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1

The Mystery of State Contribution

> It is essential to the idea of a law, that it be attended with a sanction: or, in other words, a penalty or punishment for disobedience. If there can be no penalty annexed to disobedience, the resolutions or commands which pretend to be law will, in fact, amount to nothing more than advice or recommendation.
>
> – Alexander Hamilton[1]

Congress faced a hidden enemy throughout the Revolutionary War. In addition to fighting the British, Congress struggled with its own inability to raise resources from the states. Without adequate men, money, and supplies from the states, members of Congress could not provide Continental troops. As John Sullivan observed in 1780, "they send Regulations to the States, some comply some do not; and the Consequence of this is too Obvious to need Explanation." Some 10,000 American soldiers died in camp from starvation, wounds, or disease. Food and supplies were so scarce that a band of soldiers resorted to eating their dog near Lake Champlain; others at Valley Forge tried to gain sustenance from the soles of their boots. The problem of providing for the army and raising new recruits was so severe that as early as 1776 George Washington wrote, "I think the game is pretty near up."[2]

When the war ended, state support for the federal government declined to even lower levels. Requisition payments dwindled out of existence in the summer of 1786 and Congress became incapable of providing the security, diplomacy, and open commerce upon which the

[1] Federalist 15, Rossiter, *Federalist Papers*, 110.

[2] John Sullivan to the President of New Hampshire, November 15, 1780, Burnett, ed., *Letters of Members*, 5: 447; George Washington to John Augustine Washington, December 18, 1776, Washington, *Writings*, 6: 398. Casualty figures come from Peckham, *Toll of Independence*, 131–132.

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More information

nation relied. Lack of revenue prevented Congress from fully paying its foreign and domestic debts, from forcing the British to comply with the 1783 Anglo-American peace treaty, from reacting to the Spanish blockade of the Mississippi River, from enforcing treaties with the Indians, and from averting the piracy of the Barbary states.[3] These problems did not produce imminent peril, but they demonstrated that the union was ill prepared to pay off its debts, stave off foreign invasion, and protect its shipping. Such problems might have been avoided if Congress had received the resources it requested from the states.

Even though Congress was poorly funded during the American confederation, it was never penniless, at least not for long. States did not pay all of the money requested by Congress, but they did pay some. Whenever the situation became dire, one or more states always seemed to pull through for Congress. These last-gasp contributions helped Congress win the War of Independence and provided over two fifths of the money it requested from the states between 1781 and 1789. The latter allowed it to reduce domestic debts by one fifth.[4]

The fact that states withheld their resources is not that surprising. The American confederation, like so many confederations and international organizations, was designed to produce nonexcludable goods for regional governments through a system of requisitions. Nonexcludable goods were goods that could not be feasibly excluded from one state if they were to be provided for another state. Requisitions were an appropriation of state resources for the purpose of supporting the central government, similar to an unenforced tax on regional governments for national goods and services (these and other definitions are listed in the glossary in the back of the book). The United Provinces of the Netherlands (1579–1795), the old Swiss Confederation (1291–1798), and the German Bund (1815–66) all depended on requisitions to raise men, money, and supplies. Modern international organizations such as the United Nations, European Union, and Organization of African Unity have used this institution as well. These confederations and international organizations do not enforce their requests for resources from their member states. They merely divide the cost of common goods and

[3] Brown, *Redeeming*, 17–19.

[4] These figures are based on United States, *Statement of the Accounts of the United States of America, during the Administration of the Superintendent of Finance* and *Statement of the Accounts of the United States of America, during the Administration of the Board of Treasury* (hereafter referred to as *Statement of the Accounts*). Similar figures can be found in *American State Papers*, 1 (finance): 56–57.

Special thanks to Mary Gallagher, coeditor of the *Papers of Robert Morris*, for helping me locate the first two of these most valuable records.

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Excerpt
More information

request the money needed to pay for them.[5] Regional governments and nation-states are supposed to pay out of legal obligation, not because of punishment for noncompliance or reward for compliance. This leaves the decision to contribute ultimately in the hands of state officials. Since central governments provide goods that benefit all states and state officials are usually responsible to their local constituents, we would expect regional governments to free-ride and not provide their share of requisitions. The same is true for the American confederation. Even though regional governments demand the goods provided by a central government, they have no incentive to unilaterally contribute to these goods, and the resources obtained from requisitions should be meager. Given what we know about unenforced taxation, confederations and international organizations that rely solely on requisitions for men, money, and supplies should fail.

Since requisitions were voluntary, their failure should be of little surprise to modern scholars. The real mystery is why the states paid any money to Congress, and why other confederations and international organizations which depend on requisitions succeed at all. In other words, why did the states pay sizable portions of their requisitions when our best understandings of unenforced taxation suggest they should not? This book answers that question for the American confederation. In doing so it also sheds light on the successes of other confederations and international organizations.

THE CONFEDERATIVE DESIGN

The framers of the American confederation recognized the importance of acting collectively to provide for their collective interests. No state could carry out a war against Great Britain individually nor pay off debts common to all states on its own. Their borders were too ill defined and their enemy too strong for the thirteen states to maintain their affairs privately and independently. What the states needed was a "perpetual

[5] Not all of these confederations maintained unenforced taxation systems throughout their existence. Neutral governments of the German confederation were authorized by the Schlossakte of 1820 to use force against regional governments that did not pay their requisitions (Article 33). Likewise, Article 19 of the U.N. charter allowed the General Assembly to revoke a state's voting power when the state is more than two years behind in its payments. The latter sanction could be waived whenever the Assembly was "satisfied that the failure to pay [was] due to conditions beyond the control of the member" (quoted in Lister, *The European Union*, 137). The credibility and size of these threats must be noted before a requisition system can be accurately described as "unenforced" taxation. Other confederations that have adopted systems of requisitions include the restored Swiss Confederation (1815–49) and the Commonwealth of Independent States (1991–).

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union" (Article III) to bind them together into a "league of friendship" (Article II) and mutual assistance. The Articles of Confederation established this league and organized the American states from 1781 to 1789. Although this system was officially enacted in 1781, its institutions were more or less in place by the inception of the second Continental Congress in 1775. Congress issued its first requisition for money that year and its first requisition for men in 1777 when it also passed the Articles of Confederation to the states for ratification. For this reason, I refer to the entire period from 1775 to 1789 as the American confederation. The underlying structure of the requisition system did not change during this time.

To promote interests common to all states, the Articles of Confederation established a Congress that determined, allocated, and administered the demands of the confederation. The Articles empowered Congress to provide national defense, to preserve open commerce, and to foster international diplomacy. These goods produced nonexcludable benefits for nearly all the states and could not be provided fairly nor effectively without national organization. To pay for their cost, Congress requested money from the states in requisitions.[6]

When Congress passed an act, it appropriated the money needed to pay for the act from the national treasury. The treasury was then replenished by annual requisitions on the states that varied according to estimated expenditures for the following year. After the amount needed was determined, Congress asked each state to pay a set proportion of the total and to return its portion by a specified due date. As directed by Article VIII:

> all charges of war and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person. . . . The taxes for paying for that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in Congress assembled.

[6] Almost all congressional revenues came from requisitions on the states, public bonds, or loans from abroad. Since public bonds and loans depended on future revenues, these forms of finance actually depended on requisitions. Other revenues came from the creation and selling of a national bank, the printing of unbacked currency, and the sale of western lands. Although the latter list provided important income, those revenue sources were short-lived and cannot be considered a stable source of revenue during the confederation (see Ferguson, *Power of the Purse*, and Jensen, *The New Nation*, for a more careful delineation).

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Article VIII provided clear constitutional authority for Congress to requisition the states and legally required the states to comply.[7] Since Congress had no means to enforce its requisitions, however, implementation of national policies depended on the willingness and ability of thirteen separate state legislatures. Jonathan Arnold and David Howell, delegates from Rhode Island, summarized their view of this process in a letter to their governor:

> The Continental treasury is to be supplied from the several states agreeable to Article eight, by successive requisitions. When a new requisition is made, the purposes for which it is to be appropriated are to be pointed out to you; and it is to be accompanied with particular estimates. You are at the same time, to be informed what has been done, with your last quota, and on a full consideration of the representation so made to you, you are to grant your money like freemen.[8]

Despite legal obligations, many believed that the states maintained the authority to independently decide whether to pay their requisitions. In effect Congress determined the size of a requisition, while the states judged how much of it to pay.

The system reflected an early conception of republican government that was prominent at the time. American Whigs believed that a republic required sacrifice of individual interest for common interests. "In a monarchy each man's desire to do what was right in his own eyes could be restrained by fear or force," wrote historian Gordon Wood. "In a republic, however, each man must be persuaded to submerge his personal want into the greater good of the whole."[9] Monarchs were tyrannical, according to Whig theory, because they could wield unlimited power, not because of their hereditary selection. If popularly elected rulers were given coercive power, they might ignore the will of the people and abuse their power as monarchs had done. With such a conception of government, coercion was not acceptable. Patriotism and love of country were the only way of assuring that laws would be obeyed. The whole structure of the Articles of Confederation depended on it. Virtuous individu-

[7] The obligation to pay requisitions is further advanced by Article XIII, which asserts, "Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of Confederation shall be inviolably observed by every state." Requisitions for men followed a similar procedure (see Articles VI, VII, and IX, in particular).

[8] Jonathan Arnold and David Howell to Governor Greene, October 15, 1782, Staples, ed., *Rhode Island in Congress*, 397.

[9] *Creation of the American Republic*, 68. As used here, "Whig" refers to late eighteenth-century Americans who believed in ideals of republicanism as described by Gordon Wood, 46–75. Also see Bailyn, *Ideological Origins*, 160–229.

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als would obey the decisions of state officials and virtuous state officials would preserve the greater good of the union.

To ensure that state officials empathized with their neighbors and acted as a whole, delegates frequently met to discuss their common concerns. Describing a similar plan, Ben Franklin wrote, "[T]he colonies would by this connection learn to consider themselves, not as so many independent states, but as members of the same body; and hence be more ready to afford assistance and support to each other."[10] The authors of the American confederation hoped that a creed of partnership and common obligation would encourage state compliance. They further reasoned that states would prefer to pay for federal expenses voluntarily than to empower the national government with the authority to tax. If the states failed to pay their requisitions, Americans would have no choice but to adopt coercive measures and force the states to comply or raise revenue directly from the people. Since coercing the states and direct taxation were equally deplorable and deemed abhorrent ever since the Stamp Act, the authors of the Articles of Confederation presumed that states would want to pay their requisitions. They believed that as long as congressional delegates spent the nation's money on goods and services that were in the true interests of the states, the states would pay the requested funds.

Civic virtue seemed so promising that it inspired a young James Madison to observe that "a spirit of Liberty and Patriotism animates all degrees and denominations of men. Many publickly declare themselves ready to join the Bostonians as soon as violence is offered them."[11] Sacrificing for the common good appeared frequently in the early months of the war. Both states and individuals appeared to rise to the common cause. Many believed this harmony sprang from a virtuous people and that virtue would continually bind the confederation together.

But the harmony was short lived. Shortly after the war began Congress received little of the money it requested from the states and was unable to fully supply the troops under General Washington's command. As historian Andrew McLaughlin pointed out, "the pivotal problem, the immediate and unrelenting problem, was how to get revenue for the

[10] In this quote Franklin described why the states should have complied with the system of requisitions outlined by the Albany Plan. The same understanding governed the system of requisitions under the Articles (Reasons and Motives on Which the Plan of Union was Formed, July 1754, Franklin, *Papers*, 5: 401–402).

[11] James Madison to William Bradford, November 26, 1774, Madison, *Papers*, 1: 129. See also John Page to Thomas Jefferson, April 26, 1776, Jefferson, *Papers*, 1: 288; James Madison to William Bradford, June 19, 1775, Madison, *Papers*, 1: 151–153; and Letter XII, Dickinson, *Political Writings*, 1: 272–273.

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pressing needs of the confederation."[12] Although the states had promised to pay their requisitions in signing the Articles of Confederation, they frequently did not pay their debts to the national government and never authorized an alternative method of raising revenue until the Constitution. This left the confederation incapable of carrying out its immediate tasks and undermined the very security of the union.

EXPLANATIONS FOR POOR COMPLIANCE

Early Americans offered several explanations for why the states did not pay their requisitions. Although they disagreed about the exact reason, all arguments predicted low levels of payment. The Federalists argued that the Articles of Confederation created low levels of federal revenue between 1775 and 1789. The Anti-Federalists, in contrast, argued that poor economic conditions prevented states from fully complying with requisitions. Both arguments have been supported by modern research.

After the confederation had waned and the history of poor compliance was fully known, the Federalists argued that the Articles of Confederation did not give the states adequate incentive to contribute to the union. In *Federalists* 15 through 22, Hamilton pointed to the insufficiencies of the union and cited Congress's lack of revenue as evidence that the system had failed. In Federalist 15 he argued:

> If . . . the measures of the Confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the [states], whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measure themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption.[13]

Even though the Articles gave Congress the power to request money through requisitions and a forum for states to address their common concerns, they gave Congress neither the power to enforce its requests nor any guarantee that states would act according to the whole. Since state leaders did not have the "knowledge of national circumstance essential to a right judgment," they acted according to local interests and

[12] McLaughlin, "The Articles of Confederation," 57. Also see McLaughlin, *A Constitutional History*.

[13] Rossiter, ed., *Federalist Papers*, 111. For similar arguments, see Charles Pinckney's Speech, January 16, 1788, South Carolina, *Debates Which Arose in the House of Representatives of South Carolina*, 3–9; John Marshall, Convention Debates, June 10, 1788, and James Madison, Convention Debates, June 10, 1788, Jensen, *Documentary History*, 9: 1120 and 1144–1146, respectively.

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neglected their legal obligations to the union.[14] This prevented them from acting collectively and from fully providing the goods demanded by the union.

Hamilton believed the lack of enforcement power created Congress's financial woes. Continuing with these institutions, he warned, would ultimately lead to the dissolution of the union or a reorganization of states into regional republics. The warning bolstered popular support for a stronger central government and ultimately the Constitution.

Hamilton's theory, and that of other Federalists, was consistent with the modern theory of public goods. Economists have long argued that the pursuit of self-interest in private good markets brings about mutually advantageous outcomes. But economists have also recognized that in public good markets, the pursuit of self-interest can cause individuals, or in this case states, to fail to act collectively.[15] This is what Hamilton and other Federalists were trying to say. Even though the states gained from raising the army or reducing the debt, individual states could gain even more by withholding their contributions and letting other states provide these goods on their behalf. The states would have little incentive to contribute to their common interest despite their common demands. Combined with weak institutional arrangements, the natural tendency to withhold requisitions explained the low levels of payments from the states.[16]

The reason that states do not have incentive to contribute to public goods stems from the nature of the good itself. As defined by economists (and as used here), public goods are those goods which are both nonexcludable and nonrival.[17] Nonexcludable means that no state can be feasibly excluded from the benefits of consuming the good. For example, it would be difficult if not impossible to exclude a state from the benefits of deterring foreign aggressors. If one state deterred foreign aggressors, all states would receive the benefits. This makes military deterrence a nonexcludable good. Nonrival, on the other hand, implies that the consumption of a good by one state does not reduce the amount available for other states to consume. For example, when one state benefits from deterrence, it does not reduce the benefits from deterrence available to

[14] Federalist 15, Rossiter, *Federalist Papers*, 111.

[15] Samuelson, "The Pure Theory"; Olson, *Logic*; Sandler, *Collective Action*; and Ostrom, *Governing the Commons*.

[16] At least two sets of authors have described the decision to pay requisitions as a public goods problem. See Dougherty and Cain, "Marginal Cost Sharing," and Jillson and Wilson, *Congressional Dynamics*.

[17] Neither property implies that states benefited from a good by the same amount nor that states must receive positive benefits from a good. They merely imply that public goods are collective in nature.

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others. Since deterrence is both nonexcludable and nonrival, it is a public good. When a good is public, every state can benefit from the good's production, whether it pays for it or not. Under such circumstances, each state has an incentive to withhold its contribution and let other states provide the good on its behalf.

Private goods, in contrast, are both excludable and rival. They are excludable when one actor can consume a good to the exclusion of others and they are rival when an actor's consumption reduces the amount available for others to consume. A hamburger, for example, is a private good because consuming it prevents other individuals from consuming it and also reduces the amount of hamburgers in supply by one unit. In the case of the American confederation, transferring wealth from residents of all states to residents in one state may also be a private good as well. Each dollar received produces benefits for the residents of that state that cannot be obtained by residents of other states. It also reduces the benefits available for transfer by one dollar. If wealth transfer is both excludable and rival, it is a private good.[18] Throughout the book, I use terms such as "private benefits," "public aspects," and "private interest" to refer to the excludable and rival aspects of private and public goods, not governmental or nongovernmental ownership as they are frequently used by historians and political scientists.

Since the time of Adam Smith, economists have argued that trade of private goods produces mutually advantageous, or "efficient," outcomes because private goods are excludable. Actors have to pay for private goods in order to obtain them, and the price mechanism ensures that they are efficiently supplied. Likewise, states that want private goods produced by a central government would have to contribute the resources needed to produce that private good. Without such resources, central governments will not be able to supply them.

This is not the case with public goods. Since public goods are nonexcludable, a state can obtain a public good whether or not it contributes to its purchase. In other words, a state can gain the benefits of a public good without paying for its costs. Realizing this, each state has an incentive to withhold contributions in hope that other states will pay for the good on their behalf. If a state anticipates that no other state will contribute, they still have no incentive to contribute on their own. Doing so

[18] Wealth transfer can produce nonexcludable benefits when donators benefit from the transfer – as may be the case with many welfare payments. At this point, I am simply trying to illustrate the differences between public and private goods. I am not trying to make any definitive claims about the nature of wealth transfers. I later argue that paying public debts during the confederation was a type of wealth transfer that produced both public and private benefits. In other words, wealth transfer was simultaneously a public and a private good.

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Excerpt
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would only waste valuable resources without producing the desired result – an adequate army or a paid-off debt.

A quick glance at the confederation suggests that Congress attempted to supply public goods and that states should have withheld their requisitions as public goods theory would predict. When the authors of the confederation limited Congress to tasks which they believed advanced the interests of all states, they inadvertently gave it the responsibility of providing goods that were public in nature. Congress maintained the authority to provide national defense, to preserve open commerce, and to foster international diplomacy. All of these goods were nonexcludable and nonrival.[19] However, the most important duties of Congress and clearest examples of public goods were the national war effort and reducing federal debts. Congress spent roughly 95 percent of its expenditures on the Continental army during the Revolution and 88 percent of its budget toward the war debt after the Revolution.[20] Every dollar paid by a state raised another soldier for the nation's defense or reduced the federal debt by an additional dollar. These payments benefited all states to the exclusion of none. At the same time, providing these benefits did not reduce the amount of goods that other states could consume. Since the primary functions of Congress were martial and most of its subsequent expenses went to other nonexcludable and nonrival goods, congressional goods and services can be thought of as public goods. These goods required state funds in order to be produced, but as the theory of pure public goods predicts, states should not be expected to contribute toward their production.

Perhaps the Federalists had a similar theory in mind when they complained about the ineffectiveness of the union. The Federalists recognized that without institutional mechanisms to induce cooperation, "self-interested" states would not pay their requisitions in full. Their arguments about poor institutional design suggest that states had few incentives to pay their requisitions. This explains why states did not render their quotas in full.

[19] Other responsibilities assigned to Congress by the Articles include: coining money, settling disputes between states, fixing the standards of weights and measures, and maintaining an efficient postal service. All but the last were nonexcludable and nonrival goods.

[20] The first percent is the average amount of congressional money spent on military items from 1776 to 1781 (United States, *Statement of the Receipts and Expenditures of Public Monies during the Administration of the Finances by Robert Morris* – hereafter cited as *Statement of the Receipts*). The second percent is the average, annual estimated expenditures budgeted for the national debt from 1784 to 1789 (United States, *Journals of the Continental Congress* (hereafter *JCC*), 26: 186–196; 29: 765–771; 31: 459–466; 33: 569–583; 34: 432–443).

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