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# The Voluntaryist

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*"If one takes care of the means, the end will take care of itself."*

June 1998

## The Road To Hell Is Paved With Good Intentions: Voluntaryism and the Roads

By Carl Watner

[Editor's Note: One of the purposes of THE VOLUNTARYIST is to publish articles which examine the history of private enterprise in various fields of endeavor. In many instances, such as the history of private coinage, individuals, or associations of individuals, have been able to pursue their efforts relatively unhindered; that is, at least until their successful competition with similar government programs became threatening. Obviously, such individuals or associations operate in a legal environment created by the State, but their general obligation among themselves and to the consuming public is generally no different than it would be in a totally free market. Despite the record of private financing and construction of roads throughout much of the 19th Century in the United States, I had never carefully examined the history of roads and turnpikes in order to uncover how much voluntaryism actually existed. Unlike private coinage or private schools, it turns out that "private" roads and highways have never really been allowed to function because they have always been hedged with special State restrictions. As this examination of the history of roads and regulations demonstrates, there has never been an opportunity to see how completely voluntary systems might work. In this sense, this issue of THE VOLUNTARYIST is not typical because it largely concentrates on what the State has done, rather than what private individuals have accomplished.]

### Introduction

Roads are the traveled ways between different places wide enough for people, beasts of burden, and wheeled vehicles. Roads undoubtedly date back before recorded history because man has always sought out the most direct and least hazardous routes by which to conduct his trade. Once trade routes were established by the market, it was not long before they were used as highways of conquest. The ancient rulers of the world, whether in China, Persia, or Rome, all recognized that the unity of their empires depended on their ability to move troops in order to subdue rebellious areas or conquer new territories. Roads served as the arteries of the Roman empire. Consequently, Roman soldiers became some of the earliest road engineers and systematic road-builders. Or as THE ENCYCLOPEDIA OF SOCIAL SCIENCES (XIII, 400) succinctly concluded: "The rise of empires, with their need for military and administrative supervision of the populace, were the

most effective stimuli for the building of ancient highways."

Roads, like many other human necessities, constitute one of the elements of civilized life. Although roadways seem to have always been supplied by government as one of their essential public services, there is no inherent reason why they could not be provided on a voluntary basis. The few times in history when the roads have been privately administered, such as during the turnpike era in England and the United States, they have remained highly regulated by the States which held jurisdiction over them. The reason for this is simple. National sovereignty demands complete mobility of government agents throughout the geographic territory it encompasses. The provision of roads is one of the most highly guarded prerogatives of governments because roads serve such a variety of governmental objectives. In our modern States, roads are highly politicized: construction contracts reward constituents and contributors for their political support; public routes usually enrich adjacent landowners by their presence; roads are mail routes (known as "post roads" under the U.S. Constitution), public school bus routes, military routes, and a means of delivering emergency aid to devastated areas.

Few people have questioned the assumption that highways and roads should be provided by governments. Nearly everyone of us has been brought up to assume that roads must be paid for out of taxes, yet be available to anyone who chooses to use them. Just because government management and ownership of the roads is a historical fact does not mean that it is necessarily inevitable, or even morally or economically justifiable. As Walter Block explained in his article on "Free Market Transportation: "In advocating a free market in roads, ... we shall be arguing that there is nothing unique about transportation; that the economic principles we accept as a matter of course in practically every other arena of human experience are applicable here, too." (214)

What, in fact, do we mean by advocating voluntaryism in roads and highways? First of all, we mean a world in which all land is privately owned, and in which public services, as we know them, no longer exist. Individual land owners or groups of land owners would control ingress and egress to their real estate; transportation corridors would be built and funded privately; consumers would pay for access easements according to mutually arrived at contracts. The critical value of a free market system in roads is that it would provide a "feedback mechanism telling owners how their choices satisfy the consuming public" because no one would be forced to pay for a road or service he didn't want to use.

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## The Road To Hell

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Traffic rules would be determined by owners of the property being used. Unlike our present political system, in which there is no way to determine whether the amount of service and safety is too high or too low, the market system would enable consumers of road services to make their preferences known and felt. If one road was not satisfactory, consumers would use another, or, in cooperation with others, build their own, or do without, much like they do in other areas of their lives now.

### The King's Highway

The original status of public ways in both England and the United States was that of private property. The common law held that the private property of land owners abutting a public road went "to the centre of the road." The public or the government did not own the land upon which the road was laid; the public only acquired "the right of passage." The term "the King's Highway" did not refer to an actual road. It was simply the perpetual right of passage "in the sovereign, in himself and his subjects over another's land. It was an easement—a right of way—enjoyed by the public at large from village to village, along a certain customary course of travel." (Webb 5) If the public and sovereign were to have a right of passage, then the public ways had to be maintained at someone's expense. The common law solution to the question of responsibility was this: "the inhabitants of every parish were bound to keep in repair every road in their parish to which the public had by law a right of access." (Labatut 40) This meant that individual residents of the parish were required to contribute their unpaid labor to road repair. The residents subject to providing this "statutory labor" were also expected to provide their own road-building materials and/or horse-drawn equipment. Also, land owners, whose property was adjacent to the public roads were "subject to special assessments for the maintenance of roads immediately serving [their] property. Failure to discharge these financial obligations rendered the individual liable to legal action through the process of 'presentment and indictment' before the appropriate judicial tribunal." (Dearing 13)

This situation remained practically unchanged in England until well into the 19th Century. The Highway Act passed by Parliament in 1555 (and not repealed

until the 1830s) confirmed the customary obligation of the parishes and the individuals therein to maintain the roadways under their jurisdiction, and to annually appoint an unpaid road surveyor in each parish. In the event that a parish failed to adequately provide for its roadways, Parliament empowered the local justices in quarter sessions to level a special tax. If that failed to raise the necessary funds to improve the roads, then the justices were authorized to levy the tax upon the adjoining parishes. It might be said that the idea for toll roads was implicit in this aspect of the legislation. Before large amounts of through traffic existed, most traffic was local and the expense of road maintenance fell upon those in the parish; but when large amounts of traffic simply passed through a given parish, then adjacent parishes needed to bear some of the expenses of maintaining the roads.

The first tollgate was set up by an act of Parliament in 1663, in Cambridgeshire, on the London-York road. Despite shortcomings, turning a public highway into a turnpike usually resulted in an improvement. Turnpikes did not become popular with the traveling public until well into the 18th Century. By 1820, about 20,875 miles or one-sixth of the public highways in Great Britain were under turnpike trusts, while the remaining 100,000 miles was under parochial control. Turnpike trusts were created by acts of Parliament, usually for a time span of twenty years, and were granted special authority over a certain stretch of public road. The turnpike authorities had the power to borrow money on the security of the tolls, and the tolls were to be applied to the maintenance of the road and the repayment of the loan. However, the common law liability of the parish for roadway maintenance was never removed, so parishioners were responsible for not only paying tolls, but ultimately for road repairs, in the event that the turnpike trust failed to do their job. This occasionally led to turnpike riots, where the local populace destroyed tollgates, even though destruction of a toll-house was an offense punishable by death. By 1896, all the English turnpike trusts had expired and control of the roads was returned to governmental agencies.

### Roads in the Early United States

Road legislation in England's North American colonies followed the pattern set in the mother country. The official governing body of each colony took it upon themselves to lay out the roads and pay for them by means of taxes. The first highway legislation was passed in Virginia in 1632, and provided that the Governor, his counselors, and commissioners of the monthly court should make provisions for the roads. Similar highway laws were enacted in Massachusetts in 1639 (providing for right-of-way and road construction specifications), Connecticut in 1643, New York in 1664, Maryland in 1666, and New Jersey in 1675. William Penn's 1682 Frame of Government for Pennsylvania made the governor and provincial assembly responsible for "all necessary roads and highways in the province," and in 1697 the individual townships in Pennsylvania were made responsible for the roads within their respective jurisdictions.

John Rae, in his discussion of early American roads pointed out that American colonial and state governments "followed the English practice for maintaining roads by local authorities, and with about the same lack of success. Colonial roads were generally of poor quality; in the northern sectors, in fact, it was likely to be easier to move by sleigh in the winter than by wheeled vehicle in other seasons. Work on the roads was provided by adopting the European practice whereby men paid their highway taxes by labor on the roads. The results were no better in America than in Europe." (Rae 12) This conclusion is buttressed by one 18th Century European who traveled throughout the colonies and said of the Americans: "If the mud does not quite cover the tops of your boots when you sit in the saddle, they call it a middling good road!" (Hart 80) In April 1775, it took a messenger on horseback five full days to ride from Boston to Philadelphia with the news of the Battle of Concord. By the turn of the century, when regular stagecoach schedules had been established between these cities, the condition of the roads had not changed. It still took four days between Boston and New York, and another day and a half to reach Philadelphia. (Hart 70, Mason 14)

The financing and administration of roads remained a local function from colonial times to the end of the 19th Century. Nevertheless, politicians and statesmen at all levels of American government understood the importance of "infrastructural power." William Novak defines this term in his book, *PEOPLE'S WELFARE*, as "the capacity of the state to actually penetrate civil society and to implement its political decisions throughout the realm.... Central to this was the control of transportation of people, goods, and messages.... This was the first object of police and modern statecraft.... In the early 19th Century, American officials embarked on a concrete and extensive campaign to improve and expand state power over public ways .... [P]ublic property and public highways were major preoccupations of the early American state." (Novak 116, 118) Indeed, Albert Gallatin, in his April 4, 1808 report to the United States Senate on the state of transportation in the United States (in which he urged \$20 million of federal financing for road and canal construction) noted that "No other single operation, within the power of the [federal] Government, can more effectually tend to strengthen and perpetuate that Union which secures external independence, domestic peace, and internal liberty." (Rose 27, Mason 20, *REPORT OF THE SECRETARY OF THE TREASURY ON ROADS AND CANALS*, S. Doc. 250, 10th Cong., 1st Sess., p. 725)

"Everything comes to he who waits, so long as he works like hell while he waits."

—PARADE MAGAZINE, Nov. 27, 1994, p. 18.

The process of socializing public spaces in the United States began with the adoption of the legal concept from England that the "sovereign be entrusted with the ultimate patronage and protection of the common high-

ways." Sovereign control meant that the State had "full power to provide all proper regulations of police to govern the actions of persons using them. It took away from all private persons (adjacent property owners as well as passersby) any private interest in the way." (Novak 122) Thus it became "an obligation of government to police such public properties, preventing all impediments and nuisances that might 'damnify' the public."

There were a number of ways that early American governments exerted control over the public highways. First, was the imposition of the road tax, known in many places as the statute labor system or as the "corvee," a French term for "forced labor exacted as a tax." As in England, local inhabitants of the town or county were to furnish their personal labor, equipment, and teams of animals to work on the roads for a certain number of days per year. Second, was the general tax obligations affecting all citizens, especially property owners. During most of the 19th Century, property tax was levied against all real estate. Appropriations for highways and other purposes were made from a general fund. In towns and organized municipalities, property taxes were also levied against real property specifically for street pur-

"He who has the gold sets the rules; or as one pundit put it, 'with the shekels come the shackles'."

poses. In addition, special street assessments were imposed against specific parcels of real estate. Outside the cities, landowners were often obliged to pay a special road tax, averaging from one tenth to one third of the total cost of road maintenance or improvements, to the roads abutting their property. (Mason 49) Third, was the recognition of the power of the State to initiate eminent domain proceedings to condemn and expropriate private property for the use of public ways. Although this power was recognized in the Fifth Amendment to the federal constitution, it was not often resorted to in early America because it required the use of public funds to reimburse land owners for the loss of their property.

19th Century American jurists engaged in creative legalisms to avoid the expenditure of public money. The legal doctrine of 'implied dedication' avoided both the formal expropriation and the payment demanded by eminent domain proceedings. It held that "when a property owner left his land open to public travel for a certain period of time, the courts could infer an intention to dedicate this land to public use." Practically any use of private land for public travel would be accepted as sufficient evidence of implied dedication. The only thing a land owner could do was to close off the use of his land by making the way physically impassable. If this was done then the land owner might be sued for creating a nuisance. The power to remove and abate nuisances and encroachments was "a crucial aspect of sovereignty in early American law and was accomplished by the use of equity injunctions. Indeed, the legal power to abate highway nuisances complemented, and sometimes even surpassed, the [S]tate's power of eminent

domain.” (Novak 123-124)

Finally, another legal doctrine evolved which allowed the State to avoid compensating property owners for damages resulting from the public control of the highways. The courts held that the promotion of the public welfare (such as by changes to roadways) could not be held hostage to private damage claims. “If some private individuals were injured as a consequence of public-spirited improvements, early American judges were comfortable leaving them without a remedy.” This legal doctrine, ‘*Damnum absque injuria*’, was not a hole in American jurisprudence. Rather, it was a solution to the problem of how to avoid compensating private interests for damage done to their private property by the State. (Novak 131)

### **The Turnpike Era**

Government officials in the United States during the late 18th and 19th Centuries realized that public funds for construction and maintenance of highways were limited. Toll roads offered an alternative to expending taxes on “free” roads because they were financed by private investors in the hope of generating a profit, enhancing land values, and improving the movement of goods to market.

The idea of the turnpike was imported from England, and the first turnpike in America built by a private company extended from Alexandria, Va. to Snigger’s and Vest Gap in the Shenandoah Valley. It was constructed in 1785, renamed the Little River Turnpike in 1805, and continued in operation until 1895 (when turnpikes all over the United States began to be returned to the public sector).

The States, and sometimes counties, themselves, experimented building their own toll roads. The Maryland State legislature authorized the creation of three turnpikes to serve the town of Baltimore in 1787. The “pikes” were to be built and operated by the Baltimore County government. They were turned over to private corporations in 1805. In 1792, the Pennsylvania legislature chartered the Lancaster Turnpike Company. Officially opened in 1794, the Lancaster to Philadelphia Turnpike was 62 miles long, cost \$465,000 to build, and had 9 toll gates along its route. It was the first “scientifically designed hard-surface road in the United States.” (Shank 35) Turnpikes were fairly common all over the mid-Atlantic region, and two cities especially, Boston, Mass. and Baltimore, Md., were well-known for their use of turnpikes (a half dozen or more turnpikes extended from each city to its outlying areas).

“Times change and men often change with them, but principles never!”  
—Alexander H. Stephens

Despite their status as private, for-profit corporations, the turnpike companies were highly regulated and only sometimes profitable. In 1816, Virginia established a Board of Public Works to monitor turnpikes within the state similar to the way that public utilities are supervised today. In most other states, acts incorporating turnpike companies included requirements

that the State approve the road location, the location of toll gates, the amount of capitalization, and regulate toll rates. Furthermore, the legislatures generally specified the maximum weight of loads, physical characteristics of vehicles, and other conditions of use. State charters also provided for the return of the roads to public status upon abandonment of the charter, failure to maintain the road properly, or after expiration of a fixed period. Sometimes, the states invested in the turnpike companies themselves, by advancing money as “state subscription to the capital stock of the turnpike company,” or as an outright subsidy, or as a tax abatement.

Only in very few instances is there any record of non-incorporated turnpikes. One such private turnpike in Baltimore, Maryland was known as The Fifth Avenue Extended Shell Road. It was organized in 1873 through a deed between three private individuals acting as trustees, and the owners of the properties through which the road was to pass. “The owners conveyed the land for the turnpike to the trustees, who agreed to construct the road, regulate travel, establish a tollgate, and appoint a gatekeeper. Under the agreement, revenues from the tolls were to be spent according to the following order of priorities: 1) paying the gatekeeper’s salary; 2) paying the expenses incurred by the trustees in connection with the turnpike ...; and 3) making repairs to the Trap and Sollers Point Road which would be most beneficial to the Fifth Avenue Extended Shell Road.” The tollgate was removed in January 1914, when the trustees and property owners allowed the road to become county property. As early as 1900 politicians in Baltimore City had begun campaigning against turnpikes. A Councilman Weinefle is reported to have said that, “to have a tollgate in the city the size of Baltimore belonged to the Middle Ages.” Another critic announced that, “A tollgate anywhere in America is an anachronism, but one at a entrance to a great city [such as Baltimore] is a monstrosity.” (Hollifield 10, 11, 22, 34, 84)

Although public and government perception of turnpikes had changed between their inception in the late 1700s and their demise in the early 1900s, their formation and operation were partly a reflection of community support and involvement for social improvement. “Concerns with the condition of the roads led to the formation of The Society for Promoting and Improvement of Roads and Inland Navigation in 1789. It soon had hundreds of members throughout the mid-Atlantic states.” (Mason 17) Other evidence of public support for better roads during the turnpike era is found in Maryland where “property owners on each route competed against each other for the privilege of giving their land to the turnpike company [for the route]. It was not only considered a matter of prestige but an enhancement of property value for a public road to run through a man’s land.” The same sentiment was echoed by the Chairman of the Maryland Road Commission in 1922, when Route 301 (Crain Highway, the major north-south artery from Baltimore to southern Maryland) was being mapped out: “If it is not sufficiently advantageous for the property owners to give us the [free] right-of-

way, we had better not build the road.” (A HISTORY OF ROAD BUILDING IN MD, 231-232) Despite compulsory systems of road support in both England and the United States, other private sector resources, such as private subscriptions and donations by public spirited citizens, were often used during the 19th Century to supplement the provision of state roads. As William Wooldridge in his survey of private turnpikes concluded: “In large part, America’s first passable networks of roads was probably financed by just the people who stood to benefit from them indirectly, aided by tolls from the people who used them.” (Wooldridge 133)

“Help Ever, Hurt Never.”  
—Sai Baba

### **America At The “Crossroads” of the Twentieth Century**

Although the federal government had been involved in road and automobile development in minor ways throughout most of the 19th Century, its role changed as the new century approached. Technological changes, such as the advent of the rubber-tired bicycle by 1870, resulted in the formation of groups of road users such as the League of American Wheelmen in the 1880s, which began agitating for better roads. As the 20th Century began, the support for road improvement spread to automobile enthusiasts. The advocates of “good roads” supported the substitution of money taxes for statute labor, shifting the responsibility for both taxing and administering the roads to larger political units, and the inauguration of state aid and/or federal aid to help support local roads. Such changes did away with the system of decentralized and amateur supervision of road maintenance and construction that had existed in this country since the time of its founding. “By the 1920s, a powerful [political] force had evolved, wedding road builders and the motor industry, in which government and business joined in promoting” roads and highways practically to the exclusion of all other forms of travel. This “highway-motor complex coalesced automakers, cement, asphalt, and steel producers, and petroleum companies into a common purpose. Along the way it added such diverse groups as road contractors, insurance companies, banks, and motel operators, to name but a few.” (Goddard ix)

The extended use of the automobile increased the political agitation for good roads to such an extent that it could not be ignored. The impetus for road reform came from people within the cities, primarily from civic leaders who appreciated “the economic burdens laid on city dwellers and farmers alike by the bad roads.” (AMER. HWYS. 41) Roads could not be improved without adequate funds, and there were only two ways that such money could be raised: voluntarily or coercively, via taxation. Since the roads had always been a governmental responsibility, and since government had always obtained its funding via compulsory taxes, it was no surprise to learn that to improve their roads, the various state legislatures across the country began increasing taxes for that purpose. North Carolina was

one of the first states to allow its counties to raise tax rates and to levy a road tax on all property, whether in rural or city areas. By 1902, Mecklenburg County (which includes the city of Charlotte) “was acknowledged to have the best roads in North Carolina, and its citizens were ... paying the highest road taxes in the State: 35 cents per \$100 property valuation, plus \$1.05 on the poll” tax. (AMER. HWYS. 41)

Northern states were also involved in the effort to improve their roads. The New Jersey Road Improvement Association and the League of American Wheelmen were the major supporters of the first State-aid legislation in the country, which was approved in New Jersey on April 14, 1891. The law declared that, “The expense of constructing permanently improved roads may reasonably be imposed, in due proportions, upon the State and upon the counties in which they are located.” New Jersey State officials reserved the right to approve or reject road improvement plans suggested by county officials. The cost of building new roads or upgrading existing ones was to be split three ways: “one-tenth was to be assessed to the property holders along the road, one-third to the State, and the remainder to the county. The first act appropriated \$75,000, as the State’s share for the first year’s operations.” “The New Jersey State-Aid Act was a milestone in the history of highway administration in the United States, for it clearly stated the principle that highway improvement for the general good was an obligation of the State and county, as well as the people living along the highway.” (AMER. HWYS. 43)

At the same time, during the early 1890s, the Federal government was reviving its interest in better roads. Congress began to respond to political pressures to provide some kind of federal assistance to the highways. The Agricultural Appropriation Act of 1893 resulted in the formation of the Office of Road Inquiry, with funding of \$10,000. Its purpose was to investigate the condition of roads throughout the United States, to determine the best methods of road-building, and to assist in the dissemination of this information to the States. By 1904, its funding had been increased to \$30,000 a year, and its name had been changed to the Office of Public Road Inquiries. This public agency undertook the first national road inventory and included among its other activities such efforts as experimental road building, promotion of college-level programs for road-building engineers, the “loan” of its personnel to certain States or counties for the purpose of improving a given stretch of road, and the establishment of a road- testing laboratory.

“A small error in the beginning leads to a large error in the end.”  
—Aristotle

Efforts at both the federal and State level culminated in a national policy on federal aid to State highways. The drive for federal aid at first focused on rural mail delivery, which could only be made possible by better roads to the country’s farms. The first experimental



rural delivery routes were established in 1896, and by 1903 the federal Post Office had 8600 carriers traveling 200,000 miles per day, delivering mail to almost 5 million people. The Post Office Department "made it a rule that rural delivery would be established only along reasonably good roads and that the carrier need not go out on his route unless the roads were in fit condition for travel. These requirements marshalled public opinion on the side of those who wanted better roads." (AMER. HWYS. 80) At the same time, legislation was introduced in Congress that would have provided \$20 million in federal funds to the States and counties for the building of post roads. (Under the bill, rural public roads were defined as "any public road over which the United States mail now or may hereafter be transported.") Similar laws were proposed every year for the next thirteen years, until finally in 1916 the first federal-aid bill was passed. It appropriated \$25 million for the construction and maintenance of rural post roads, out of which each State would receive at least \$65,000. "To receive Federal aid after 1920, each State would have to have a State highway department to administer the Federal funds. [T]he construction and maintenance of the aided roads would remain under State control." (AMER. HWYS. 86) Under the Federal Highway Act of November 1921, the Federal aid program was designed to create federally designated interstate highways in each State, which would eventually be linked to one another. This interstate system of roads, sponsored primarily by the federal government, but also with matching funds by the States was "the greatest public works project in world history." (Goddard 183)

### Conclusion

The local, state, and federal governments in the United States are essentially just like all other governments the world over. They subsist on taxes and have monopolized the ownership and administration of roads and highways. Without taxes they could not survive; and without control over roads and highways they could not move troops or officials throughout their domains. As a result of these concerns, voluntarism has played a minor part in the history of the roads. Some of the major advances in road building and administration have come from the private sector, but for the greater part there has never been a time in world or American history when the roads were not socialized and under government control.

Controversies have raged for centuries over who should foot the bill for better roads: the actual road users, property owners, or the public at large? One thing is certain though—everyone loves good roads, but no one really wants to pay for them because they cannot profit from them—because they are not subject to true free market competition. Only a few times in American history have there been advocates of free market roads. In the early 1840s Ralph Waldo Emerson asked in his essay on "Politics" whether statist methods were so perfect that his contemporaries need not devise better ways to achieve their social goals. "When [people] are pure enough to abjure the code of force, they will be wise

enough to see how the public ends of the post office, the highway, of commerce and the exchange of property, of museums and libraries, of institutions of art and science can be answered." To Emerson, and others like him, who believe(d) that voluntarism offers the only moral and practical way to provide roads and highways, the road to hell is not only paved with good intentions, but roofed over with thousands of years of lost opportunities to prove their point. ▣

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"If you're doing your job, it doesn't matter when the boss comes in."

## Highway and Vehicle Regulations

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first traffic code in the world was adopted by New York City in 1903. (Labatut 454) Many "municipalities had their own ordinances regulating speeds, parking, the use of bells, horns and gongs, the making of unnecessary exhaust noise and the emission of noxious gas, smoke or steam, and they imposed fines for violations. These regulations varied widely from city to city and, especially in the smaller municipalities were often enforced in a discriminatory way." (AMER. HWYS. 57, 60) "Speed traps" were often operated by local police officers in rural communities "with fines going into the local treasury or the pockets of the police, justice, or

magistrate. The speed trap racket was so bad in New York prior to 1910, that the Legislature passed an act that year requiring all fines imposed for violations of the motor vehicle laws to be turned over to the State treasurer. This reduced the fines collected from motorists to a mere trickle." (AMER. HWYS. 60) The effort to standardize traffic codes finally came to fruition in 1926, when a committee under Commerce Secretary Herbert Hoover compiled the first national Uniform Vehicle Code. (Tyler 86)

Registration of motor vehicles with local governments often began on a voluntary basis; that is government offered a free service as an additional means of identifying one's vehicle in the event of theft. "Registration of vehicles was often accomplished by a motorist selecting his own numbers and advising a local official that such numbers had been affixed to the vehicle—usually on a leather tag. The local official filed the record by name and by number. Duplication of numbers was avoided by a simple checking procedure .... [However,] this method of registering vehicles was short-lived.... [L]ocal authorities secured the passage of ordinances ... [and] some of these early enactments also granted regulatory powers. Thus, the basic pattern of motor vehicle administration was established and continued its growth to the present time." (Labatut 442) The New York State law of 1901 did not require that vehicles be classed in any particular way. All vehicles paid the same fee. "The New York law was primarily a measure for legal control rather than for revenue, but in later years New York and other States collected sizable amounts of money in registration fees.." (AMER. HWYS. 57) Connecticut and Massachusetts passed similar legislation in 1903, requiring the registration of automobiles and motorcycles on a statewide plan. "Many of these early systems were conducted on a basis whereby a flat fee once paid effected registration for the life of the vehicle." (Labatut 443) Registration fees were not the only motor vehicle imposts faced by early car owners. "Some cities and villages required the motorist to pay a 'wheel tax' of \$10 to \$20 per year for the privilege of driving on their streets. A number of States collected a personal property tax on the vehicle in addition to the registration fee." (AMER. HWYS. 57)

The importance of registration as a means of taxing owners of motor vehicles for the "privilege" of being an owner was noted as early as 1903 in HORSELESS AGE Magazine: "The Denver [Colorado] automobile ordinance has been of much assistance to the assessors of taxes, who have been enabled by means of the license requirements to identify and tax the owners [of vehicles]. Previous to its adoption, it is estimated that one-third of the automobiles in the city went untaxed." (Vol 11, May 6, 1903, p. 564)

"Horace Dodge and Henry Ford lost a 1904 suit that they brought on behalf of Detroit's motorists to test the constitutionality of that city's registration ordinance. They claimed that the \$1 fee constituted double taxation of personal property and that the ordinance was unjust 'class Legislation' because owners of horse-drawn vehicles were neither forced to carry identification tags

nor deprived of the right to allow children under sixteen year's of age to drive their vehicles." (Flink 170) In April 1905, the city court of Detroit ignored the questions of taxation and held that the ordinance requiring registration and display of a license tag on each and every motorized vehicle was "a justifiable exercise of police power, in the interest of the safety of the traveling public."

As soon as a number of States had enacted registration laws, the question of reciprocity arose to plague motorists. In 1907, at least eight States extended no reciprocity at all to any other States. (Dearing 250) "New York, the leader in the registration movement, allowed any vehicle to use its roads, provided the vehicle was registered in its own State, and provided that State granted the same privilege to cars registered in New York." (AMER HWYS 57) By 1910, fifteen other States had reciprocity with New York, but this did not include New Jersey. "As a result, thousands of New Yorkers who had summer homes on the Jersey coast had to register their machines for the full year in both States. A similar relation existed with Massachusetts and 17 other States which did not grant full reciprocity." (AMER. HWYS. 57) As a result of such lack of cooperation between the States, groups such as the American Automobile Association (1902) and the National Automobile Chamber of Commerce (1913) were organized. Both supported changes in the law that would have required Federal, rather than State, registration of all motor vehicles, in order to solve the problem of reciprocity among the States. This problem was ultimately overcome when all of the States accepted plans for mutual reciprocity.

[Editor's Concluding Note: The above material was discovered while doing research on the history of roads and highways. It is undoubtedly sketchy and very incomplete. Since private ownership of the roads has never existed, it is difficult to imagine what provision property owners and insurance companies would make regarding the regulation and use of roads. One historical fact is certain. The population of the United States learned to drive cars without any assistance from the State.] ☐

### **"Why Do We Steer on the Left and Drive on the Right?"**

The only "customary" rule of the road which has managed to survive is the American practice of steering from the left side of a moving vehicle, while it is on the right side of the roadway. This practice probably stems from the use of horse and oxen pulling the Conestoga wagon of the 1750s. The wagoneer walked beside his team or perched precariously on the lazy board. This was a stout oak board that pulled out from underneath the wagon bed immediately in front of the left rear wheel. The wagon had to be on the right side of the road for the driver to have a clear view. From this position the driver had a good view of the road ahead, as well as the ability to operate the wagon brakes. The first state to codify this practice was New Jersey in 1813.

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# A Short History of Highway and Vehicle Regulations

By Carl Watner

The development of the automobile, in contrast to the history of the socialized roads upon which it runs, was largely a free market phenomenon. James Flink, a professional historian of the automobile, has noted that, "One must conclude that the development of adequate automobile roads lagged well behind the diffusion of the motor vehicle in the United States and that the automobile was widely adopted here despite the relative scarcity of suitable roads for its use.... American automobiles were improved much more rapidly than the streets and highways on which they were driven." (Flink 211) After the first American gasoline-powered automobile was constructed by the Duryea brothers in 1893, car manufacturing operations began to spring up all over the country. Carriage makers, like the Studebaker Corporation (which claimed to be the world's largest producer of horse-drawn vehicles at that time), as well as corner machine shops, had their fling at automobile production. Almost any one with mechanical ingenuity and machining facilities could get into operation by assembling the parts they had either purchased from others or made themselves, and tagging the end result with their own name. "Since the first Duryea, there have been a total of more than 2200 different makes of automobiles, of which only a handful have survived." (Shank 52) Flink failed to observe

that the reason than the average car improved much more rapidly than the average road was because of the presence of free market competition and the absence of State ownership of the firms that produced automobiles. It was this spirit of entrepreneurship and the absence of the State which propelled the development of the automobile, and the exact opposite which held back the development of American roads.

Nonetheless, the political governments of the time had to have their try at directly regulating and controlling the automobile. The legal system was used as a means of collecting royalties on the use of gasoline engines in automobiles by enforcing the Selden patent, but this effort was broken by Henry Ford in 1911. Actually, the turn of the century did not mark the beginning of political regulation of conveyances. Local and municipal governments were already regulating and licensing bicycle usage within their jurisdictions during the 1880s and 1890s. (Mason 42) For example, the city of Chicago had a "Wheel Tax" ordinance in effect in 1898, which required an annual license fee from all wagons, carriages, coaches, buggies, and bicycles. The year 1901 marked the first attempt at levying a registration fee specifically on autos (New York State—annual revenue for the year was \$954), and at the same time the first law regulating the speed of an automobile was passed in Connecticut (12 mph in the country, 8 mph in the cities). (Labatut 95, 99) By 1907, 31 States required registration of motor vehicles, the fees varying from 25 cents to \$25 per vehicle. (Dearing 250) The

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