen overnight, President-elect Buchanan began his journey, again, from Lancaster to Washington. A contemporary account reported:

About 6 o'clock the bells of all the churches, the Courthouse, fire companies, &c., commenced ringing, and continued for almost half an hour, added to which the occasional boom of cannon from College Hill, aroused our citizens, and reminded them that one of the proudest days in the history of our city had arrived.

Hundreds of citizens moved to the centre-square where local officials led them along West King Street to Wheatland. President-elect Buchanan greeted them “with that

blandness of manner that distinguishes him, adding, however, an expression of regret that they should have placed themselves to so much inconvenience and discomfort for his sake.”

Eager to see him, the crowd surrounded the private carriage that waited for him, “pressed so close to it, as almost to prevent the necessary movements of its driver”:

Presently, Mr. B. was soon to issue from a door in one of the wings of the house, where he bade farewell to all the members of his household, and in company with his niece, Miss Lane, took his seat in the carriage. Quite a number here shook hands with him, and in response to the greetings of many, he politely returned the compliment in his own graceful style.

As the only President who never married, President-elect Buchanan was accompanied by his niece, Harriet Lane, who would serve the traditional social functions of the First Lady. Led by the crowd, the driver turned the carriage toward the city. As the procession traveled along West King Street, the crowd grew to over 2,000 people:

All along the line of this street, vast crowds of people were stretched, all desirous of showing their approbation of the man who was so soon to be elevated to the highest post in the nation, while the ladies in great numbers crowded the windows and balconies of the houses, waving their handkerchiefs, and adding the principal figure in the scenes of the day.

As the parade passed through centre-square, “the people could no longer restrain their enthusiasm, and gave vent to huzzas over and over again.” Bells rang and continued as the parade passed along North Queen Street to the railroad depot:

As Mr. Buchanan changed from the carriage to the cars, the pressure to get a sight of him was even greater than before, and many rushed up to bid him adieu. He seemed to be greatly affected, and answered all their congratulations with an earnestness and sincerity that showed he felt what he said. After he had been seated at the window of the car, he again shook hands with numbers, who pressed up to do so. As the train moved off, he politely returned the demonstrations of respect, in return to which the crowd sent up cheer after cheer, that plainly showed there was nothing but the heart-felt outpouring of its sentiments at work.

The Philadelphia and Columbia Railroad had prepared a special four-car train decorated with patriotic scenes. By 9, they were in Columbia, west of Lancaster, where a large crowd greeted the President-elect and his party. They switched to a special train arranged by the Northern Central Railroad that “presented a fine appearance.” The train crossed the bridge over the Susquehanna River to Wrightsville:

At this place there was, also, a large assemblage of people; and the same manifestations of enthusiasm were there continued. At York the dépôt was crowded with people, who, during the few minutes spent there, thronged about the car in which Mr. Buchanan was seated, and expressed their feelings in continued hurrahs.

At Glen Rock near the border with Maryland, a committee from Baltimore met the train as it rolled toward that city:

From this point the train made but one stoppage. At many of the way stations along the road the people had gathered, and the cheers of the men and the waving handkerchiefs of the other sex, greeted the train as it swept rapidly on.

Crowds had gathered in Baltimore and around the Bolton depot:

Mr. Buchanan was received with great enthusiasm, all joining heartily in welcoming and greeting the choice of the nation, and forgetting past political excitements in the national hope for a wise, impartial, and patriotic administration of the Government for the next four years.

President-elect Buchanan and Mayor Swann led a parade in an open barouche drawn by six gray horses “up Madison to Howard-street, down Howard to Baltimore and thence through Calvert-street to the City Hotel, where the distinguished guests alighted and were enthusiastically greeted by the throng of citizens assembled”:

Throughout the whole line of the procession the streets and houses were thronged with spectators, and the President elect gracefully acknowledged the complimentary greetings with which he was received, carefully avoiding all unnecessary exposure to the searching and cutting wind, by uncovering, except in return to the compliments of the ladies.

They arrived at the hotel, considered one of the most opulent in the country, at about 2:30 p.m. After exchanging greetings with local officials, President-elect Buchanan and his party headed to the Baltimore and Ohio Railroad station at Camden Square:

On reaching the dépôt the President elect was taken in charge by W. Prescott Smith, Esq., and other officers of the Company, and a magnificent new car, in readiness for the occasion, was attached to the train then ready to start, and in a few minutes he was on his way to Washington where the telegraphs informed us he arrived at a quarter before 5 o'clock, and reached his hotel before his arrival in the city was known.

Despite his experience in January, President Buchanan and his party stayed at the National Hotel.

On Wednesday, March 4, 1857, the inauguration was, according to *The Baltimore Sun*, “the most imposing in numbers, and the most brilliant in display, ever witnessed here.” The *Sun* continued:

Facility of transportation from all the principal cities, North, South, East, and West, offered inducement which did not exist on any former occasion, and were gladly appropriated for a sort of national holiday at the Capital.

An account in *The New York Times* described the day:

Everything was stirring in the city at an early hour this morning, and the streets were alive with the multitudes. Pennsylvania-avenue presented a most animated appearance. Flags waved from all the hotels and public buildings, and from many private houses. The movements of military companies, preparing to take their places in the line of processions, gave a particularly lively character to the scene . . . .

The procession started for the Capitol about noon. It was very long, and presented a beautiful appearance.

At the National Hotel, the parade halted for President Pierce and President-elect Buchanan, who boarded an “elegant barouche, drawn by four horses.” The parade resumed, with the open carriage immediately behind the rear of the military. Vice President-elect Breckinridge also was in an open carriage. (As noted, his Pierce Administration counterpart had died in Cuba.) The two carriages were surrounded by members of the Keystone Club and preceded by the military and displays such as a “representation by a lady dressed as the Goddess of Liberty on a high platform drawn by six horses, followed by a miniature ship-of-war of considerable size, made by the mechanics of the Washington Navy Yard.”

They arrived at the Capitol around 1 o’clock and entered by the north door on their way to the Senate where Vice President Breckinridge took his oath of office. In the tradition of his predecessors, he delivered a short, humble address. He brought to the duties of his new role as president of the Senate “few other qualities than a deep sense of the importance of this body in the scheme of the Government, and a feeling of respect for its members.” His duties, he said, were “comparatively few and simple, and I am sure that they will be made easy by a pervading sense of propriety which will of itself be sufficient on all occasions to preserve the dignity and decorum of the Senate.” He concluded:

It shall be my constant aim, gentlemen of the Senate, to exhibit at all times, to every member of this body, the courtesy and impartiality which are due to the representatives of equal States.

[“Narrow Escape of the President Elect from a Violent Death,” “The Journey to Washington,” “The Inauguration,” *The New York Times*, March 5, 1857]

They proceeded to the platform on the East Portico for the public ceremony. A photographer, John Wood, would take the first photograph of an inauguration.

Much of President Buchanan’s Inaugural Address related to the slavery issue that had dominated Washington for years, particularly whether new western territories and States would allow slavery. He quoted the Kansas-Nebraska Act of 1854, which provided that Congress would neither “legislate slavery into any Territory or State nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.” He commended this provision and said the issue was mainly a judicial question

that “will, it is understood, be speedily and finally settled.” He added, “To their decision in common with all good citizens, I shall cheerfully submit, whatever this may be . . . .”

He said that once that issue was settled:

No other question remains for adjustment, because all agree that under the Constitution slavery in the States is beyond the reach of any human power except that of the respective States themselves wherein it exists. May we not, then, hope that the long agitation on this subject is approaching its end, and that the geographical parties to which it has given birth, so much dreaded by the Father of his Country, will speedily become extinct? Most happy will it be for the country when the public mind shall be diverted from this question to others of more pressing and practical importance.

Moving on, he noted that the country’s financial condition “is without parallel in history. No nation has ever before been embarrassed from too large a surplus in its Treasury”:

It produces wild schemes of expenditure and begets a race of speculators and jobbers, whose ingenuity is exerted in contriving and promoting expedients to obtain public money. The purity of official agents, whether rightfully or wrongfully, is suspected, and the character of the government suffers in the estimate of the people. This is in itself a very great evil.

The natural mode of relief from this embarrassment is to appropriate the surplus in the Treasury to great national objects for which a clear warrant can be found in the Constitution. Among these I might mention the extinguishment of the public debt, a reasonable increase of the Navy, which is at present inadequate to the protection of our vast tonnage afloat, now greater than that of any other nation, as well as to the defense of our extended seacoast.

The Constitution was “a grant from the States to Congress of certain specific powers, and the question whether this grant should be liberally or strictly construed more or less divided political parties from the beginning.” Long experience had taught him that “a strict construction of the powers of the Government is the only true, as well as the only safe, theory of the Constitution.” Whenever the country departed from the strict interpretation, the results “have never failed to produce injurious and unhappy consequences”:

Many such instances might be adduced if this were the proper occasion. Neither is it necessary for the public service to strain the language of the Constitution, because all the great and useful powers required for a successful administration of the Government, both in peace and in war, have been granted, either in express terms or by the plainest implication.

While “deeply convinced” of this truth, he believed that “under the war-making power Congress may appropriate money toward the construction of a military road when this is absolutely necessary for the defense of any State or Territory of the Union against foreign invasion.” With that constitutional authority, he asked how else “to afford this protection

to California and our Pacific possessions except by means of a military road through the Territories of the United States, over which men and munitions of war may be speedily transported from the Atlantic States to meet and to repel the invader?" He pointed out that if war did break out in the West, the opponent "would instantly close the route across the isthmus of Central America" for transportation of military forces. He would forbear presenting an opinion "as to the wisest and most economical mode in which the Government can lend its aid in accomplishing this great and necessary work."

Chief Justice Taney administered the oath of office to President James Buchanan.

### **The Supreme Court's Action**

The Supreme Court opinion President Buchanan was waiting for was *Dred Scott v. Sandford*. He had urged Chief Justice Taney to go beyond the facts of the case to address the broader issues of slavery that had enflamed the country. The facts were whether a slave, Dred Scott, who was taken by his owner, Dr. John Emerson, from the slave State of Missouri to the free State of Illinois, was a slave after his owner died and his widow sold the slave to John F. A. Sandford.

On March 6, 1857, two days after President Buchanan took the oath of office, Chief Justice Taney released the court's 7-2 opinion in *Dred Scott v. Sandford*. Under the decision, descendants of black Africans – whether free or slave – could not be citizens of a State under the Constitution. Slaves had no right to freedom or to pursue freedom in the courts; they were property subject only to the conditions of sale. Previous compromises that Congress had produced on the issue of slavery in the country's new territories and States were unconstitutional.

Although President Buchanan may have thought that "all good citizens" would cheerfully submit to the opinion, it deepened divides by satisfying the Southern slave States, aggravating the northern free States, and increasing tensions in the new States and territories. Today, the opinion in *Dred Scott v. Sandford* is widely considered one of the worst findings in the history of the Supreme Court, maybe the worst, and a dark moment in the Nation's history. In addition to worsening race relations for a century, the opinion reopened confrontations over slavery that had been left unsettled by compromise in an uneasy peace.

Another side effect was that the opinion, with its uncertain impacts in the time after its release, resulted in reduced railroad travel to the western territories. This uncertainty was one factor undermining the fortunes of railroads – and that, in turn, was a factor in the Panic of 1857. As the railroad stock "bubble" burst, the stock market crashed; the Ohio Life and Insurance Company failed, taking with it associated banks and mortgage companies; the S.S. Central America sank during a hurricane off the coast of the Carolinas in September 1857, depriving eastern banks of 30,000 pounds of much-needed gold valued at \$8 million in a time when paper money was redeemable for gold; and actions in Great Britain regarding the backing for paper money further destabilized the economy.

By the time of President Buchanan's first annual message to Congress on December 8, 1857, he acknowledged that, notwithstanding all its advantages "our country in its monetary interests is at the present moment in a deplorable condition":

In the midst of unsurpassed plenty in all the productions of agriculture and in all the elements of national wealth, we find our manufactures suspended, our public works retarded, our private enterprises of different kinds abandoned, and thousands of useful laborers thrown out of employment and reduced to want. The revenue of the Government, which is chiefly derived from duties on imports from abroad, has been greatly reduced, whilst the appropriations made by Congress at its last session for the current fiscal year are very large in amount.

He looked on the bright side:

The late disastrous monetary revulsion may have one good effect should it cause both the Government and the people to return to the practice of a wise and judicious economy both in public and private expenditures. An overflowing Treasury has led to habits of prodigality and extravagance in our legislation. It has induced Congress to make large appropriations to objects for which they never would have provided had it been necessary to raise the amount of revenue required to meet them by increased taxation or by loans. We are now compelled to pause in our career and to scrutinize our expenditures with the utmost vigilance; and in performing this duty I pledge my cooperation to the extent of my constitutional competency.

By true public economy, he did not mean withholding funds from important national objects, especially for the common defense:

In the present crisis of the country it is our duty to confine our appropriations to objects of this character, unless in cases where justice to individuals may demand a different course. In all cases care ought to be taken that the money granted by Congress shall be faithfully and economically applied.

He went on to discuss the factors affecting the downturn, the long running battle over the issue of slavery in Kansas, the growing dispute with the Mormon government of Utah, and international relations.

He also returned to the subject of the military road to the Pacific States that he had mentioned in his Inaugural Address. He explained that such a project was well within the scope of the Constitution and, therefore, "it is our imperative duty to construct such a road." However, he expanded the idea of a road to a railroad:

The difficulties and the expense of constructing a military railroad to connect our Atlantic and Pacific States have been greatly exaggerated. The distance on the Arizona route, near the thirty-second parallel of north latitude, between the western boundary of Texas, on the Rio Grande, and the eastern boundary of California, on the Colorado, from the best explorations now within our knowledge, does not exceed 470 miles, and the face of the country is in the main

favorable. For obvious reasons the Government ought not to undertake the work itself by means of its own agents. This ought to be committed to other agencies, which Congress might assist, either by grants of land or money, or by both, upon such terms and conditions as they may deem most beneficial for the country. Provision might thus be made not only for the safe, rapid, and economical transportation of troops and munitions of war, but also of the public mails.

The commercial interests of the whole country, both East and West, would be greatly promoted by such a road, and, above all, it would be a powerful additional bond of union. And although advantages of this kind, whether postal, commercial, or political, can not confer constitutional power, yet they may furnish auxiliary arguments in favor of expediting a work which, in my judgment, is clearly embraced within the war-making power.

For these reasons I commend to the friendly consideration of Congress the subject of the Pacific Railroad, without finally committing myself to any particular route.

In addition, he discussed the latest report by the Postmaster General, including “the report of the Department in relation to the establishment of the overland mail route from the Mississippi River to San Francisco, Cal.” He added that, “The route was selected with my full concurrence, as the one, in my judgment, best calculated to attain the important objects contemplated by Congress.”

According to Winifred Gallagher’s history of the United States Post Office, the need for such a service was critical, with Californians demanding “a communications upgrade: a reputable, regularly scheduled, twice-weekly stagecoach service that would carry both mail and travelers.”

On March 3, 1857, President Pierce, on his last full day in office, signed “An Act making Appropriations for the Service of the Post-Office Department during the fiscal Year ending the thirtieth of June, eighteen hundred and fifty-eight.” The legislation included provisions for award of a contract, not to exceed \$300,000 a year, to carry mail from the Mississippi River to San Francisco. Selecting the route was controversial:

However, antebellum politics immediately complicated the overland mail service’s birth. The northerners who controlled the House wanted a northerly route from the railroad’s Missouri terminus. The southerners who ruled the Senate favored a more circuitous southerly path down through Texas – a much easier trip in terms of terrain, weather, and avoiding hostile Indians but also 900 miles longer, thus slower . . . .

Despite outraged protests from the eastern and Californian press, in 1857, Postmaster General Aaron Brown, not coincidentally a Tennessean, awarded the stagecoach contract to the Butterfield Overland Mail Company, which would operate on the southerly route.

Its swooping curves from Missouri through Tennessee, into Texas, across New Mexico and Arizona before hitting California gave the line the nickname of the Oxbow Route

because to contemporaries, the route depicted on a map looked like an oxbow (the U-shaped harness for oxen). The 2,795-mile, twice-a-week trip took 25 days. When service began on September 15, 1858, President Buchanan telegraphed the successful contractor, John Butterfield:

I cordially congratulate you upon the result. It is a glorious triumph for civilization and the Union. Settlements will soon follow the course of the road, and the East and West will be bound together by a chain of living Americans which can never be broken.

Gallagher summarized the result:

As Congress correctly bet, the costly mail route would also become the developmental spine from which would spring settlements, industries, and the future transcontinental telegraph and railroad. [Gallagher, Winifred, *How The Post Office Created America: A History*, Penguin Press, 2016]

While the Butterfield Overland Mail would be a precursor to the Transcontinental Railroad, the rail line would be advanced after the start of the Civil War when the oxbow route through Confederate States was no longer feasible; it would follow a direct line from Missouri to California, with the Rocky Mountains as the chief physical barrier.

According to Professor John Hoyt Williams's history of the Transcontinental Railroad, President Buchanan, while faithful to his party's pledge, had little time for the railroad:

Dealing from the first days of his administration with sectional crises and [Mormon] rebellion in the West, Buchanan could not even spare the time to read a pamphlet published in January 1857 and sent to him by its author, Theodore Dehone Judah. Entitled *A Practical Plan for Building the Pacific Railroad*, the pamphlet – and its author – would soon have more impact than the hundreds of memorials and petitions presented to Congress over the years.

Judah sent copies of his pamphlet to every Member of Congress as well as to the President:

This was the first genuinely “practical” plan of its nature, based upon data far more scientific than had been gathered by any of the 1853-55 survey teams, and in fact, covering a portion of the Sierras totally ignored by Jefferson Davis's engineers.

Shortly after returning to the capital, Judah secured an audience with President Buchanan on December 6, 1859. In addition, Judah was allowed to set up an office in the Capitol that he called his “Pacific Railroad Museum,” where he displayed drawings, maps, and data. While the congressional response was positive, Congress was too preoccupied with the divisive tensions of the debates on slavery to act on the railroad concept. President Buchanan would reiterate his support for the Pacific Railroad, but his successor, President Abraham Lincoln, would launch the Transcontinental Railroad project by

signing the Pacific Railroad Act on July 2, 1862. [Williams, John Hoyt, *A Great and Shining Road: The Epic Story of the Transcontinental Railroad*, Times Books, 1988]

As noted, President Buchanan followed the lead of his Democratic Party on internal improvements. Of his seven vetoes, two involved river and harbor bills. On February 1, 1860, he vetoed “An act making an appropriation for deepening the channel over the St. Clair flats, in the State of Michigan.” His veto message began with a practical consideration. The appropriation of \$55,000 was for work that had “been already substantially accomplished.” He was not saying “the work had been completed in the best manner, but it was sufficient for all practical purposes.”

Beyond the practical consideration was the constitutional question. He asked, “Does Congress possess the power under the Constitution to deepen the channels of rivers and to create and improve harbors for purposes of commerce?” The issue had been debated so frequently that “it would seem useless on this occasion to repeat or to refute at length arguments which have been so often advanced.” His own views had been expressed by President Polk in his veto message of December 15, 1847, while President Buchanan was Secretary of State.

Nevertheless, he went on to explain that the only possible authority for the appropriation, if one existed, was the constitutional power “to regulate commerce.” He did not believe the word “regulate” embraced the power to create or construct. “To say that it does is to confound the meaning of words of well-known signification.” The word “regulate” presupposed that something existed that could be regulated:

The words “regulate,” “regulation,” and “regulations” occur several times in the Constitution, but always with this subordinate meaning . . . . So the Constitution, acting upon the self-evident fact that “commerce with foreign nations and among the several States and with the Indian Tribes” already existed, conferred upon Congress the power “to regulate” this commerce.

Chief Justice Marshall, President Buchanan pointed out, had said the power to regulate commerce “is the power to prescribe the rule by which commerce is to be governed.” [Gibbons v. Ogden, March 2, 1824] The President also quoted President Madison’s veto of March 3, 1817:

“The power to regulate commerce among the States” can not include a power to construct roads and canals and to improve the navigation of water courses, in order to facilitate, promote, and secure such commerce without a latitude of construction departing from the ordinary import of the terms, strengthened by the known inconveniences which doubtless led to the grant of this remedial power to Congress.

The framers knew that under the Articles of Confederation, when States imposed different duties on goods, “jealousies and dangerous rivalries had sprung up between the different States.” Remedying these evils was the primary reason why the phrase was included in the Constitution:

It is not too much to assert that no human being in existence when the Constitution was framed entertained the idea or the apprehension that by conferring upon Congress the power to regulate commerce its framers intended to embrace the power of constructing roads and canals and of creating and improving harbors and deepening the channels of rivers through our extensive Confederacy. Indeed, one important branch of this very power had been denied to Congress in express terms by the Convention. A proposition was made in the Convention to confer on Congress the power “to provide for the cutting of canals when deemed necessary.” This was rejected by the strong majority of eight States to three. Among the reasons given for this rejection was that “the expense in such cases will fall on the United States and the benefits accrue to the places where the canals may be cut.”

In short, to accept the view that “regulation” implied creation of a system of internal improvements “would be to adopt a latitude of construction under which all political power might be usurped by the Federal Government.” Such an interpretation “would be in conflict with the well-known jealousy against Federal power which actuated the framers of the Constitution”:

The distinctive spirit and character which pervades the Constitution is that the powers of the General Government are confined to our intercourse with foreign nations, to questions of peace and war, and to subjects of common interest to all the States, carefully leaving the internal and domestic concerns of each individual State to be controlled by its own people and legislature . . . . In nothing does the wisdom of its framers appear more conspicuously than in the care with which they sought to avoid the danger to our institutions which must necessarily result from the interference of the Federal Government with the local concerns of the States. The jarring and collision which would occur from the exercise by two separate governments of jurisdiction over the same subjects could not fail to produce disastrous consequences. Besides, the corrupting and seducing money influence exerted by the General Government in carrying into effect a system of internal improvements might be perverted to increase and consolidate its own power to the detriment of the rights of the States.

Considering all possible improvements in the vast United States, “The truth is that most of these improvements are in a great degree local in their character and for the especial benefit of corporations or individuals in their vicinity, though they may have an odor of nationality on the principle that whatever benefits any part indirectly benefits the whole.”

He drew conclusions from experience:

From our past history we may have a small foretaste of the cost of reviving the system of internal improvements.

For more than thirty years after the adoption of the Federal Constitution the power to appropriate money for the construction of internal improvements was neither claimed nor exercised by Congress. After its commencement, in 1820 and 1821,

by very small and modest appropriations for surveys, it advanced with such rapid strides that within the brief period of ten years, according to President Polk “the sum asked for from the Treasury for various projects amounted to more than \$200,000,000.” The vetoes of General Jackson and several of his successors have impeded the progress of the system and limited its extent, but have not altogether destroyed it. The time has now arrived for a final decision of the question. If the power exists, a general system should be adopted which would make some approach to justice among all the States, if this be possible.

President Buchanan did not mention the Cumberland Road in his veto message.

He understood that from an “honest desire to promote the interests of their constituents,” Congress would revert to a system of logrolling (“I know of no word so expressive,” he wrote) that would exhaust the Treasury and deprive the Federal Government “of the means necessary to execute those great powers clearly confided to it by the Constitution for the purpose of promoting the interests and vindicating the honor of the country.”

He added that using the tonnage provision in the Constitution, Michigan could, with congressional consent, impose a “very insignificant tonnage duty on American vessels.” Thus, “a clear constitutional mode exists by which the legislature of Michigan may, in its discretion, raise money to preserve the channel of the St. Clair River at its present depth or to render it deeper.”

He concluded the message by writing about an exception:

In what I have said I do not mean to intimate a doubt of the power of Congress to construct internal improvements as may be essentially necessary for defense and protection against the invasion of a foreign enemy. The power to declare war and the obligation to protect each State against invasion clearly cover such cases. It will scarcely be claimed, however, that the improvement of the St. Clair River is within this category. This river is the boundary line between the United States and the British Province of Upper Canada. Any improvement of its navigation, therefore, which we could make for purposes of war would equally inure to the benefit of Great Britain, the only enemy which could possibly confront us in that quarter. War would be a sad calamity for both nations, but should it ever, unhappily, exist, the battles will not be fought on the St. Clair River or on the lakes with which it communicates.

Earlier, he had pocket vetoed a bill that Congress had passed at the end of its session in March 1859: “in relation to removal of obstructions to navigation in the mouth of the Mississippi River.” On February 6, 1860, a few days after his previous veto message, he submitted a brief veto message on the earlier veto. He referenced the points he had made in his veto message of February 1, and simply observed that Congress had appropriated sums totaling \$690,000 for this same purpose, “yet it is now acknowledged that this money had been expended with but little, if any, practical benefit to its navigation.”

President Buchanan had pledged to serve only one term. For the 1860 presidential election, the Democratic Party split over the slavery issue. The party nominated Illinois Senator Stephen A. Douglas, but his view that each territory should decide on the status of slavery alienated southern Democrats. They chose their own candidate, Vice President Breckinridge. In addition, the Constitutional Union Convention nominated former Senator John Bell of Tennessee for President, with former Senator Edward Everett of Massachusetts the nominee for Vice President.

The Republican Party, in its second presidential election since forming after the breakup of the Whig Party, nominated former Representative Abraham Lincoln for President and Senator Hannibal Hamlin of Maine for Vice President. The party's platform reinforced a founding concept:

That the maintenance of the principles promulgated in the Declaration of Independence and embodied in the Federal Constitution, "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed," is essential to the preservation of our Republican institutions; and that the Federal Constitution, the Rights of the States, and the Union of the States must and shall be preserved.

It denounced slavery:

The new interpretation of the Constitution that allows slavery in all the territories "is a dangerous political heresy, at variance with the explicit provisions of that instrument itself." The normal condition "is that of freedom," with freedom deprived only with due process of law, a provision of the Constitution that must be maintained. The platform denied "the authority of Congress, of a territorial legislature, or of any individuals, to give legal existence to slavery in any territory of the United States." The restoration of the African slave trade "under the cover of our national flag, aided by perversions of judicial power," was "a crime against humanity and a burning shame to our country and age." The platform called on Congress "to take prompt and efficient measures for the total and final suppression of that execrable traffic."

It opposed disunion and calls being heard for disunion:

And we congratulate the country that no Republican member of Congress has uttered or countenanced the threats of disunion so often made by Democratic members, without rebuke and with applause from their political associates; and we denounce those threats of disunion, in case of a popular overthrow of their ascendancy as denying the vital principles of a free government, and as an avowal of contemplated treason, which it is the imperative duty of an indignant people sternly to rebuke and forever silence.

In addition, it stated that “the present Democratic Administration has far exceeded our worst apprehensions, in its measureless subserviency to the exactions of a sectional interest . . . .” The platform promised:

That the people justly view with alarm the reckless extravagance which pervades every department of the Federal Government; that a return to rigid economy and accountability is indispensable to arrest the systematic plunder of the public treasury by favored partisans; while the recent startling developments of frauds and corruptions at the Federal metropolis, show that an entire change of administration is imperatively demanded.

A House investigating committee had released a report in June 1860 cataloguing the Buchanan Administration’s frauds, graft, briberies, and campaign abuses. According to historian Michael Holt, the Buchanan Administration “was undoubtedly the most corrupt before the Civil War and one of the most corrupt in American history.” [Holt, Michael, *The Political Crisis of the 1850s*, John Wiley & Sons, Inc., 1978]

The platform also stated:

That appropriations by Congress for river and harbor improvements of a national character, required for the accommodation and security of an existing commerce, are authorized by the Constitution, and justified by the obligation of Government to protect the lives and property of its citizens.

That a railroad to the Pacific Ocean is imperatively demanded by the interests of the whole country; that the federal government ought to render immediate and efficient aid in its construction; and that, as preliminary thereto, a daily overland mail should be promptly established.

In the divided electorate, Lincoln received 1,865,908 votes and 180 electoral college votes, with 152 needed to win. Senator Douglas was the closest competitor in the popular vote with 1,380,202 votes, but he won only 12 electoral votes. In the electoral college vote, Vice President Breckinridge, received the second highest total, 71 reflecting a popular vote of 848,019.

President Buchanan’s strong views on the separation of powers among Federal and State governments had become most in evidence as the political battles intensified over slavery. In response to the election of Abraham Lincoln, southern States began seceding from the Union, starting with South Carolina on December 20, 1860. President Buchanan sought compromise where none was possible as southern State after State followed South Carolina’s example.

In his fourth and final annual message to Congress on December 3, 1860, President Buchanan began:

Throughout the year since our last meeting the country has been eminently prosperous in all its material interests. The general health has been excellent, our harvests have been abundant, and plenty smiles throughout the land. Our

commerce and manufactures have been prosecuted with energy and industry, and have yielded fair and ample returns. In short, no nation in the tide of time has ever presented a spectacle of greater material prosperity than we have done until within a very recent period.

Why is it, then, that discontent now so extensively prevails, and the Union of the States, which is the source of all these blessings, is threatened with destruction?

Professor James M. McPherson, in his history of the Civil War, summarized the President's discussion of the divisive issue in the message:

James Buchanan surprised some of his southern allies with a firm denial of the right of secession. The Union was not "a mere voluntary association of States, to be dissolved at pleasure by any one of the contracting parties," said Buchanan . . . . If secession was legitimate, warned the president, the Union became "a rope of sand" and our thirty-three States may resolve themselves into as many petty, jarring, and hostile republics . . . . By such a dread catastrophe the hopes of the friends of freedom throughout the world would be destroyed . . . .

Despite having reached that conclusion, President Buchanan did not intend to use "coercion" to prevent secession. Had he wished to do so, he would have had little military force to support the attempt and what he had was so widely dispersed around the country that it would not have been able to respond in a timely manner.

As Professor McPherson explained, Republicans and Democrats disagreed on how to resolve the issues in a way that would reunite the country:

Buchanan's message to Congress set the agenda for these efforts. He first blamed the North in general and Republicans in particular for "the incessant and violent agitation of the slavery question" which had now "produced its natural effects" by provoking disunion. Because of Republicans, said the president, "many a matron throughout the South retires at night in dread of what may befall herself and children before morning." Buchanan stopped short of asking the Republican party to dissolve; instead he asked northerners to stop criticizing slavery, repeal their "unconstitutional and obnoxious" personal liberty laws, obey the fugitive slave law, and join with the South to adopt a constitutional amendment protecting slavery in all territories. Unless Yankees proved willing to do these things, said Buchanan, the South would after all "be justified in revolutionary resistance to the Government." As an additional sign of northern good will, Buchanan also advised support for his long-standing effort to acquire Cuba, which would further placate southern fears by adding a large new slave state to the Union.

The reaction, particularly among Republicans, was, as Professor McPherson put it, "readily imagined." [McPherson, James M., *Battle Cry of Freedom: The Civil War Era*, Oxford University Press, 1888]

In addition to the discussion Professor McPherson summarized, President Buchanan noted what he considered a misguided cause of discontent in the South, namely the

election of Abraham Lincoln to be the next President of the United States. The election of anyone to the office, President Buchanan observed, “does not of itself afford just cause for dissolving the Union.” To “justify a resort to revolutionary resistance,” the Federal Government would have to be guilty of “a deliberate, palpable, and dangerous exercise” of powers not permitted by the Constitution, and no such act could have been committed by a man who had not taken office:

Reason, justice, a regard for the Constitution, all require that we shall wait for some overt and dangerous act on the part of the President elect before resorting to such a remedy. It is said, however, that the antecedents of the President-elect have been sufficient to justify the fears of the South that he will attempt to invade their constitutional rights. But are such apprehensions of contingent danger in the future sufficient to justify the immediate destruction of the noblest system of government ever devised by mortals? From the very nature of his office and its high responsibilities he must necessarily be conservative. The stern duty of administering the vast and complicated concerns of this Government affords in itself a guaranty that he will not attempt any violation of a clear constitutional right.

After all, he is no more than the chief executive officer of the Government. His province is not to make but to execute the laws . . . . Surely under these circumstances we ought to be restrained from present action by the precept of Him who spake as man never spake, that “sufficient unto the day is the evil thereof.” The day of evil may never come unless we shall rashly bring it upon ourselves.

After completing his analysis of the slavery and secession issue, President Buchanan went through the usual topics of annual messages, including foreign affairs and domestic issues, adding, “It would be a useless repetition to do more than refer with earnest commendation to my former recommendations in favor of the Pacific railroad.”

On his way to Washington for his inauguration, Lincoln traveled from his home in Springfield, Illinois, entirely by train on a 1,900-mile, 13-day roundabout route that took him to Indianapolis, Cincinnati, Columbus, Pittsburgh, Cleveland, Buffalo, Rochester, Albany, New York, Trenton, and Philadelphia. At each stop, he delivered speeches that were intended to reassure northern residents regarding his plans and let southern residents know he was not the evil incarnate they imagined.

The next leg of the trip, Baltimore, was seen as the most dangerous. Southern interests in Maryland and elsewhere were plotting to assassinate the President-elect, with the most likely plan involving action while he transferred between the Philadelphia, Wilmington and Baltimore Railroad depot on President Street and Camden Avenue to the Baltimore and Ohio Railroad’s Camden Street Station. Horses pulled the cars along tracks for the five blocks between the two stations.

By careful planning, the train carrying President-elect Lincoln reached Baltimore around 3:30 a.m. In other cities, his train had arrived to large crowds that forced the Lincoln

party to struggle through the streets to reach their hotel. Now, in the middle of the night, no one was expecting him. The city was quiet. The crowds that the assassins had hoped would provide cover for their act were absent. The horses pulled the cars to the Camden Street Station in routine fashion and without calling attention to the occupant of one of the cars.

The train for Washington left the Camden Street Station at around 4:30 a.m., crossing into Washington at 5:30 a.m., and arriving at the depot at 6:00. Because of the hour and the secrecy maintained during this last leg of the trip, people, whether friend or foe, were not aware that President-elect Lincoln had arrived in the city he had not seen since the inauguration of President Taylor. A friend had a carriage waiting to take the party to Willard's Hotel on Pennsylvania Avenue. [Widmer, Ted, *Lincoln on the Verge: Thirteen Days to Washington*, Simon and Schuster, 2020]

Doris Kearns Goodwin described the inauguration on March 4, 1861:

As the clock struck noon, President Buchanan arrived at the Willard to escort the president-elect to the ceremony. Lincoln, only fifty-two, tall and energetic in his shiny new black suit and stovepipe hat, presented a striking contrast to the short and thickset Buchanan, nearly seventy, who had a sorrowful expression on his aged face. As they moved arm in arm toward the open carriage, the Marine Band played "Hail to the Chief." The carriage made its way up Pennsylvania Avenue, while cheering crowds and hundreds of dignitaries mingled uneasily with the hundreds of troops put in place by General [Winfield] Scott to guard against an attempted assassination. Sharp shooters looked down from windows and rooftops. Cavalry were placed strategically throughout the entire route . . . .

As the day brightened, Washington, according to one observer, assume[d] an almost idyllic garb." Though the city "displayed an unfinished aspect" – with the monument to President Washington still only one third of its intended height, the new Capitol dome two years away from completion, and most of the streets unpaved – the numerous trees and gardens were very pleasing, creating the feel of "a large rural village."

The appearance of Lincoln on the square platform constructed out from the east portico of the Capitol was met with loud cheers from more than thirty thousand spectators. Mary sat behind her husband, their three sons beside her. In the front row, along with Lincoln, sat President Buchanan, Senator Douglas, and Chief Justice Taney.

Lincoln's old friend Edward Baker . . . introduced the president-elect. Lincoln made his way to the little table from which he was meant to speak. Noting Lincoln's uncertainty as to where to place his stovepipe hat, Senator Douglas reached over, took the hat, and placed it on his own lap. Then Lincoln began. His clear high voice, trained in the outdoor venues of the Western states, could be heard from the far reaches of the crowd . . . .

At the end of the address, Chief Justice Taney walked slowly to the table. The Bible was opened, and Abraham Lincoln was sworn in as the sixteenth President of the United States.

In his Inaugural Address, Lincoln discussed the issues dividing the country, but concluded:

We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

Returning to the Executive Mansion, former President Buchanan took his leave:

As Buchanan bade farewell, he said to Lincoln, “If you are as happy, my dear sir, on entering the house as I am in leaving it and returning home, you are the happiest man in this country. [Goodwin, Doris Kearns, *Team of Rivals: The Political Genius of Abraham Lincoln*, Thorndike Press, 2012]

By the time Abraham Lincoln took office on March 4, 1861, the country had split into two. Only weeks later, on April 12, 1861, a brief battle at Fort Sumter in the South Carolina harbor at Charleston pulled the country into the Civil War.

Historian Agar put President Buchanan in perspective:

Buchanan saw himself, inaccurately, as a politician of rich experience and wisdom. He had been in public service for almost forty-two years and he mistakenly believed that he had been learning all that time . . . . When hard-pressed his refuge was irresolution . . . .

By and large, the Cabinet was a faithful mirror of the President. Most of it was old and unaware of the perilous mood of the country. None of it, with the exception of [Treasury Secretary Howell] Cobb [of Georgia], was notably able. None of it could provide leadership at Cabinet meetings. If Buchanan went wrong there was no one to help. If he tried to evade decisions there was no one to compel action. It is pathetic to think of this tired, sick man, with his too dignified deportment masking the self-distrust which kept him from delegating power, working till late hours night after night in the White House, poring over a multitude of papers which he insisted on reading but which he failed to understand.

Fergus Bordewich, in his book about the slavery debate, described President Buchanan as “one of the most experienced and least capable men ever to sit in the White House.” Professor Charles A. Beard wrote that, “Rare insight and rare courage were needed, and Buchanan had neither.” Politician and diplomat Robert Strauss, in his biography of Buchanan, partly explained the adverse judgment of history by stating that, “Throughout his term, when a fork appeared in the road, Buchanan managed to take the wrong turn.”

[Bordewich, Fergus M., *America's Great Debate: Henry Clay, Stephen A. Douglas and the Compromise That Preserved the Union*, Simon and Schuster, 2012; Beard, Charles A., *Mr. President: The President in American History 1789-1980*, Julian Messner, A Simon and Schuster Division, 1979; Strauss, Robert, *Worst. President. Ever.: James Buchanan, the POTUS Rating Game, and the Legacy of the Least of the Lesser Presidents*, Lyons Press, Reprint Edition, 2017]

By railroad, former President Buchanan returned to Wheatland. Frustrated by the vitriol aimed at him during the Civil War, he would spend much of the rest of his life attempting to restore his reputation, but without success. He died from respiratory failure on June 1, 1868, at the age of 77.

No one knew it when the former President and incoming President said farewell, but historians would determine that one, Buchanan, had been the worst President in the country's history, while the other, Lincoln, was to be the greatest.

### **Shifting Ownership**

After the failure to secure appropriations in the early 1840s for continuing the Cumberland Road, friends of the road did not give up. In 1846, they tried to pass a bill in the House that would turn the road over to Ohio, Indiana, Illinois, and Missouri, along with an incentive for the States to finish construction. Each State would receive public lands along with the transfer of ownership of the road:

- Ohio: 344,000 acres
- Indiana: 921,000 acres
- Illinois: 1,389,360 acres
- Missouri: 1,331,832

If the States did not complete the road in 8 years, they would forfeit the public land.

Young, in his constitutional history of the road, summarized the outcome:

The general tenor of the debate was to the effect that the original “compact” was binding; but the bill failed. Some said they wished never to hear the words “Cumberland Road” pronounced in the House again. But the following, together with the strict-construction theory, generally determined the matter:

Why, sir, men are behind the times with this old-fashioned road. The spirit of the age is “onward!” Thirty miles an hour on land and one thousand miles a minute on Professor Morse's wires are deemed but ordinary speed.

The House engaged in a lengthy debate on two alternatives: a traditional appropriation bill and the land-substitute bill. At one point, Representative Robert Smith, a Democrat from Illinois and chairman of the Committee on Roads and Canals, addressed his colleagues for “nearly an hour.” Speaking on April 6, 1846, he said, “No member in this House was more strenuously opposed to an *extravagant* and *indiscriminate* system of

internal improvements by the General Government than he was.” He would not vote for any bill now before the House “which had not been sanctioned by the fathers of the Constitution, and similar appropriations approved by the great expounders of the Democratic creed – Jefferson, Madison, Jackson, and Van Buren.”

The Cumberland Road proposition, he said, had begun under President Jefferson and continued until the commencement of President Tyler’s term:

With such facts staring him in the face, he must be excused for preferring to adopt the construction put upon the Constitution, and the power of the General Government to make appropriations for this road, by Jefferson and Madison, who acted a conspicuous part in framing that instrument, rather than adopt the construction given to it by the two honorable *young* gentlemen from Alabama, [Messrs. Yancey and Payne.] He believed that those who framed and adopted that Constitution understood full as well the powers that instrument designed Congress should exercise, as those of the present generation and the present day. And that, protecting himself behind the shield constructed by the framers of the Constitution, he should continue to advocate and support all appropriations designed for the completion of this great national work.

(As mentioned previously, Thomas Jefferson was not one of the framers of the Constitution; he was Minister to France at the time of the Constitutional Convention.)

Representative Smith, who was 44 years old, was referring to Representatives William L. Yancey (32 years old) and William W. Payne (39), both Democrats from Alabama. During the debate on April 3, Representative Yancey had denied any obligation to complete the road, given the exhaustion of the two-percent fund. He opposed the bill “on the ground of constitutionality and of expediency.” Representative Payne had read an extract, cited earlier, from Secretary of State Thomas Jefferson’s reply, on February 15, 1791, to President Washington’s request for comments on the constitutionality of the National Bank:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

After reading the excerpt, Representative Payne concluded:

The power to dig a canal, build a road, or improve a river, is not among the enumerated powers. If, then, Congress attempts to do either, we take possession of a boundless field of power, no longer susceptible of any definition.

Representative Smith considered it “extraordinary” that during the years when the Cumberland Road was under construction from Cumberland to Wheeling, the Representatives from the three States had supported it, “time and again,” adding that

“these constitutional objections did not appear to have sprung up in the minds of the Representatives from Virginia against the further construction of this great national thoroughfare, until *after* it had been constructed through that State, and *completed* to Wheeling, on the banks of the Ohio.”

He realized that they attempted to avoid claims of inconsistency by pointing out that the two-percent fund was exhausted. That was, in Representative Smith’s view, only a “pretext”:

Up to April, 1820, the appropriations made for the construction of the Cumberland road through the three States of Maryland, Pennsylvania, and Virginia, amounted to the sum of \$1,698,984; while, during that that same period, the *two per cent. fund* only amounted to \$210,000. Here, then, it would appear that up to the period named, (1820,) the excess of appropriations to the Cumberland road, over and above the two per cent. fund, amounted to the enormous sum of \$1,488,984. And yet (said Mr. S.) no objection was raised that the General Government was exceeding its authority, or going beyond the stipulations of the compact, by making appropriations to an amount exceeding that realized from the two per cent. fund.

Nevertheless, Congress on May 15, 1820, passed legislation to extend the road to the west bank of the Mississippi River between St. Louis and the mouth of the Illinois River. Representative Smith read the preamble to that Act:

Whereas, by the continuation of the Cumberland road from Wheeling, in the State of Virginia, through the States of Ohio, Indiana, and Illinois, *the lands of the United States may become more valuable, &c.*

Here, Representative Smith explained, Congress was admitting that it had the power to extend the road “irrespective of anything contained in the compact, from the effect of which it would prove difficult for the gentlemen to escape.” He mentioned this only to disprove the claim that supporters of the road “were contending for new and extended powers of the General Government to continue these appropriations; and to repel the charge that, in advocating them, they were violating any principle of the Democratic party.”

He then pointed out that during the Jackson and Van Buren Administrations, they took a limited view of the power of Congress, but approved bills appropriating funds for the Cumberland Road:

During General Jackson’s Administration, larger appropriations were made for the completion of the Cumberland road than during any previous or subsequent Administration. And as to him was awarded the fame of checking a reckless and extravagant system of internal improvements; no one could question but what he regarded this road as coming clearly within the constitutional powers of Congress, or he never would have given his sanction to appropriations exceeding \$3,700,000, and, at the very time, too, when all the mighty energies of his

indomitable nature were being exerted to put a stop to all works of internal improvements not strictly of a national character.

Representative Smith read an extract from President Jackson's Maysville Road veto citing two examples during the Jefferson Administration – the Louisiana Purchase and the Cumberland Road – that “have a greater agency in marking the character of the power than any subsequent events.” The extract included President Jackson's observation that the Cumberland Road derived “much weight from the acquiescence and approbation of three of the most powerful of the original members of the Confederacy expressed through their respective Legislatures.”

If, Representative Smith said, he was in error in supporting appropriations for the Cumberland Road, “it was to him sufficient justification that he had been led into that error by the distinguished Democratic Presidents to whose action and writings he had previously referred.”

He explained that in compliance with his duty to himself and his constituents, he had reported a bill appropriating \$400,000 for continuation of work on the road. Shortly afterwards, Representative Caleb B. Smith, an Indiana Whig, had reported the bill granting public lands to the States as incentive for them to complete the road. As chairman of the committee, Representative Robert Smith had written to every member of the House from those States to secure their opinion, and for the most part they favored the public lands version of the bill:

These strong and nearly unanimous expressions from three States most deeply interested in this great national work, added to the undeniable fact that all attempts to procure a money appropriation had entirely failed for the last eight years, he did not feel himself at liberty to disregard.

Therefore, he had released the lands bill, but with the understanding that it would be considered only if the appropriation bill failed. “In pursuing this course, he was doing what he conscientiously believed was for the best interests of his constituents, and the West in general.”

On April 7, the House voted 78 to 108 to reject the lands bill and 72 to 106 to reject the appropriation bill. “So the bill was *rejected*,” as the *Globe* summed up the outcome.

Although funding was at an end, Congress was not finished with the Cumberland Road, as Young described. On March 31, 1848, the Indiana legislature passed a resolution accusing Congress of having failed to fulfil its contract, “and praying that the eastern part of the road to the state of Indiana might be transferred together with materials, tools, etc., to the state, that it might authorize a private company to finish it.” The resolution closed:

Provided, however, that the United States may resume the ownership and control of said Road at any time by paying to the corporations the cost of constructing the same.

In response, Congress passed *An Act to surrender to the State of Indiana the Cumberland Road in said State*. President Polk signed it on August 11, 1848:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That so much of the part of the Cumberland road as lies within the State of Indiana, and all the interest of the United States in the same, together with all the timber, stone, and other materials belonging to the United States, and procured for the purpose of being used in the construction of said road, and all the rights and privileges of every kind belonging to the United States as connected with said road in said State, be, and the same are hereby, transferred and surrendered to the said State of Indiana.

Lee Burns, in his article about the road in Indiana, wrote that:

But the state would have none of it. The canals and railroads that it had built in a gigantic and ill considered scheme of internal improvements had resulted in financial disaster, and the state had begun to turn them over to such private companies as would agree to complete them and keep them in operation.

And so control of the National road through Hancock, Marion, Hendricks and Putnam Counties was granted in 1849 to the Central Plank Road Company which covered the road with oak planks and put up a series of toll gates. In Indianapolis a toll gate was built at the bridge and another just east of town. This was considered by the citizens as taking an unfair advantage of the franchise and finally the eastern gate was removed, after the town council had agreed that the company should not be required to keep Washington street in repair. After a time the planks began to decay and the road was graveled . . . .

The plank road craze in the United States began in 1846 when the first such road opened in New York (Syracuse to Oneida Lake). Thousands of miles of plank road would be built as toll roads. However, as Albert C. Rose explained in *Historic American Roads*, this craze did not last long:

In spite of the reluctance of the engineering profession to endorse any material that by its nature was transient in character, this new road surfacing struck the popular fancy and during the following decade thousands of miles were built in many States until the disillusioned public began to appreciate the fact that the life of any road is limited by the lasting qualities of the material of which it is built. It took 10 years to demonstrate this axiom – just long enough for the wooden planks to rot away and wear out.

Owners of the roads could not afford to replace the planks based on toll collection in a time when railroads were a superior form of surface transportation.

Burns continued:

Through Wayne County the road was taken over by the Wayne County Turnpike Company and was operated by it as a toll road for over forty years when it was

finally purchased by the townships through which it passed and made a free gravel road, and in Henry county the road was operated for many years by a private company.

The entire road in Indiana was soon paralleled by a railroad.

In response to a similar resolution from Illinois, Congress approved a bill that President Pierce signed on May 9, 1856, transferring the Cumberland Road to that State.

On March 27, 1877, Ohio asked permission to stop collecting toll with the consent of the counties the road passed through. Maryland adopted a similar resolution. By Act of January 30, 1879, Congress granted authority to Maryland, with similar consent for Ohio by Act of February 26, 1879.

Young summarized:

The surrender of the road to the states was but the concrete expression of the great democratic wave which swept over the United States during the thirties and forties. Every state admitted, beginning with Ohio, had entered into a compact with the United States by which the latter reserved 2 per cent. of land sales for the construction of a road to the state. In 1836, when Arkansas entered the Union, she was given the entire 5 per cent to expend to suit herself, and in 1841 the 2 per cent. reservation for Alabama and Mississippi was surrendered to those states.

Reasons have already been given for this surrender. The main ones were (1) a lack of jurisdictional power in the United States to levy tolls and police the road; (2) a desire on the part of both the states and the United States to preserve the road from destruction. The acts surrendering the road east of the Ohio declared the consent given only "during the pleasure of Congress." No time is mentioned in the Ohio act of 1831, but in 1879 the United States disclaimed all obligations in the future; in Indiana and Illinois the surrender was complete and unconditional. In the original acts of surrender, 1831-35, there was a recognition of either a proprietary or a jurisdiction interest, or both, in the United States as follows: (1) something was surrendered; (2) surrender was made by "compacts" which regulated the number of toll-gates and the rates of toll; (3) provision was made for the United States to resume its proprietary or jurisdictional interest at pleasure.

## **In the Supreme Court**

### **Searight v. Stokes**

In the 1830s, Congress had passed Acts consenting to Pennsylvania's law "for the preservation and repair of the Cumberland road." It called for the appointment of commissioners to build toll-houses and toll-gates, but included several exemptions from the tolls, including "any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States or to any of the states composing this union." By an Act of July 3, 1832, Congress agreed to the State takeover laws of Pennsylvania as well as Maryland.

Pennsylvania, however, felt that it was not getting as much toll revenue as it should.

By an Act of June 13, 1836, the State provided that wagons carrying goods, cannon, or military stores of the United States would be exempt from tolls only to the proportional amount of such goods they carried, but subject to toll for the remainder, "and that in all cases of wagons, carriages, stages, or other modes of conveyance, carrying the United States' mail, with passengers or goods, such wagon, stage, or other mode of conveyance, shall pay half toll upon such modes of conveyance."

The National Road Stage Line operated by William B. Stokes and Lucius W. Stockton of Maryland was one of the companies subject to the new toll law. (Stockton was cited earlier regarding repairs he had made to the road without formal permission to do so.) In accordance with agreements with the Postmaster General, the company's stages carried the United States mail as well as passengers and their baggage. The company refused to pay the proportional toll for its non-mail activities.

In *The Old Pike*, Thomas B. Searight described the first encounter:

We recall but one instance of a refusal to pay toll for passing over the National Road, and that was a remarkable one. It grew out of a misconception of the scope of the act of Congress, providing for the exemption from toll of carriages conveying the United States mails. The National Road Stage Company, commonly called the "Old Line," of which Lucius W. Stockton was the controlling spirit, was a contractor for carrying the mails, and conceived the idea that by placing a mail pouch in every one of its passenger coaches it could evade the payment of toll. Stage companies did not pay toll to the collectors at the gates, like ordinary travelers, but at stated periods to the Road Commissioner.

At the time referred to, William Searight, father of the writer, was the commissioner in charge of the entire line of the road through the state of Pennsylvania, and it was fifty years ago. Upon presenting his account to Mr. Stockton, who lived at Uniontown, for accumulated tolls, that gentleman refused payment on the ground that all his coaches carried the mail, and were therefore exempt from toll. The commissioner was of opinion that the act of Congress could not be justly construed to cover so broad a claim, and notified Mr. Stockton that if the toll was not paid the gates would be closed against his coaches. Mr. Stockton was a resolute as well as an enterprising man, and persisted in his position, whereupon an order was given to close the gates against the passage of his coaches until the legal toll was paid.

The writer was present, though a boy, at an execution of this order at the gate five miles west of Uniontown. It was in the morning. The coaches came along at the usual time and the gates were securely closed against them. The commissioner superintended the act in person, and a large number of people from the neighborhood attended to witness the scene, anticipating tumult and violence, as to which they were happily disappointed. The drivers accepted the situation with good nature, but the passengers, impatient to proceed, after learning the cause of

the halt, paid the toll, whereupon the gates were thrown open and the coaches sped on. For a considerable time after this occurrence an agent was placed on the coaches to pay the toll at the gates.

Mr. Stockton instituted prosecutions against the commissioner for obstructing the passage of the United States mails, which were not pressed to trial, but the main contention was carried to the Supreme Court of the United States for adjudication.

Commissioner Searight took the company to court. State law had exempted property of the United States, but the issue was whether tolls could be charged on a proportional basis for carriages carrying passengers and private property as well as Federal property such as the U.S. mail. On November 29, 1842, the Circuit Court of the United States for the western district of Pennsylvania ruled in favor of the defendants, Stokes and Stockton.

*Searight v. Stokes*, 44 U.S. 151 (1845), reached the Supreme Court, which issued its opinion on January 1, 1845. Chief Justice Taney, writing the opinion for the majority, explained that Pennsylvania, under Federal law, could change the toll charges without the consent of Congress, as long as the toll collected was never higher than the amount needed for preservation of the road.

Taney went through the history of the road, and the legislation transferring responsibility to the State, before summarizing what the case was and what it was not:

And we are now to inquire whether this half-toll can be imposed upon carriages carrying the mail under the compact between the United States and Pennsylvania.

It will be seen from this statement, that the constitutional power of the general government to construct this road is not involved in the case before us; nor is this court called upon to express any opinion upon that subject; nor to inquire what were the rights of the United States in the road previous to compacts herein before mentioned. The road had in fact been made at the expense of the general government. It was the great line of connection between the seat of government and safe channel for the conveyance of the mails, and enabling the government thereby to communicate more promptly with its numerous officers and agents in that part of the United States west of the Alleghany mountains. The object of the compacts was to preserve the road for the purposes for which it had been made. The right of the several states to enter into these agreements will hardly be questioned by any one. A State may undoubtedly grant to an individual or a corporation a right of way through its territory upon such terms and conditions as it thinks proper; and we see no reason why it may not deal in like manner with the United States, when the latter have the power to enter into a contract. Neither do we see any just ground for questioning the power of Congress. The Constitution gives it the power to establish post-offices and post-roads; and charged, as it thus is, with the transportation of the mails, it would hardly have performed its duty to the country, if it had suffered this important line of communication to fall into utter ruin, and sought out, as it must have done, some circuitous or tardy and

difficult route, when by the immediate payment of an equivalent it obtained in perpetuity the means of performing efficiently a great public duty, which the Constitution has imposed upon the general government. Large as the sum was which it paid for repairs, it was evidently a wise economy to make the expenditure. It secured this convenient and important road for its mails, where the cost of transporting them is comparatively moderate, instead of being compelled to incur a far heavier annual expense, as they must have done, if, by the destruction of this road, they had been forced upon routes more circuitous or difficult, when much higher charges must have been demanded by the contractors.

Having established the basis for the case, Taney wrote that the Act of March 3, 1835, was due “great consideration” because it allowed the States to take possession of the road and charge tolls for its preservation, subject to specified conditions:

By so doing they assented to all the provisions contained in this act of Congress; and one of them is an express condition, that the United States not thereafter be subject to any expense in relation to the road. Yet under the argument, the expenses of the road are to be defrayed out of the tolls collected upon it. And if the mails in Pennsylvania and Maryland may be charged, it will be found, that instead of the entire exemption, for which the United States so expressly stipulated, and to which Pennsylvania agreed, a very large proportion of the expenses of repair will be annually thrown upon them. We do not think that either party could have intended, when the contract was made, to burden the United States in this indirect way for the cost of repairs. So far as the general government is concerned, it might as well be paid directly from the Treasury. For nobody, we suppose, will doubt that this toll, although in form it is paid by the contractors, is in fact paid by the Post-office Department. It is not a contingent expense, which may or may not be incurred, and about which a contractor may speculate; but a certain and fixed amount, for which he must provide, and which, therefore, in his bid for the contract, he must add to the sum he would be otherwise willing to take. It is of no consequence to the United States whether charges for repairs are cast upon it through its Treasury or Post-office Department. In either case it is not free from expense in relation to the road, according to the compact upon which it was surrendered to and accepted by the states.

The general government had “unquestionably a property in the mails.”

The State law referred to wagons “laden” with the property of the United States:

Nor can the word laden be construed to mean fully laden, for that would in effect destroy the whole value of the exemption, and compel the United States to pay a toll even on its military stores and other property, unless every wagon or carriage employed in transporting it was as heavily laden as it could conveniently bear. We think that a carriage, whenever it is carrying the mail, is laden with the property of the United States within the true meaning of the compact: and that the act of Congress of which we have spoken, and to which the state assented, must

be taken in connection with the state law of 1831 in expounding this agreement. Consequently, the half-toll imposed by the act of 1836 cannot be recovered.

Taney contrasted the situation with the case where the State of Pennsylvania could have built the road with its own funds:

If the state had made this road herself, and had not entered into any compact upon the subject with the United States, she might undoubtedly have erected toll-gates thereon, and if the United States afterwards adopted it as a post-road, the carriages engaged in their service in transporting the mail, or otherwise, would have been liable to pay the same charges that were imposed by the state on other vehicles of the same kind. And as any rights which the United States might be supposed to have acquired in this road have been surrendered to the state, the power of the latter is as extensive in collecting toll as if the road had been made by herself, except in so far as she is restricted by her compact; and that compact does nothing more than exempt the carriages laden with the property of the United States, and the persons and baggage of those who are engaged in their service. Toll may therefore be imposed upon every thing else in any manner passing over the road; restricting, however, the application of the money collected to the repair of the road, and to the salaries and compensation of the persons employed by the state in that duty.

One of the arguments against the toll charge was that if it were upheld, mail contractors would be able “to drive every other line of stages from the road, by dividing the mail-bags among a multitude of carriages, each of which would be entitled to pass toll free, while the rival carriages would be compelled to pay it.” The mail contractors would thereby have a monopoly throughout the length of the road, which would be “greatly injurious to the public, by lessening that disposition to accommodate which competition is sure to produce, and enhancing the cost of travelling beyond the limits of a fair compensation.”

Taney dismissed this argument because the United States “cannot claim an exemption for more carriages than are necessary for the safe, speedy, and convenient conveyance of the mail.” If contractors were to spread the mail among carriages to avoid tolls, they would be in violation of the compact:

The postmaster-general has unquestionably the right to designate not only the character and description of the vehicle in which the mail is to be carried, but also the number of carriages to be employed on every post-road. And it can scarcely, we think, be supposed, that any one filling that high office, and acting on behalf of the United States, would suffer the true spirit and meaning of the contract with the state to be violated or evaded by any contractor acting under the authority of his department.

If a contractor, nevertheless, tried to avoid tolls by spreading the mail among far more carriages than necessary, “the contract, according to its true construction, could be enforced by the state in the courts of justice; and every carriage beyond the number

reasonably sufficient for the safe, speedy, and convenient transportation of the mail would be liable to the toll imposed upon similar vehicles owned by other individuals.

The Supreme Court, therefore, upheld the opinion of the Court of Claims in favor of the defendants, Stokes and Stockton.

### **Neil, Moore & Co. v The State of Ohio**

The State of Ohio thought it also was not receiving the toll revenue it was due for preservation of the road. Initially, State law enacted in 1831 exempted mail stages from paying tolls. However, by An Act of February 6, 1837, the State exempted only one daily stage, coach, or other vehicle, "and no more," belonging to any contractor carrying the mail. Any other vehicles would pay the toll. "But if the postmaster-general shall order the mail to be divided, and carried in two or more stages, coaches, or vehicles, in any one direction daily, then in such case the coaches or vehicles in which mails shall actually be carried, shall pass free of toll; but on each passenger transported in any such additional stage, coach, or vehicle, there shall be charged and collected at each gate, three cents."

By Act of March 19, 1838, the legislature granted authority to the Board of Public Works to revise the toll "to be paid by persons passing on or using the National road in Ohio, and so to modify the same, from time to time, as to raise and collect, in the most equal manner, the sum necessary to defray the expenses incident to the preservation and repair of said road." The board changed the toll to 10 cents per passenger at each toll-gate.

In October 1842, the board as plaintiff brought suit against Neil, Moore & Co., a mail contractor, in the Court of Common Pleas, in Franklin County. A statement of facts agreed to by both parties stated:

The plaintiff claims to recover for tolls on passengers carried upon the National road, in Ohio, in coaches belonging to the defendants, other than and besides one daily stage-coach, carrying the mail of the United States; which said coach, with the horses, passengers, and every thing else pertaining to it, was permitted to pass toll free. The order of the Board of Public Works . . . was made in due form, at the date thereof, and is to be admitted in evidence. The passengers upon whom toll is sought to be recovered, were carried by the defendants, as above mentioned, between the first days of April and October, A.D. 1842. The defendants were contractors for carrying the mail of the United States upon said road, and said passengers were all carried in coaches in which a part of said mail was carried at the same time; the mail being thus carried in more than one coach, pursuant to orders from the postmaster-general; one coach, containing a part of the mail, and the passengers, and baggage, and every thing on it, being, at the same time, permitted to pass toll free, as above stated.

The parties agreed that the toll was equal to what was required to keep the road in repair, but it was not intended by "this admission to preclude the defendants from objecting to

the validity or legality of said charge of toll upon passengers, upon any ground they may think proper to take in the argument”:

It is agreed by the parties that the whole number of passengers charged with toll at all the gates, between the first day of April and July, A.D. 1842, was ten thousand seven hundred and fifty-six, and that the whole number chargeable between the first day of July and October, A.D. 1842, was twelve thousand six hundred and seventeen.

In all, the Board of Public Works calculated that it was owed tolls totaling \$2337.08, plus interest. The Court of Common Pleas found in favor of the plaintiffs, calculating total damages of \$2,438.25.

Neil, Moore & Company appealed to the Supreme Court of Ohio, which affirmed the lower court’s finding in December 1843.

When the case arrived in the U.S. Supreme Court, Chief Justice Taney again wrote the opinion for the majority. In his opinion on *Neil, Moore & Co. v. State of Ohio*, 44 U.S. 3 How. 720 720 (1845), he noted that the Supreme Court had in the same term considered the similar case in Pennsylvania. After summarizing the case, he wrote of the agreements on toll charges:

At the time this compact was made, it was well known that the mail was always transported by contractors, and that whenever it was conveyed in carriages, the vehicles belonged to them, and were their own private property, and not the property of the United States. It was equally well known that upon this road, as well as many others, the postmaster-general, in his contracts, uniformly required that the mail should be carried in a stage or coach capable of accommodating a certain number of passengers, the presence of the passengers being regarded as adding to the safety of the mail, and superseding the necessity of any other guard.

The State was well aware of these facts when in 1831 it exempted carriages carrying the mail from the toll:

The reason for this exemption is evident; for a toll charged upon the carriages of the contractor would, in effect, be a charge upon the Post-office Department, since the contractor would be obliged to make provision for this expense when bidding for the contract, and regulate his bid so as to cover it.

In the proposition made by Ohio, nothing was said of a toll on the passengers in a carriage of any kind, but the charge is made upon the carriage itself, according to its description, and the number of horses, without any regard to the number of persons that may be travelling in it; and it is evident that it was at that time supposed that the rates specified and agreed on would prove sufficient to keep the road in repair, and that the United States would always thereafter have the free use of it, for mail-carriages, of the usual kind, without any burden upon them, direct or indirect.

If the revenue collected had been sufficient to maintain the road, no one would have thought of charging tolls on each passenger in a mail stage, “or that the specified charges upon the carriages could have been reduced, and the deficiency supplied by a toll upon persons traveling in the carriages which conveyed the mail.”

In *Searight v. Stokes* and other opinions, the court had found that the case turned on “the relation in which the parties stood to one another, as well as to the subject-matter of the contract, and the object which the high contracting parties intended to attain; and we must expound it upon the principles of justice, so as to accomplish intention, by a narrow and literal interpretation of its words.”

First, none of the cost of preserving the National Road was to be levied on the United States, “but was to be obtained altogether from other sources; and that the relative position and privileges of the mail-coaches in regard to tolls, as prescribed in the law, were to be always maintained, unless a deficiency or superabundance of revenue should render it necessary to increase or diminish the rates fixed in the law.” Otherwise, the tolls set in State law, and consented to by Congress, “would be nugatory and without object.” At the same time, “two sovereignties were contracting with each other by means of legislative action,” and the State law and congressional assent constituted the “compact between them, so far as their respective rights were concerned.”

Based on these considerations, Chief Justice Taney summarized:

The law of the state, and the order of its Board of Public Works, impose a toll upon every one travelling in the mail-stage, while the passengers in every other vehicle are allowed to go free. If this can be done, it is manifest that the United States will derive no benefit from the compact, and so far from enjoying the privilege for which they stipulated, and for which they paid so heavily in the construction of the road, a large portion of the burden of repairs will be thrown upon them.

The difference could be seen by comparing the tolls on stagecoaches not carrying the mail and similar stagecoaches carrying it:

According to the rates contained in the law of which we are speaking, a four-wheel carriage, drawn by four horses, pays at each gate thirty-one and a quarter cents, and if it is not conveying the mail, it pays nothing on its passengers. This sum is therefore the whole amount of the toll to which it is liable. Now the mails on this road have, we understand, been always transported in coaches of the above description, and although under the order of the Board of Public Works no toll is charged directly upon the carriage, yet every passenger must pay ten cents at each gate, so that the carriage of a mail-contractor, containing six passengers, pays nearly double as much as a like carriage owned by any one else with the same. And what still more strongly marks the disadvantages to which the United States are subjected by this order of the board, these passengers may be persons in the service of the United States, passing along the road in the execution of some public duty, for the order makes no exceptions in their favour.

Although the toll is on passengers, the contractor pays the toll, reducing his profit, “and when thus levelled exclusively at passengers in the mail-stage, it accomplishes indirectly what evidently cannot be done directly by a toll upon the carriage, and in its consequences must seriously affect the interests of the United States,” the next time bidding for the contract is advertised. Moreover, if this form of toll were sustained, “the mischief may not stop here.” The States through which the National Road passes could “graduate the tolls as to drive all passengers from the mail-stages into other lines, and by that means compel the United States, contrary to their wishes, and contrary to the public interest, to transport the mails in vehicles in which no passenger would travel.”

Nevertheless, the court did “mean to deny the right of the state to impose a toll upon passengers in the mail-stages, provided, the power is exercised, in a manner and upon principles, consistent with the spirit and meaning of the argument in which the road was transferred to the care of the states.” In *Searight v. Stokes*, the court had “already said that such a toll may be lawfully collected.” Because that case had not involved a toll on passengers, the court’s opinion had not addressed the subject. The key was the true meaning of the compact:

The carriages carrying the mail, with their passengers, travelling in the known and customary manner, were to pass toll free, as well as other vehicles laden with the property of the United States and the persons employed in their service, as mentioned in the proviso hereinbefore recited; and the road was to be kept in repair by the revenue derived from the tolls specified in the Ohio law, according to the rates there set forth, provided they should prove to be sufficient for the purpose. No toll was at that time proposed upon passengers in any vehicle, and passengers in the mail-stage therefore had no peculiar privilege in going free, and merely passed along the road upon the same terms with those who were travelling in other carriages. And as the compact contains no stipulation for the exemption of travellers in the mail-stages, the general government can demand no advantages in their behalf, which are not extended to passengers in other vehicles. But they have a right to insist that the equality upon this subject, which the law of Ohio originally proposed, shall still be maintained; that the privilege and advantages intended to be secured to the carriages conveying the mail, over those granted to other vehicles, shall be preserved in substance and reality as well as in form; and that the passengers in the mail-stages shall not be selected and set apart, as the especial objects upon which burdens are to be laid, and to which travellers in other carriages are not to be subjected.

When the State realized that the original toll charges were insufficient to maintain the road, it had several choices to increase revenue, including leaving the original tolls in place while supplementing them with tolls on passengers:

And if instead of selecting the persons travelling in the mail-coaches, and laying the burden exclusively upon them, all passengers in vehicles of any kind had been equally charged, the real and substantial advantages and privileges to which the United States are entitled under the agreement would have been preserved, and the quality in relation to passengers originally existing between the mail coaches

and other carriages would not have been disturbed. And it is this manner only, in our judgment, and as a toll in addition to that specifically staged in the contract, and imposed equally upon passengers in every description of vehicle, that persons traveling in the mail-stages can be lawfully charged, without first obtaining the assent of Congress.

Ohio, undoubtedly, had the right to let the mail-stages pass without toll, but “if it thinks proper, to revoke it, since the exemption was a mere voluntary act, founded on no valuable consideration, but growing out of what was then supposed to be a just and liberal policy, which the state could afford to exercise; which it had the right to change whenever it was deemed necessary to do so.” However, the United States, by building the road, had contributed “a full and valuable consideration . . . for the privileges reserved to them”:

And this being the case, the section in question cannot by any sound rule of construction be regarded as inconsistent with the contract contained in another part of the same law, and as placing the rights secured to one party entirely at the discretion and the control of the other. The reservations of power to the state, evidently relate to subjects in which the general government had no separate interest; and they would have been altogether unnecessary and useless if the state had not considered the preceding part of the law as the proffer of a compact which was to be obligatory upon it, if assented to by Congress.

Chief Justice Taney had one concern. The 1837 State law included a provision that “would appear to distinguish between the mail-stages, in relation to toll, where more than one mail passed along the road on the same day.” The Postmaster General has the absolute authority to determine how many stagecoaches should be dispatched with the mail each day, and the hours of transportation. His decisions cannot be controlled by a State or the courts:

And in the case of *Searight v. Stokes and others*, when the court speak of abuses by the contractors in the number of carriages employed, and of the right of the court to enforce the compact, it will be seen by a reference to the opinion, that it is confined to cases where the mail-bags, directed to leave the post-office at the same time, are unnecessarily divided among a number of carriages in order to evade the payment of toll; and the opinion expressed on that occasion by the court does not apply to stages leaving the post-office with mails at different hours, in obedience to the orders of the department. In the latter case it is immaterial whether the mails are light or heavy. The postmaster-general is, upon this subject, the proper and only judge of what the public interest and convenience requires, and his decision cannot be questioned by the courts.

The State law appeared to have been included to guard against contractor abuses, rather than to interfere with the Postmaster General’s powers:

And in regard to the toll imposed, as hereinbefore mentioned, if it is necessary for the support of the road, it is in the power of the parties to the compact to modify it

at their pleasure, and to give the state the power it has exercised. But according to the terms of the contract, as it was originally made, and still stands, the toll upon passengers in the mail-stages, laid in the manner hereinbefore stated, cannot lawfully be demanded, and the judgment of the state court must therefore be reversed.

### **Achison v. Huddleson**

Maryland experienced a similar need for additional toll revenue to keep its portion of the Cumberland Road in repair. The original 1832 Maryland law, subject to congressional assent, provided:

That no tolls shall be received or collected for the passage of any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States, or to any of the States composing this Union.

Congress consented in the Act of July 3, 1832.

When toll revenue was insufficient for preservation of the road, the State of Maryland, by an Act of March 10, 1843, imposed a toll of 4 cents for each passenger in the mail coaches for every 10 miles of travel on the road “and so in proportion for every greater or less distance, which shall be taken and received in lieu of the tolls now established by law on all coaches or stages with four horses passing over said road, and which shall be collected, paid out, and expended as other tolls on said road are collected, paid out and expended, under existing laws.”

The mail contractor was to provide, under oath, on the first Monday of every month “to the gate-keeper at number one, a list, showing the number of passengers transported over said road in their respective coaches, for the month next preceding the time when said list is so returned.” If the contractor did not provide the list, the gate-keeper at number one was “to demand of and receive from, such proprietor or proprietors so failing, the sum of one dollar for each and every stage-coach passing over said road its entire length.”

Over the years, the mail had been carried in the four-horse post-coaches of Stockton, Falls and Company, under contract with the Postmaster-General. The stage company did not comply with the law.

Therefore, Jonathan Huddleson, superintendent of the Maryland section of the Cumberland Road, became plaintiff in a suit against Stockton, Falls, Moore, and Achison, the formal name of the stage company. The company contended that the recent law violated the compact, established in the earlier law, between the State and the United States. The State argued that the case differed from the earlier cases in Pennsylvania and Ohio and was not in violation of the earlier compact.

After hearing the case, the County Court of Alleghany County found for the Huddleson in support of the State law. The Court of Appeals of Maryland affirmed the lower court’s decision.

Achison, as the company's representative, took the case to the U.S. Supreme Court.

In *Achison v. Huddleson*, 53 U.S. (12 How.) 293 (1852), Associate Justice Benjamin R. Curtis wrote the court's opinion released on February 18, 1852. (Appointed by President Fillmore, Curtis – the first Justice who received a degree from a law school – served on the court only from 1851 to 1857. Along with one other Associate Justice, he is known for his vigorous dissent to every finding in Chief Justice Taney's opinion in *Dred Scott v. Sanford*.)

Noting the similarities to *Searight v. Stokes* and *Neil, Moore & Co. v. the State of Ohio*, Curtis found that the finding in *Neil, Moore* applied to the original act of Maryland in accepting, subject to congressional consent, the road. The question, therefore, was whether the second State law complied with that compact among the parties.

The earlier State law imposed a toll on all vehicles on the road except coaches carrying the U.S. mail. Curtis wrote, "And, inasmuch as coaches conveying the mail were not subject to any toll, there was by law a discrimination in favor of mail-coaches, their proprietors bearing none of the burden of supporting the road, while the proprietors of other four-horse coaches did bear a part of that burden." The Act of March 10, 1843, imposed a 4-cent toll on each passenger in a mail coach passing between each toll-gate, "which shall be taken and received in lieu of the tolls now established by law on all coaches or stages with four horses passing over said road, and which shall be collected, paid out, and expended, as other tolls on said road are collected, paid out, and expended, under existing laws."

The case was based on the last part of the law, requiring the company to pay \$1 per coach for failing to provide a list of the number of passengers to the gate-keeper. This provision of the law destroyed the discrimination in the original law in favor of the proprietors of mail coaches:

It was held in both the former decisions, that the stipulation in the compact, that the United States should not thereafter be subject to any expense to maintain the road, was inconsistent with the imposition of a tax upon the contractors for carrying the mail in four-horse coaches, because the United States, requiring the mail to be so carried, would thus indirectly be made, through the enhancement of the price for this service, to bear a part of that burden.

The law, therefore, imposed a tax on the United States, through the contractors, for support of the road.

Huddleson argued that "it is a tax upon the passengers, and not within the former decision. But we do not so consider it." It is true that if the mail proprietor did not carry passengers, he would not have to pay any toll. "But the regulations of the Post-Office Department require him to take passengers for the security of the mail." In fact, the State would not have imposed the toll unless the legislators believed the mail coaches would carry passengers:

The real effect and meaning of the law is, therefore, to impose a tax on the proprietor of a four-horse coach which carries the mail, making the amount of that tax depend on the number of passengers carried. Now, the objection is not to the amount, but to the existence of the tax. Not having the power to impose any tax, it is no answer to say, its amount is regulated by the number of passengers.

The defendants argued that the \$1 charge per coach was not a toll under the third section of the law, but a penalty for not complying with the second section:

We think it more properly a commutation as to amount, for the tolls payable under the first section. It fixes their amount by operation of law, and without regard to the number of passengers carried; and is certainly subject to difficulties quite as great as would attend a demand for the tolls under the first section.

Our opinion is, that, by reason of the compact between the United States and the State of Maryland, the tolls sued for could not be legally demanded, and that the decision of the Court of Appeals was erroneous and must be reversed.

The opinion reversed the Court of Appeals' opinion, "with costs." The case was ordered back to the Court of Appeals "in order that such further proceedings may be had therein, in conformity to the opinion of this court, as to law and just may appertain."

### **Indiana v. United States**

On October 23, 1889, the State of Indiana went into the Court of Claims to file suit against the United States to recover \$412,184.97 due, the suit alleged, from the sale of public lands in the State.

As stated earlier, the Enabling Act of April 19, 1816, that admitted Indiana to the Union provided:

That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of Congress.

Similar provisions had been included in Enabling Acts for the other Cumberland Road States as well as Alabama (1819) and Missouri (1820). As described earlier, legislation beginning in 1820 provided for use of the two-percent fund set aside for road or roads leading to the State for extension of the Cumberland Road west from Wheeling. The road was never completed to macadam standards in Indiana by the time Congress authorized the final significant funds for the work on May 25, 1838. The road was gradually turned over to the States.

An Act of September 4, 1841, provided that 10 percent of revenue from public land sales in the States of Alabama, Arkansas, Illinois, Indiana, Louisiana, Michigan, Mississippi, Missouri, and Ohio shall be turned over to the States “over and above what each of the said States is entitled to by the terms of the compacts entered into between them and the United States upon their admission to the Union”:

*Provided*, That the sum so allowed to the said States, respectively, shall be in no wise affected or diminished on account of any sums which have been heretofore, or shall be hereafter, applied to the construction or continuance of the Cumberland road, but that the disbursements for the said road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said States.

The funds going to Mississippi were to be used for a railroad from Brandon to the Alabama border, while the Alabama funds were for internal improvements of its choice.

By an Act of March 2, 1855, Congress called on the Commissioner of the General Land office to determine what sum was owed to Alabama under its Enabling Act for admission to the Union, and to include several reservations under treaties with several Indian Tribes, “and to pay to the said State five per centum thereon, as in case of other sales.”

Two years later, Congress approved an Act of March 3, 1857 to settle accounts with Mississippi “and other States” based on the same principles as the Act of March 2, 1855. The 1857 Act also called for a similar accounting for “each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.”

In accordance with the 1857 Act, the commissioner of the General Land Office stated an account for Indiana on December 4, 1872:

Balance due on December 31, 1856, on account of the three percent fund:	\$47.12
Amount of net proceeds of sales through December 31, 1856:	\$413,568.61
Amount of five percent on the cash value, at \$1.25 per acre in reservations:	<u>\$6,333.73</u>
	\$419,949.46

The commissioner also calculated that Congress had appropriated \$2,502, 900.45 for the laying out and making the Cumberland Road in Ohio, Indiana, and Illinois from 1818 to 1837 under acts requiring the Treasury to be reimbursed from the two-percent fund. In addition, \$1,555,000 had been appropriated, to be reimbursed from the two-percent fund, for the road in those States and Missouri. From these sums, the commissioner concluded that the sum appropriated for the Cumberland Road in those States was far more than the accrued amounts reserved from land sales for them. As a result, the only amounts due to Indiana were \$47.12 on the three-percent account and \$6,333.73 for Indian reservations.

These amounts were later verified by the Comptroller of the Treasury on February 5, 1874. Therefore, a sum of \$6,380.85 was offered to the State of Indiana, which did not accept the amount as a final settlement of its demands.

On October 17, 1889, Indiana formally demanded that the commissioner state an account in accordance with the Act of March 3, 1857. Without a change in the commissioner's position, the State pursued the case in the courts. The State filed a petition in the Court of Claims on October 23, 1889, against the United States to recover \$412,184.97. After the Court of Claims dismissed the petition, Indiana appealed to the Supreme Court.

The Supreme Court heard *Indiana v. United States*, 148 U.S. 148 (1893), on January 13, 1893. Justice Horace Gray rendered the court's opinion on March 13, 1893. President Chester Arthur, the Vice President who became President after the assassination of President James A. Garfield, had appointed Gray, a Boston native, to the Supreme Court in 1882, and he served until his death on September 15, 1902. He was the first Supreme Court Justice to hire a clerk, whom he paid out of his own salary.

He found that the Enabling Act for Indiana statehood "did not define the termini of the road or roads to be built, or bind Congress to complete any road, or require the two per cent of the proceeds of the sales of lands in Indiana to be expended within the State." The only obligation was to apply the two-percent fund "to the making of a road or roads leading to the said State, under the direction of Congress." Congress had the right to decide "on what part of the road leading to Indiana this fund should be expended; and Congress had the right to treat the road as a whole, constructed for the benefit of all the States through which it passed."

Whether the compact was a contract or a trust, "the contract has been performed, or the trust executed, by applying the fund in question to the making of a road 'leading to the said State' of Indiana." Based on the accounts of the commissioner of the General Land Office, "the sums appropriated to the construction of the Cumberland road leading to the State of Indiana greatly exceeded the whole amount of the two per cent fund from sales of lands in the State; and that, therefore, in the absence of special legislation upon the subject, nothing was payable to the State of Indiana on account of this fund."

Congress, which had a general authority to apply the two-percent fund to any part of the road, exercised this authority "honestly and fairly." That being the case, "it did not appear . . . what part of the expenditures upon the road was properly chargeable to 'making a road to the said State,' or what proportion of such expenditures for making a road to the State of Indiana was properly chargeable to the States of Ohio, Illinois, and Missouri, is wholly immaterial; and it was so treated by both parties at the argument."

Justice Gray noted that "the failure of the United States to build the National road" was not a foundation for the petition, but was suggested as an incidental explanation of motive. Under the Act of March 3, 1857, the petition contended that "it was immaterial what moneys had been expended by the government toward the construction of the National turnpike." Thus, interpretation of the 1857 Act was the determining factor in the case.

Indiana had argued that the 1857 Act stated that the amount owed was to be settled “upon the same principles” as prescribed for Mississippi and Alabama in the earlier Acts for relinquishing the two-percent. The difference, Justice Gray found, was that Congress had not appropriated the two-percent fund in those other States for road construction:

But there is nothing, in any of the acts upon the subject, which warrants the inference that Congress intended that, because the United States held themselves to be liable to Alabama and to Mississippi for the two per cent fund which they had never applied as they had agreed, they should therefore be liable to the other States for the like two per cent fund which had been fully appropriated and expended in accordance with their obligations to those States.

These views being conclusive against the right of the State of Indiana to recover anything in this case, it is unnecessary to consider the other questions discussed in the opinion of the Court of Claims and argued in this court.

### **What Searight Said**

Thomas B. Searight, in his pioneering 1894 work on the Cumberland Road, explained the significance of the road:

The road which forms the subject of this volume, is the only highway of its kind ever wholly constructed by the government of the United States.

When Congress first met after the achievement of Independence and the adoption of the Federal Constitution, the lack of good roads was much commented upon by our statesmen. But, it was not until 1806, when Jefferson was President, that the proposition for a National Road took practical shape. The first step . . . was the

appointment of commissioners to lay out the road, with an appropriation of money to meet the consequent expense.

The author of this work was born and reared on the line of the road, and has spent his whole life amid scenes connected it. He saw it in the zenith of its glory, and with emotions of sadness witnessed its decline. It was a highway at once so grand and imposing, an artery so largely instrumental in promoting the early growth and development of our country’s wonderful resources, so influential in strengthening the bonds of the American Union, and at the same time so replete with important events and interesting incidents, that the writer of these pages has long cherished a hope that some capable hand would write its history and collect and preserve its legends and no one having come forward to perform the task, he has ventured upon it himself, with unaffected diffidence and a full knowledge of his inability to do justice to the subject.

It is not a little singular that no connected history of the renowned Appian Way can be found in our libraries. Glimpses of its existence and importance are seen in the New Testament and in some old volumes of classic lore, but an accurate and complete history of its inception, purpose, construction and development,

with the incidents, accidents and anecdotes, which of necessity were connected with it, seems never to have been written. This should not be said of the great National Road of the United States of America. The Appian Way has been called the Queen of Roads. We claim for our National highway that it *was* the King of Roads. . . . .

From the time it was thrown open to the public, in the year 1818, until the coming of the railroads west of the Allegheny mountains, in 1852, the National Road was the one great highway, over which passed the bulk of trade and travel, and the mails between the East and the West. Its numerous stately stone bridges with handsome turned arches, its iron mile posts and its old iron gates, attest the skill of the workmen engaged on its construction, and to this day remain enduring monuments of its grandeur and solidity, all save the imposing iron gates, which have disappeared by process of conversion prompted by some utilitarian idea, savoring in no little measure of sacrilege.

Many of the most illustrious statesmen and heroes of the early period of our national existence passed over the National Road from their homes to the capital and back, at the opening and closing of the sessions of Congress. Jackson, Harrison, Clay, Sam Houston, Polk, Taylor, Crittenden, Shelby, Allen, Scott, Butler, the eccentric Davy Crocket, and many of their contemporaries in public service were familiar figures in the eyes of the dwellers by the roadside. The writer of these pages frequently saw these distinguished men on their passage over the road, and remembers with no little pride the incident of shaking hands with General Jackson, as he sat in his carriage on the wagon-yard of an old tavern . . . .

The National Road was designed to meet the wants of a free and progressive people, and to aid in building up and strengthening a great and growing republic . . . . The National Road served its purpose grandly, was a complete success, the pride and glory of its day and generation, and when it lost its place as a national thoroughfare, the government that made it was all the stronger because it had been made.

## **In the 20<sup>th</sup> Century**

With the dominance of railroads for long distance surface transportation, roads faded as a subject of constitutional debate until the popularity of the bicycle spurred the Good Roads Movement in the 1880s and 1890s. The Cumberland Road, also known as the National Road and the National Pike, had become primarily a local road, much less used for interstate travel than the railroads.

With the growing popularity of the automobile in the 20<sup>th</sup> century, road supporters began the named trail era of the 1910s to the mid-1920s. Groups identified a route, gave it a colorful name, then served as a quasi-chamber of commerce to promote improvement and use of the road. The Cumberland Road was included in one of earliest and most popular transcontinental roads of the Good Roads era, the National Old Trails Road. It went from

Baltimore, initially, later from Washington to Los Angeles, over 3,000 miles on a series of historic roads, including the Cumberland Road from Cumberland to St. Louis; Boon's Lick Road from St. Louis to the salt springs on the Missouri River, a distance of about 135 miles; and the Santa Fe Trail from Missouri to Santa Fe, New Mexico; from there via the Grand Canyon route to Los Angeles.

In 1925, the Secretary of Agriculture appointed the Joint Board on Interstate Highways to determine a new method of identifying and marking the country's best interstate routes. One goal was to eliminate the approximately 250 named trails, such as the National Old Trails Road, that had been selected by private associations without regard to an organized national road network. The Joint Board recommended creation of the U.S. numbered highway system.

Because the States owned the identified roads, the Secretary submitted the proposal for consideration by the national organization of State highway agencies, the American Association of State Highway Officials (AASHO). After numerous changes in routing and numbering, AASHO adopted the plan on November 11, 1926. The plan made the former Cumberland Road/National Old Trails Road, from Cumberland to St. Louis, part of one of the system's transcontinental roads, U.S. Route 40 (initially from Atlantic City, New Jersey, to San Francisco, California).

Over the years, as roads have been improved, alignments shifted, and a parallel Interstate Highway (I-70) built, U.S. 40 no longer aligns directly with the Cumberland Road, but in many places the old highway, imagined by George Washington, launched under President Thomas Jefferson, and never completed to Jefferson City, Missouri, remains in service.

Under the National Scenic Byways Program, the U.S. Department of Transportation designated the Historic National Road an All-American Road from Maryland to Illinois. Sponsoring associations in each State had nominated the route for designation. While all of America's Byways® involve intrinsic qualities that make them worth visits, roads designated as All-American Roads are a destination in itself.

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### **A Note on Sources**

With apologies to historians and other lovers of footnotes, I wrote this article without the scholarly referencing I, to the best of my ability, usually include. I have no excuse.

I hope it helps that most of my sources are cited in the text, although without the usual page references.

For congressional debates, I relied mainly on the HEINONLINE Web site at <https://heinonline.org/HOL/Index?collection=congreg>. I hope that my text provides

enough cite references to allow researchers who want more details to locate them in these records on HEINONLINE or elsewhere.

For the Inaugural Addresses, annual presidential messages to Congress, and other presidential documents, I tended to rely on the text in the congressional records available via HEINONLINE. I also consulted speeches and statements available from The American Presidency Project at <https://www.presidency.ucsb.edu/presidents>.

Text from Acts of Congress came from several sources, but the Library of Congress has posted a useful compilation at <https://www.loc.gov/law/help/statutes-at-large/index.php>.

In addition, I consulted numerous published sources, including some of the following on the Cumberland Road:

Brusca, Frank, Route40.net, <http://www.route40.net/page.asp?n=1478>.

Burt, Olive W., *The National Road: How America's Vision of a Transcontinental Highway Grew Through Three Centuries to Become a Reality*, The John Day Company, 1968.

Carvell, Clarence, *The National Road . . . A Photographic Journey*, Heritage Special Edition, American Literary Press, 2007. (Black and white photographs of the National Road today, including Maryland's "Bank Road" extension between Cumberland and Baltimore.)

Gray, Ralph, "From Sea to Shining Sea," *National Geographic*, July 1961. (A journey along U.S. 40 from Atlantic City, New Jersey, to San Francisco, California.)

Ierley, Merritt, *Traveling the National Road*, The Overlook Press, 1990.

Jordan, Philip D., *The National Road*, The Bobbs-Merrill Company, 1948.

Raitz, Karl, editor, *The National Road*, The Johns Hopkins University Press, 1996.

Raitz, Karl, editor, *A Guide to the National Road*, The Johns Hopkins University Press, 1996.

Schlereth, Thomas J., *U.S. 40: A Roadscape of the American Experience*, Indiana Historical Society, 1985.

Schneider, Norris F., *The National Road: Main Street of America*, The Ohio Historical Society, 1975.

Searight, Thomas B., *The Old Pike: A History of the National Road, with Incidents, Accidents, and Anecdotes Thereon*, and Bruce, Robert, *The National Road*, Reprint for the Western Pennsylvania Genealogical Society.

Sky, Theodore, *The National Road and the Difficult Path to Sustain National Investment*, University of Delaware Press, 2011. (A history of the National Road, its contribution to the history of the country, its decline in the second half of the 19<sup>th</sup> century and its revival in the 20<sup>th</sup> century as part of U.S. 40.)

Stewart, George R. *U.S. 40: A Cross Section of the United States*, Houghton Mifflin Company, 1953 (reprinted by Greenwood Press, 1973).

Vale, Geraldine R. and Thomas R. *U.S. 40 Today: Thirty Years of Landscape Change in America*, University of Wisconsin Press, 1983.

Vivian, Cassandra, *The National Road in Pennsylvania*, Arcadia Publishing, 2003 (Historic photos of the National Road in Arcadia's "Images of America" series.)

The central question in our political history, pre-dating the Constitution, is the appropriate balance of authority among the central government, State and local governments, and the people. After the attempt to establish the balance in the Articles of Confederation (1777) proved unworkable, the Constitution and the Bill of Rights adjusted the relationships.

From the start, however, during the ratification debates in the States and George Washington's first term as President, the words of the Constitution left enough ambiguity that officials began debating where the central governing document placed the balancing points – and that debate has continued to this day and probably will continue for as long as the country endures. While working on this article, I became fascinated by the congressional discussions that seemingly put the Cumberland Road at the center of the debate on the meaning of the Constitution. At times, the Members of Congress, in the midst of their debates about the Cumberland Road, seemed weary of the never ending conflicts over the same topics, such as the meaning of "establish" or what the framers meant by "regulate commerce," but unable to avoid the debates for fear of compromising their individual or party vision of the balance.

Many Members of Congress involved in the debates are virtually unknown today, recalled by dedicated researchers mainly thanks to the online *Biographical Directory of the United States Congress* at <https://bioguideretro.congress.gov/> or short Wikipedia entries. Others debaters, such as Henry Clay, are well known to historians. Still others involved in the debates on the Cumberland Road went on to become Presidents of the United States or, in the reverse case of President John Quincy Adams, to leave the presidency and join the ongoing debates as a member of the U.S. House of Representatives.

These more prominent debaters have their own biographies and are included in other histories of their times. Few biographers and historians, however, pay much attention to their involvement in the Cumberland Road debates. In that regard, I hope my article provides a look at a lesser known aspect of the lives of these illustrious Americans as they debated passionately on subjects that are mostly forgotten today – the Cumberland Road and internal improvements – before they went on to their ultimate place in the country’s history.

As Presidents, Members of Congress, economic panics, and a war came and went, the Cumberland Road slowly made its way across the eastern half of the country. Over four decades, it stretched from Cumberland, Maryland, to Vandalia, Illinois, while the call for canals, the rise of steamboats, and then, ultimately, the coming of the railroad made road technology, even a road that cost over \$6 million – a shocking, extravagant sum at the time – nearly obsolete except for local service.

As in many of the articles written for the Highway History Web site, “The Nation’s First Mega-Project: A Legislative History of the Cumberland Road” illustrates how the history of highways, and more broadly of transportation, must be understood in the context of the changing economic, political, and social history of the times. Beyond the debates on the understanding of the Constitution, the Cumberland Road evolved during the ups-and-downs of the economy, the comings-and-goings of political parties and Presidents, and the changing technology of transportation.

It’s not true that history runs in cycles, repeats itself, or that those who do not learn from history are doomed to repeat it. It is true, however, that some issues, such as the proper balance between the Federal and State governments, may be debated forever without fear that a universally accepted answer will be found.