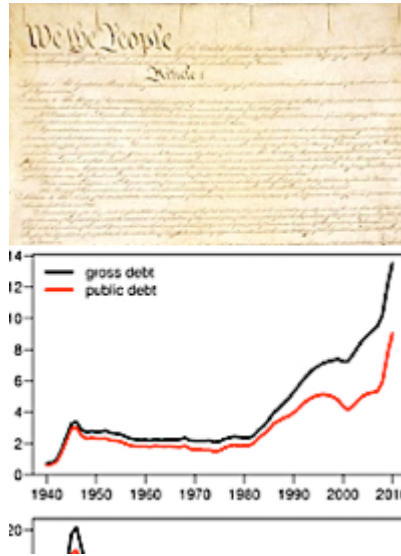




Written by [Charles Scaliger](#) on July 1, 2011

The Constitution and the Debt Limit

It's a sad commentary on the state of affairs in Washington that the only occasions on which the United States Constitution is invoked with any reverence by the political establishment is when it appears to support the expansion of federal power. The topic du jour in the capital is the 14th Amendment, and whether it authorizes President Obama, in effect, to ignore the congressionally-imposed debt ceiling and instruct the Treasury to issue new debt to pay for old. For the record, the 14th Amendment's Section Four states:



The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

This portion of the 14th Amendment was intended to reassure purchasers of U.S. government debt in the aftermath of the Civil War that, although they would not honor debts incurred by the Confederacy nor pay compensation to former slaveholders, the Union/federal government in Washington would continue to honor its obligations to creditors. This, say the usual raft of supporters of business as usual in D.C., is justification enough for the president to thumb his nose at any congressional spending limits and act on his own, running up more debt to satisfy creditors. Garrett Epps, a former *Washington Post* reporter and constitutional scholar, put words in President Obama's mouth in an [April 28th article for The Atlantic](#):

A vocal and determined political minority — what our great Founder James Madison would have called a "faction" — is determined to use its dominance in one House of Congress as a weapon to circumvent the democratic process. It wants to find a back-door way to undo programs and policies that have been democratically enacted over a 75-year period. It wants to impose a narrow vision of government and America that has been rejected by our people repeatedly over the same period.

The disingenuousness of this particular passage is typical of Big Government liberalism: invoke the Constitution when it's convenient, and defend the long parade of unconstitutional expansions of federal power — the "programs and policies" here alluded to — as valid on populist grounds alone. As for those who oppose bigger, badder federal government, well, they're afflicted with "narrow vision." Put otherwise: Because "the people" have supposedly consented to a revolutionary overhaul in the federal government, from the New Deal to Obamacare — an overhaul with no constitutional countenance whatsoever, on Tenth Amendment grounds alone — it is not for us to consider reducing or eliminating any of these programs. But because the national debt has been consecrated by the 14th Amendment, all other considerations must be secondary, regardless of what the people, or the vexatious "factions" representing them, might think.



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Or, as Epps put it, “this provision makes clear that both the monies our nation owes to bondholders, and the sums promised in legislation to those receiving pensions set by law from the federal government, must be paid regardless of the political whims of the current congressional majority.” Note well the subtle double standard: unaffordable and unconstitutional government programs enacted over the years for which the piper now has to be paid are all a result of the “democratic process.” Current sentiment in favor of cutting some of those programs to clear the budget for servicing debts, however, are mere “political whims.”

The solution now being [urged upon us by the punditocracy \(and, apparently, being discussed in private among some of Obama’s Democratic allies on the Hill\)](#) is a typical study in Beltway false alternatives: either Congress must knuckle under and raise the debt limit, or the president must act dictatorially, as the Constitution allegedly authorizes him to do. Neglected from this argument is any suggestion that the president and his supporters are under any obligation to, say, make deep and meaningful cuts in federal spending to accomplish the same end. Such an option — that Washington voluntarily relinquish any portion of its illegitimate power — is not to be broached.

But what does the 14th Amendment actually say? Only that the validity of the public debt, authorized by law, shall not be questioned, which would seem to preclude an outright, permanent default. But it does not authorize the president to take extraordinary measures to authorize more debt (and the inevitable taxes that must eventually be levied to pay it) without congressional approval. Indeed, the phrase “authorized by law” would suggest that Congress must be involved in the process.

In point of fact, if we are invoking the U.S. Constitution, we would do well to consider that the Founders also insisted, in Article 1, Section 7, that “all bills for raising revenue shall originate in the House of Representatives.” Why? Because the House, which represents the people (who ultimately pay the bills) directly, was to be trusted, appropriately, with the purse strings of government. It is perfectly appropriate that the House is now holding the Obama Administration to account for making significant cuts in government spending before authorizing the issuance of any more Treasury debt.

Moreover, those now urging the president to ignore congressional limits on debt in the name of the 14th Amendment are hypocritical in their piety. For if the political class truly believes that the “validity of the public debt...shall not be questioned,” then it never would have countenanced going off the gold standard, thereby repudiating its promise to redeem its notes in gold and unilaterally rewriting the rules of obligations to holders — first domestic and then foreign — of U.S. dollars. And our decades-long policy of debasing the U.S. dollar via inflation is a flagrantly dishonest means of printing our way out of debt, a discredit to ourselves and a dishonor our creditors.

So what is the proper course of action for the federal government? Following the House’s constitutionally-mandated lead in making significant spending cuts to free up funds for paying down the federal debt. Despite the rhetoric on Capitol Hill, this could easily be accomplished, if there were any political will to, say, end subsidies on agriculture, housing, education, and a host of other “public-private partnerships,” to end unconstitutional regulatory agencies like the FDA and dozens of others like it, to close down dozens of military bases overseas that serve no discernible interest other than policing the globe, and to terminate any number of other federal programs in which the federal government has clearly exceeded its constitutional authority.

Since President Obama and his allies in Washington’s old guard have signaled their refusal to do any of this, the choice has become one of unpalatable alternatives: a partial default on the debt, which will doubtless provoke a political if not financial crisis in the near-term, or yet another debt increase, which



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will lead to a far greater crisis in the not-so-long term, when our debt can no longer be paid off even by reducing government expenditures to zero. As the citizens of Greece can attest, that day may be closer than we are willing to believe. If our political leadership takes us there, by refusing to cut spending and insisting on raising taxes, then constitutional niggling will be the least of our worries.



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