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Improving Surface Transportation Through Federalism

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KEY TAKEAWAYS

Congress should rethink the federal government's role in funding surface transportation before reauthorizing transportation infrastructure programs.

The rationale for significant federal activity in surface transportation is increasingly shaky, and HTF's fiscal and policy problems continue to mount.

Devolving responsibility for highway revenues and spending to the states while reducing federal regulations would improve the quality of infrastructure spending.

Politicians and analysts regularly cite federal infrastructure legislation as an opportunity to avoid the heavily personalized and partisan bickering that has become routine in Washington, DC. It should come as no surprise that S. 2302, the America's Transportation Infrastructure Act (ATIA) of 2019, has been greeted with enthusiasm by many in the upper chamber. The bill, which passed the Senate Environment and Public Works Committee unanimously, would reauthorize federal surface transportation activity through fiscal year 2025.

Yet while congressional Republicans, Democrats, and President Donald Trump repeatedly tout their desire for significant new federal spending on roads, bridges, and transit, the discussion assumes that such action would be beneficial. This is a continuation of a badly flawed mindset—that the federal government should take the lead in most aspects of domestic policy.

Less noticed are myriad problems with federal overreach and overspending. The Highway Trust Fund (HTF) is going bankrupt,[1] federal dictates reduce the value of the fund's spending,[2] and states are incentivized towards dependency rather than responsibility.[3] The America's Transportation Infrastructure Act would exacerbate these problems.

Members of Congress would serve their constituents best by turning to the founding principle of federalism. Devolving power back to state and local governments would improve the speed and value of surface transportation spending, enhance policy flexibility, and improve transparency and accountability for the public.

A Cracked Status Quo, 100 Years in the Making

In the aftermath of the heavily motorized World War I, the U.S. Army set out to see how well a "truck train" would fare traversing the nation.[4] Starting in Washington, DC, on July 7, 1919, the voyage to San Francisco dragged on for a full two months. One factor in the trek's slow progress was the unreliable nature of early motor vehicles. However, the lack of roads and sturdy bridges through the Midwest and west of the nation was by far the greatest obstacle.

Future President Dwight D. Eisenhower, then a Lieutenant Colonel, was a participant. His experience on the convoy, along with seeing fully developed highways in Europe during World War II, informed his strong desire to see a national highway network in America. This came to fruition with the Federal Aid Highway Act of 1956, which massively expanded federal involvement in highways and created the HTF for that purpose.[5] Although federal funding had begun in 1916 and increased in 1944, the 1956 act was orders of magnitude larger in both scope and funding.

The law linked the federal gasoline tax, which had previously been a general-purpose tax since its creation in 1932, to improving a system used directly by drivers. While Congress did not intend for the federal gas tax to be an exact user fee in the way that a toll road is, there was at least a connection between the people paying the tax and the benefit provided by HTF spending.

An oft-cited rationale for the project was to ensure that the military could have efficient access to all parts of the country in case of invasion. A highly detailed, defense-focused map drawn by the U.S. Army in 1922 served as a blueprint for national highway planning. However, economic concerns were dominant in the formulation of actual policy.[6] By the time of the interstate system's completion in 1992, the Cold War was over and national defense no longer provided a constitutional fig leaf for justifying a continued federal role.

President Eisenhower, despite his support of federal highway construction, was concerned by the emerging trend he saw as federal subsidies for projects outside the interstate system increased significantly just two years after the landmark 1956 law.[7] These subsidies were further codified in 1995 through the creation of the National Highway System, which includes interstate highways, state highways, and, in some cases, county roads.[8] All National Highway System roads are eligible for federal funds. It is no coincidence that this expansion took place shortly after the long-delayed completion of the interstate system.

Political benefits from expanding the mission of federal surface transportation spending enabled the edifice to survive the end of the originally stated goals. Congress added more and more programs outside of highway construction to the HTF as the decades progressed. A few, such as the National Highway Traffic Safety Commission, had at least some connection to highways. Others, such as a 1982 expansion of formula-based funding for urban transit, created hidden cross-subsidies from one mode of transportation to another.[9] The many types of spending from the expanded trust fund created many different constituencies for its continuation.

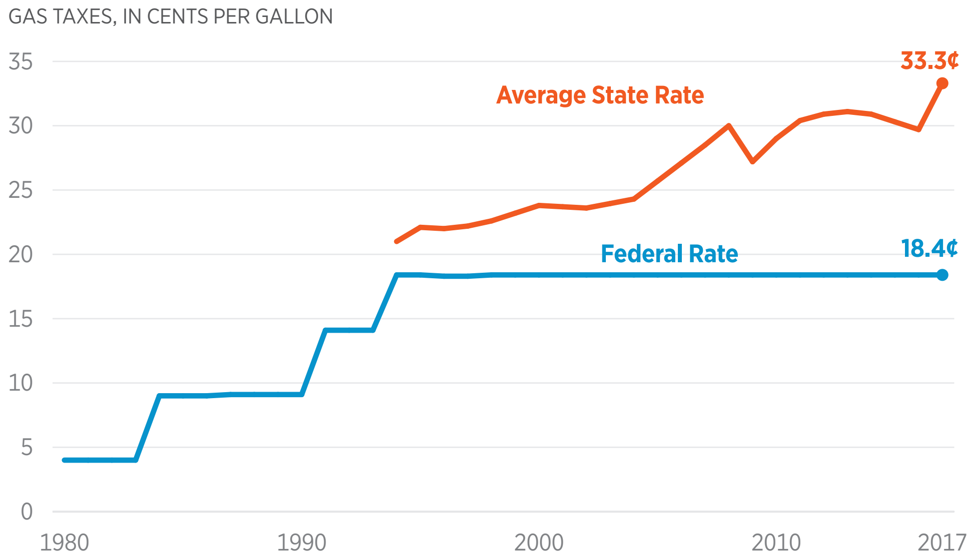
From the private side, contractors, labor unions, equipment manufacturers, and material suppliers are reliable cheerleaders for dollars that flow their way. On the public side, state and local governments receive grants and subsidies from the federal government without state and local politicians being directly responsible for the federal gas tax. Since federal politicians ultimately authorize the spending, all levels of elected officials are able to take credit for projects.

While Congress has reauthorized the HTF time and again, there have been some changes to address criticisms. The most prominent complaint about the HTF is that there were significant disparities between what many states paid into the fund and the amount of benefit they received.[10] This "donor state" dilemma has been partially alleviated through the creation of formulas to ensure that benefits are at least close to revenues for each state.[11]

In the process of fixing regional iniquities, Congress inadvertently undermined the premise of the entire operation. In theory, the federal government's involvement would be necessary for the sake of funding projects that have value far in excess of state and local benefits. However, there is no logical reason to expect the location of such projects to be evenly distributed across the country. A truly nation-focused infrastructure regime would likely include a significant amount of funding-to-benefit imbalance amongst states.

CHART 1

States Tax Gasoline at Nearly Twice the Federal Rate



SOURCE: Data courtesy of Chris Edwards, Cato Institute. For more information, see Chris Edwards, "Federal Gas Tax Increase Misguided," Cato Institute, January 12, 2018, https://www.cato.org/blog/federal-gas-tax-increase-misguided (accessed October 29, 2019).

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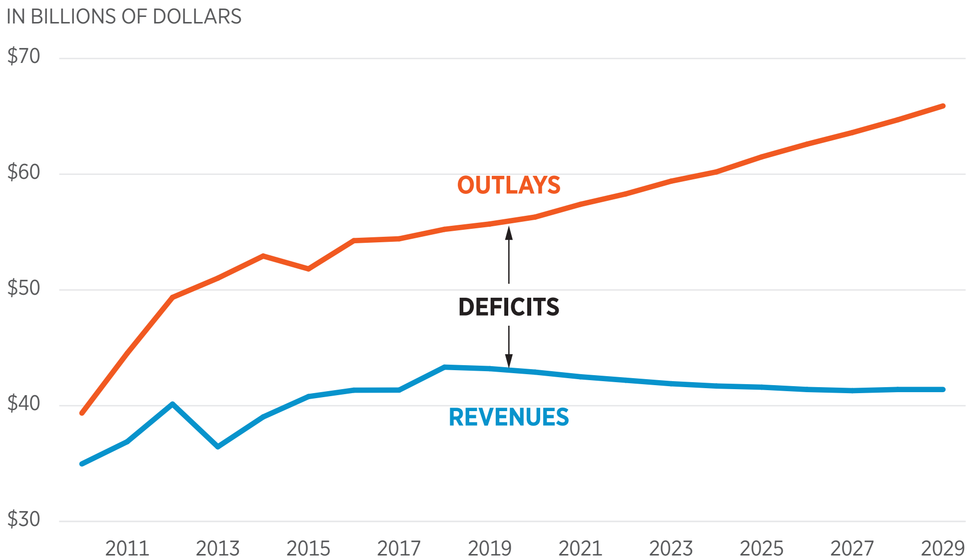
The reason that the donor state problem was a legitimate issue is because HTF-funded projects have ceased being about enhancing national welfare—and are instead subsidies for state and local projects and activities. With revenue-linked benefit formulas in place, the HTF primarily acts as a collection point for gas taxes, which the Department of Transportation sends back to states. This practice is not only illogical, it also violates constitutional principles of limited and defined federal powers.[12] An increasing use of resources from federal taxpayers toward purely local projects has damaged the functioning of all levels of government.

There was some national interest in the creation of the interstate highway system. Now that the system is in place, the ongoing work involves maintenance and improvement of existing roads. State governments administer the vast majority of these projects, and state and local governments own the vast majority of roads.[13] Considering that states have demonstrated an ability to levy and increase their own gas taxes to pay for infrastructure—to the point at which the average state gas tax is now much higher than the federal one[14]—it is difficult to justify continual HTF

CHART 2

Highway Trust Fund Runs Deficits



SOURCES: U.S. Department of Transportation, Federal Highway Administration, "Status of the Highway Trust Fund - Fiscal Year 2019," https://www.fhwa.dot.gov/highwaytrustfund/docs/fe-1_mar19.pdf (accessed October 29, 2019); and the Congressional Budget Office, "Highway Trust Fund Accounts—CBO's January 2019 Baseline," https://www.cbo.gov/system/files?file=2019-01/51300-2019-01-highwaytrustfund.pdf (accessed October 29, 2019).

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spending increases.[15] The status quo acts as a way to move the same money back and forth to generate maximum *political* value rather than maximum *public* value.

Yet even if the current federal role in surface transportation was fully justified on the policy merits, it faces a serious roadblock: HTF spending and revenues have been badly out of alignment for years.

Trust Fund Mismanagement: Bad Math and Bad Policy

Congress has repeatedly used so-called "general funds" to fill fiscal gaps in the HTF.[16] Most recently, the 2015 Fixing America's Surface Transportation (FAST) reauthorization included $70 billion in general fund transfers to make the HTF solvent through fiscal year 2020.[17] With the federal government running deep annual deficits, HTF bailouts irresponsibly add to the national debt.[18] A five-year HTF reauthorization at current levels would require roughly $68 billion in general fund transfers.[19]

TABLE 1

Diversions to Non-Highway Programs

Program	Amount (FY 2019)	Diversion (%)
Mass Transit	$9,939,380,030	17.8%
Congestion Mitigation and Air Quality	$2,449,216,207	4.4%
Transportation Alternatives Program	$850,000,000	1.5%
Tribal Transportation Program	$495,000,000	0.9%
FHWA Administrative Expenses	$473,692,304	0.8%
Research and Education	$420,000,000	0.8%
Federal Lands Transportation Program	$365,000,000	0.7%
Metropolitan Transportation Planning	$350,360,775	0.6%
Federal Lands Access Program	$265,000,000	0.5%
Emergency Relief	$100,000,000	0.2%
Ferry Boats and Ferry Terminals	$80,000,000	0.1%
Total	**$15,787,649,316**	**28.2%**
Highway Trust Fund Total	**$55,946,976,030**	

SOURCES: Federal Highway Administration, "Federal-Aid Highway Program Authorizations Under the Fixing America's Surface Transportation (FAST) Act," 2015, https://www.fhwa.dot.gov/fastact/estfy20162020auth.pdf (accessed October 29, 2019); Federal Transit Administration, "FAST Act Estimated Program Totals," December 1, 2015, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FAST_ACT_FTA_Program_Totals.pdf (accessed October 29, 2019); and Federal Highway Administration, "FY 2019 Apportionment and Obligation Limitation Notices," https://www.fhwa.dot.gov/fastact/fy2019comp.pdf (accessed October 29, 2019).

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The 2019 ATIA would increase spending dramatically, but does not yet feature any ways to close the existing funding gap, let alone cover new costs. Senate Finance Committee Chairman Charles Grassley (R–IA) has stated that an increase to the federal gas tax (currently 18.4 cents per gallon) is not under consideration.[20] Other revenue options, such as creating a federal tax on carbon-dioxide emissions or vehicle miles traveled, would be even more problematic than a gas tax hike from a policy standpoint.[21]

The 2015 FAST Act dodged the revenue question in two ways. The first was the $70 billion general fund transfer. The second was a collection of dubious pay-fors,[22] including a cap on the Federal Reserve Surplus Fund, an extension of customs user fees, sales from the Strategic Petroleum Reserve, and a rescission of authorized spending in the final year.[23]

While there are many factors undergirding the HTF's financial shortcomings, the largest by far is the number and size of non-highway spending diversions. Under current law, over 28 percent of HTF spending goes for uses outside of highway construction and maintenance. If Congress removes that spending, the HTF's fiscal outlook would improve dramatically.

The core diversion, to urban transit, provides funding for metropolitan areas of over 50,000 people based on population.[24] The funding formula goes so far as to send amounts to secondary and tertiary states if a city's exurbs cross into them. For example, Missouri received $1,111 in fiscal year 2019 for its sliver of the Alton, Illinois, metro area.

From a perspective of policy and equity, taxing automobile users to pay for subways and buses is puzzling.[25] There is now several decades of data to demonstrate that subsidizing transit is an astonishingly cost-prohibitive way to facilitate personal mobility in the United States.[26] The effects on road traffic and pollution are minimal, and thus do not remotely justify the degree of gas tax diversion.[27]

Concerns about providing transportation options for the poor would be better addressed directly (e.g., with vouchers provided by private charity or local government), rather than indirectly through federal subsidies for whole transit systems. Concerns about the cost of urban traffic congestion as a result of factors such as urban sprawl would be better addressed by local land use reforms to allow for denser, more transit-friendly cities.[28] In both cases, it is difficult to discern how the problems are a federal responsibility.

The plethora of other diversions have, at best, tangential connection to roads and bridges and, at worst, none at all. Funds for congestion mitigation and metropolitan area planning are additional hand-outs to urban areas at the expense of rural ones. The Transportation Alternatives Program provides grants for local projects such as bike paths and hiking trails that are far outside a proper federal purview.[29] Spending on ferry boats and terminals, while a small fraction of the HTF, is perhaps the most baffling of all.

The 2019 ATIA as reported by the Senate Environment and Public Works Committee does not address most of the current spending diversions. However, it does move in the wrong direction by adding new cross-subsidies to the HTF.

"Green" Policies Run Trust Fund Deeper into the Red

The ATIA includes about $10 billion in climate-related spending. The bill makes funding available for electric vehicle charging stations, as well as for hydrogen and natural gas refueling infrastructure. To reduce emissions from trucks idling at ports, the bill would spend money on electrifying port operations.

The legislation also includes a formula grant program to reduce carbon-dioxide emissions from on-road sources, as well as increased spending on adaptation and resilience for infrastructure projects. This includes spending on "facilities for pedestrians and bicyclists (including the conversion and use of rail corridors for pedestrian and bike trails)" and replacing street lighting and traffic control devices with more energy-efficient alternatives.[30] State and local governments would also receive federal tax dollars for performance grants to demonstrate that they have reduced greenhouse gas emissions.

Another climate-related spending initiative is to nudge consumers away from single-occupancy vehicles and into "public transportation facilities, pedestrian facilities, bicycle facilities, and shared or pooled vehicle trips." The section also reauthorizes the Diesel Emissions Reduction Act (DERA) grants through 2024. In the past, the federal government awarded grants to states, cities, ports, and local governments to retrofit truck engines, to replace school buses with electric or propane-powered buses, and to electrify parking spaces.[31]

The problems with the climate section of ATIA are emblematic of the broader problems with massive, top-down federal transportation bills. Namely, the legislation would use federal tax dollars to subsidize projects that states or local governments should exclusively undertake, or on activities that should be left to the private sector entirely. Moreover, the programs would prioritize green projects over federal infrastructure needs.

For instance, federal taxpayers should not pay for states and cities to switch away from diesel-fueled buses, trucks, and boats—nor should they pay for installing alternative fuel infrastructure. If these projects have value and communities want them, the people who stand to benefit most from them should pay for them.

Instead, programs like the Diesel Emissions Reduction (DERA) grants disperse the cost of such replacement programs among federal taxpayers and concentrate the benefits to the projects that receive grants. Taxpayers in Pennsylvania should not partially pay the Los Angeles Airport to replace three buses with electric buses (a $674,865 grant California received through DERA in 2018). When financing of these projects is not tethered to the communities that derive the most value from them, it is much easier to frivolously spend money rather than properly assessing if the project is worth the cost.

For activities such as alternative fuel charting infrastructure, the private sector should bear the full costs of the project. A common argument for federal support of alternative fuel vehicles is that consumers will not buy the cars if they have no place to re-charge or re-fuel them, thus creating a chicken-and-egg problem. However, markets overcome the chicken-and-egg problem routinely. Diesel cars and diesel pumps and cellular telephones and cellular towers are just two examples of investments that expanded rapidly.

Good economic ideas will succeed, but not as the result of a government program or of politicians thinking they know what the most promising alternative to the internal combustion engine will be. Whether it is electric vehicles, natural gas, propane, or biofuels (or none of these), the market will most efficiently determine those outcomes *without* the federal government pressing its thumbs of the scales of investment through taxpayer-funded grants. In fact, the private sector is already making these investments. UPS, for example, announced it was investing $130 million in 400 semi-tractors, 330 terminal trucks, and five refueling stations, a follow-up from the $190 million the company invested in the two years prior.[32]

With regard to spending on more resilient infrastructure, these investments can be cost-effective and pragmatic steps to adapt to a changing climate and extreme weather, no matter the cause. Spending on durable infrastructure will enhance resiliency and protect human lives. However, there is a question of who should pay for it.

If it is building a more resilient interstate highway, there is a role for the federal government. If the infrastructure needs are located to a specific region, such as building a better dike or levy in Louisiana or tornado shelters in Oklahoma, it should be a state and local priority. If there is a role for federal legislators, it should be identifying and removing policies like the National Flood Insurance Program that artificially reduce the risk of people living in disaster prone areas.[33]

The multitude of HTF diversions are emblematic of problems caused by the dramatically outsized role of the federal government across a broad spectrum of issues, which consistently places political considerations ahead of public needs.

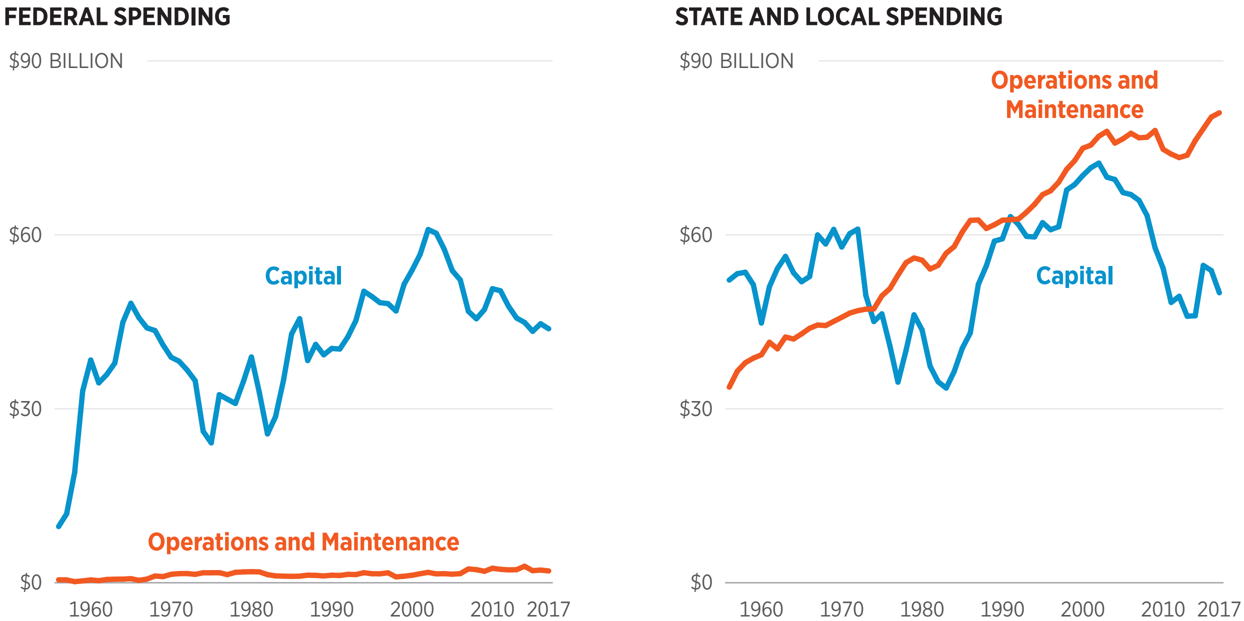
Why Federal Involvement Creates Detours

The act of inserting the federal government into a significant amount of infrastructure spending and revenue decisions leads to layers of inefficiency, bad incentives, and reduced quality.

Distorting Priorities. The presence of many diversions serves to force outcomes based on political considerations. For example, the genuine transit needs for a given city or urban area scale strongly with population density.[34] The distribution of transit funds to sufficiently small cities

CHART 3

Federal Spending on Infrastructure Capital Is Driving More State and Local Spending on Maintenance



NOTE: Figures are in 2017 dollars.
SOURCE: Congressional Budget Office, "Public Spending on Transportation and Water Infrastructure, 1956 to 2017," October 15, 2018, www.cbo.gov/publication/54539 (accessed October 29, 2019).

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ensures that every state is eligible for those funds, which affords the HTF's transit account a certain amount of political protection.

However, this segregation of funds between the highway and transit accounts limits choices for states. That is particularly true for low-density states that only have small or mid-sized cities, which in turn have limited transit needs. These states would benefit most from greater control of transportation dollars, as their residents would likely prefer more highway spending to the current federally mandated transit share.

In addition to distorting choices on the mode of transportation spending, the federal government also puts a thumb on the scale between *types* of spending. While state and local governments cover both capital spending (construction) and operations and maintenance spending, federal funds flow almost exclusively to capital spending.[35]

While a federal focus on capital spending made some sense during the period of creating the interstate system, today it reflects a bias towards announcing new projects and attending ribbon-cutting ceremonies over ensuring that existing infrastructure remains in good condition. This has a twofold negative effect.

First, state and local governments (spurred by federal dollars) commit to new infrastructure projects that entail long-term upkeep costs. While capital spending in real dollars has fluctuated over time, operations and maintenance spending by state and local governments has steadily escalated. The pro-capital bias also impacts rail, where the best way to get federal funding is to build despite skyrocketing construction costs.[36]

Second, a growing backlog of deferred maintenance points to flawed federal priorities.[37] There is potential value for the public in a shift towards maintenance, even if that is less appealing to the press offices of elected officials.[38] The capital-spending mania not only harms maintenance, but it also leads to a tremendous amount of waste.

Facilitating Dubious Projects. The allure of funding from federal programs, especially those with set allocations, drives state and local governments to search for projects that can qualify for "free money." This mindset affects all types of surface transportation, especially since there are few limiting principles for what can qualify for federal aid. To wit:

Transportation Alternatives Program (TAP). Created in 2012 as a combination of multiple diversionary programs, TAP almost exclusively funds bike paths and pedestrian infrastructure.[39] This is far removed from projects with a meaningful national purpose.

Investigating individual TAP projects can be daunting. The Department of Transportation does not list TAP grant recipients by project. Public oversight of TAP is difficult due to the dispersion of information across state governments. The federal-to-state transfer reduces transparency. Taxpayers can reasonably track the use of their monies in one state, but that is a daunting prospect across 50 states.

A multitude of TAP projects are large enough that they would have received substantial scrutiny at the local level, especially for any project that necessitated a property tax increase. Yet at the federal level, a project receiving "only" a few million dollars in funding is small enough to pass unnoticed.

This is an inter-governmental version of the problem of concentrated benefits and dispersed costs, in which a small number of people benefit significantly and a large group of people pay a relatively small amount, creating imbalanced incentives.[40] Examples of such TAP projects can be found in most states where data is available.

In New York, "pedestrian accessibility enhancements" are a common use of TAP funds. Stamford (population 2,267) received $1.7 million, and

Randolph (population 2,602) received $2 million for such projects.[41] This amounts to over $700 per person in those towns. In New Jersey, $1 million for “downtown business district streetscape improvements” in Frenchtown (population 1,373) meant a similar per capita benefit.[42]

In Virginia, the state bestowed residents of Cape Charles (population 1,009) with $1 million for phase four of a multi-use trail, which would have cost them just over $1,000 each.[43] A sidewalk connecting Rappahannock Community College to the town of Warsaw, Virginia (population 1,512), was allocated $1.4 million, despite the project having already received previous TAP funding.

For each of these projects, along with countless more across the country, the federal taxpayers pay for local-level benefits through a complicated set of formulas and approvals. This replaces local-level deliberation, taxes, and accountability. Even if each of the TAP projects above is worth the cost, that cost should not be borne by taxpayers in other corners of the country.

An even worse use of TAP is set-aside funding for recreational trails.[44] Such trails can be a worthwhile expenditure for a community, but they are indefensible as a federal priority and irresponsible at a time of soaring national debt.

CMAQ. The Congestion Mitigation and Air Quality Program (CMAQ) is the second-largest HTF diversion. Its funding goes toward projects that could theoretically reduce urban congestion, and in turn reduce air pollution, since congestion increases the amount of pollutants per mile traveled. In practice, CMAQ is one of many programs that often operate like a slush fund for state and local governments.

A prime example of this is the “Hop” streetcar in Milwaukee, Wisconsin. Of the streetcar’s $128 million cost, $69 million came from CMAQ.[45] As with most streetcar projects, ridership for the Hop has been far below projections.[46] The presence of an underused streetcar on local roads can increase, rather than decrease, congestion. This does not deter those who stand to directly benefit from construction, who lobby heavily for the projects.[47]

As with TAP, information on projects funded by CMAQ is only accessible through state governments.

Highways. Non-diversion spending from the highway trust fund is vulnerable to the same perverse political incentives as TAP and CMAQ.

The growth of a metropolitan area and the expansion of its transportation infrastructure usually go hand-in-hand. Yet with the national interstate system long since completed, the responsibility of paying for new highways ought to fall upon local and state governments rather than the federal government. This is especially true for state roads that are potentially eligible for Federal-Aid Highways funding.[48]

State and local governments often use faulty analysis when requesting federal funds for new highways. Proposals for highways in Florida, Wisconsin, Alabama, and Arizona all relied on questionable forecasts of population growth and congestion as a reason to justify federal subsidies.[49]

America has faced a long-running debate about urban planning and "sprawl," where a metropolitan area grows to cover larger areas as workers move further away from the city core. This can lead to road congestion and excessively long commutes.

The federal government spends billions of dollars per year on programs such as CMAQ and transit subsidies that seek to combat the problems of urban sprawl. Perversely, the act of subsidizing the construction of marginal highway projects can serve to undermine anti-sprawl efforts. New highways can induce economic development in suburban and exurban areas, causing cities to grow "out" rather than "up."

Local, regional, and state governments have responsibility for policy choices such as land-use regulation and infrastructure development. The federal government should not put a thumb on the scale in favor of new highways that increase sprawl. It certainly should not do so while putting a thumb on the opposite scale in favor of urban mass transit. Preferably, the federal government will move out of the matter entirely.

Delaying and Inflating Costs for Worthwhile Projects

Even when an infrastructure project is worth some taxpayer expense on the merits, the "helping hand" of the federal government generates added costs and longer lead times.

The broad availability of infrastructure funding can cause state and local elected officials to delay the start of an expected project while they apply for a federal grant.[50] In addition, all levels of government expend a tremendous amount of effort in applying for grants (state and local) and processing requests (federal), which necessarily adds to the length of time before a given project is completed. There is a byzantine maze of rules associated with using federal funds,[51] and local compliance with the rules is uneven.[52]

On one hand, some amount of federal regulation and oversight is necessary to fight fraudulent or abusive uses of federal funds. On the other hand, federal grants often lead to micromanagement of local decisions and tie up local and federal government resources with compliance work.[53] This creates costs, since local and federal bureaucrats draw salaries and benefits. It also serves to further centralize governance in Washington, DC, which is contrary to how the American system was originally designed.

In addition to the costs and delays associated with administering surface transportation projects, several mandates further reduce the public value of federal spending. The most egregious of these is the Davis–Bacon Act, which requires that federally funded construction projects pay "prevailing wages."[54] This long-standing practice is a sop to labor unions, since it serves to undercut the competitive advantage of non-union contractors. In the process it adds billions of dollars in unnecessary costs to projects. A related provision instituted by the Obama Administration requires Project Labor Agreements, which adds union-style work rule requirements to projects.[55]

Not content with adding to the cost of human inputs for construction, "Buy American" rules inflate the cost of physical inputs. The 2015 FAST Act increased these requirements for transportation, mandating that at least 70 percent of public transit components and subcomponents (by cost) have domestic origin by fiscal year 2020.[56] This protectionist practice is based on badly flawed, politically motivated economic reasoning.[57]

The process of sending tens of billions of dollars per year in gas tax revenue to the federal government results in waste, slower construction, and less infrastructure per dollar spent. As if all of this was not enough, there is also significant federal interference with the other side of the balance sheet.

Restricting Revenue and Private Investment

One of the core tenants of surface transportation policy has been an attempt to impose user fees to pay for systems.[58] Sometimes these fees are direct, such as bus or train fares and highway tolls. The gas tax as currently constituted is an indirect fee, since state and federal governments impose it regardless of whether a driver is primarily using local, state, or interstate roads.

Compared to staffed toll booths, the gas tax is much more efficient at generating revenue. However, the increasing efficiency of electronic tolling has led to a surge in its use across the developed world.[59] Additionally, the adoption of partially and fully electric vehicles by large numbers of drivers means that the gas tax fails to capture the costs imposed by many drivers.

From a policy perspective, electronic tolling is an ideal way to pay for roads, whether public or private.[60] Tolling can be flexible, allowing for approaches such as congestion pricing, time-based pricing, and different prices for vehicles that impose greater costs.[61] Such tolling also provides transparent pricing information to users, who can then decide whether entering the highway is worth the cost. Interstate highways have a high traffic volume (25 percent of national vehicle miles travelled on just 1 percent of road surface) that makes them especially well-suited for tolling.[62]

This makes the federal ban on tolling for most interstate roads, in place since 1956,[63] so wrongheaded.[64] By preventing states from using a direct, transparent means of paying for their share of interstate highway costs (especially operations and maintenance), the federal government's tolling ban leads to more reliance on gas taxes as a revenue source. It also leads to continued, unhealthy dependence on Washington, DC.

Lost amidst the state-versus-federal infrastructure debate is a largely untapped source of potential funding: private investment. Private activity bonds, which give private investors the same federal tax subsidy—in the form of tax-free interest—as municipal bonds, are severely constricted under federal law.[65] Since state and local governments have easy access to federally subsidized funding, they remain a dominant force in surface transportation.

Privately funded and operated projects have the potential to provide substantial value to the nation's infrastructure. For example, a Reason Foundation study estimated that hundreds of billions of dollars in funding could be obtained using public–private partnerships and "asset recycling" across all forms of infrastructure.[66] In this scenario, governments lease existing infrastructure to private firms, which are responsible for maintenance and improvement in exchange for the ability to generate user fees.

Regardless of the exact setup of public–private partnerships, they provide access to infrastructure financing from the investors around the globe rather than being reliant on taxpayers. The federal preference for state and local governments limits the potential amount of surface transportation investment.

Rethinking the Necessity of Federal Infrastructure Spending

The most common talking point used by today's elected officials in regards to surface transportation is "crumbling roads and bridges."[67] Politicians regularly deploy the trope to generate a sense of crisis requiring immediate federal action. Yet data shows just the opposite: The vast majority of roads and bridges are in good condition, and long-term trends are positive. For example, the number of structurally deficient bridges has been roughly halved since 2000,[68] and over 93 percent of National Highway System vehicle miles traveled is on roads with good or acceptable pavement quality.[69]

Another justification cited for federal involvement in infrastructure is that some projects generate positive spillover effects outside the immediate area, such that federal support would allow for a maximization of the public good. However, the mere existence of spillover effects is not sufficient justification for federal intervention. This is especially true in light of the many problems that accompany federal infrastructure activity.

Instead, a three-part test should be the starting point for determining whether there is a potential federal role in an infrastructure proposal:

1. **Does the project provide larger benefits than the total cost?** Since the cost includes the amount spent by all levels of government (including long-term maintenance and interest on the federal debt) and costs imposed on the private sector and citizens (such as using eminent domain to acquire land), many projects fall short.[70]

   Cautionary Example: The so-called "Bridge to Nowhere" project received opprobrium when appropriators sought hundreds of millions of dollars in federal funding to construct a bridge that would connect a town in Alaska to an island with a small airport. The fact that there was already ferry service to allow access to the airport meant that the benefit would be minimal, and certainly not enough to justify the expense.[71] Pushback against the project was substantial, and it served as a rallying point in the fight against "earmark" spending.[72] Alaska ultimately scrapped the bridge, although the state was able to spend most of the appropriated funds on other projects.[73]

2. **Are there significant, positive spillovers outside the state where the project would take place?** If residents of a state are receiving the entirety or an overwhelming majority of the benefit from a project, they should be the ones covering the costs. A significant portion of federal infrastructure spending does not even pretend to meet this standard.[74]

3. **Would the project not take place without federal support?** The combined resources of state, county, and local governments, along with the private sector, provide infrastructure projects with an incredible amount of potential funding.[75] Given the costs associated with federal participation, non-federal funding is preferable.

For projects drawing on the HTF, additional tests are appropriate:

4. **Do the benefits primarily flow to drivers?** Since gas tax revenue flows into the HTF, which was created to fund the interstate system for drivers, relying on those two policy pillars can serve to keep the HTF as simple and transparent as possible. Cross-subsidies into other forms of transportation add complexity—and often act as hidden wealth transfers. Since transit, ferries, and bike and foot paths do not fund the HTF, the HTF should not fund those activities.

5. **Does the spending belong within the HTF?** Several HTF diversions, such as those for federal lands and the Tribal Transportation Program, would be better suited to the Department of the Interior's budget. Others, such as research and education, would make more sense as part of the non-HTF Department of Transportation budget. The complicated accounting of the HTF, whose budget authority falls into the uncapped mandatory category rather than the often-capped discretionary category, partially explains why Congress has done this.[76]

The effect of applying all of these tests to current and proposed spending from the HTF would be dramatic. Beyond reducing or eliminating non-highway diversions, this would also reduce federal highway spending on projects that ought to be the responsibility of state governments. This does not imply that total government spending on highways should be reduced on a similar scale, but rather that much less of that spending should be funneled through Washington, DC.

Federalism: A Better Alternative

A feature of American governance at the time of the nation's founding was a preference for devolved government power, in contrast with centralized monarchal systems in Europe. The concept of favoring governance at the lowest possible level of government is known as federalism.[77]

There are a number of virtues embodied within federalism. It enhances accountability and transparency, since local officials have fewer constituents, and state and local governments tend to have a clearly limited set of responsibilities. It improves efficacy, since those who live in an area have better knowledge of problems and solutions than do bureaucrats potentially located thousands of miles away. It is also less vulnerable to political economy problems, such as concentrated benefits and dispersed costs, since there are fewer people to spread costs across.

Just as importantly, federalism allows for different approaches to governance to better fit a diverse set of polities. America's plethora of ethnic groups, religious beliefs, and regional cultures is part of what makes it the greatest country on earth. One-size-fits-all federal policies are unlikely to satisfy more than a plurality of people.

The decline of federalism over the course of the 20th century took place under political leaders from both parties. Politicians did so at the supposed behest of popular causes such as reducing poverty, improving education, and constructing a national interstate system. Some interventions, such as the civil rights acts, were properly justified in defense of constitutional freedoms.[78] However, many were well outside the bounds of federal power as understood at the time of the nation's founding—and served as a long-term federal power grab.[79]

In the case of surface transportation, the case for a return to federalism has never been stronger. The original rationale for federal control, constructing the interstate system, is now a distant memory. Meanwhile, the problems of federal control—deficits, wasteful spending, political priorities, and expensive red tape—are an increasingly heavy burden.

The federal government should return most of its responsibility for surface transportation spending and financing to state and local governments.[80] State and local governments will make better decisions without federal micromanagement and the allure of "free" dollars for politically favored projects. This would also make it easier for citizens to keep tabs on their own money.

Due to the scale of current federal activity, this would require sustained effort over several years. Specific policy changes should include:

- **Eliminating funding for diversions from the HTF.** Some programs, such as federal transit subsidies, TAP, and CMAQ, should have budget authority zeroed-out as soon as possible. Others, such as federal lands and administrative expenses, can be moved to the discretionary side of the ledger. This would single-handedly bring the trust fund close to balance.

- **Winding down the Surface Transportation Block Grant Program.** As with most block grants, this program serves as a way to shuffle taxpayer dollars between multiple levels of government to maximize political value and allows state governments to have back-door access to federal debt issuance. Closing the block grant program, in addition to non-highway diversions, would shift the HTF's balance sheet from multi-billion-dollar deficits to multi-billion-dollar surpluses.

- **Ending HTF eligibility for roads other than interstate highways and military base connectors in the Strategic Highway Network.** State highways and lower-volume interstate roads can and should be managed by state governments.

- **Ending HTF eligibility for new highways.** The interstate system that began under President Eisenhower already facilitates the movement of goods, people, and military assets from border-to-border and sea-to-sea. New highways are based on perceived local and regional needs, and their funding and construction should be the responsibility of local and state governments.

- **Shifting HTF spending from a capital spending bias towards a focus on maintenance costs.** With the interstate system completed, there is a greater national need to keep it in working order than to expand it. This shift would reduce the prevalence of wasteful projects and improve the quality of our busiest highways.

- **Reducing remaining HTF budget authority and the federal gas tax over time, such that the HTF has sustained balance.** While there is incredible potential in devolving most of the federal highway role to state governments, states will need a few years to adjust, especially in determining how best to raise new revenues. However, because states have sufficient wherewithal to do so, the federal government can eventually be limited to a supporting role on the interstates. Ideally there will be a clear connection between lower federal spending and lower federal gas taxes, creating a virtuous cycle.

- **Cutting federal red tape on HTF projects.** This would include repealing the Davis–Bacon Act, repealing Buy American statutes, overturning project labor agreement requirements, ending the federal ban on new interstate highway tolls, and putting private activity bonds on a more equal footing with municipal bonds.[81]

Conclusion

The combined effect of all these policies would be a seismic shift in surface transportation: eliminating the HTF deficit, faster and more affordable construction, more private investment, and perhaps most importantly, more localized governance.

America can have a much more affordable, responsible, and market-friendly surface transportation system if elected officials are willing to put the public good first.

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