

# The Constitution, Congress and Government Debt

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*What would you do if you were driving a vehicle and came upon a traffic light that had both red and green lights on? Most rational folks would stop. After all, the red means "stop and stay stopped until the red light goes off," and the green means "you may proceed with caution."*

An analogous dilemma faces President Joe Biden today as he attempts to spend money that Congress has ordered to be spent, but which the government does not have, and in place of which it cannot legally borrow.

The big-government mentality that has been running Washington, D.C., since the days of Woodrow Wilson has mismanaged the government into \$31.4 trillion in debt. This number is so vast that — with interest rates rising — the annual interest payments to the owners of that debt will soon consume more than half the revenue collected in taxes.

That will barely leave enough for Medicare, Medicaid and Social Security; and all other government expenditures — from defense to the courts to the post office — will need to be funded by higher taxes or debt.

What is Biden to do? Here is the backstory.

After the states won the Revolutionary War and ratified the Constitution, money in the U.S. consisted largely of gold and silver coins issued by the feds and promissory notes backed by gold and silver issued by banks. The Constitution — in order to prevent the type of government debt now confronting Biden and deter the central management of the American economy — conspicuously permits Congress and the states to coin only gold and silver as money, but not to issue paper.

As the Southern states were reentering the Union — forced as they were to ratify the 13th, 14th and 15th amendments as preconditions to Union reentry and the removal of federal

troops from their streets — they soon found themselves extracting money from their residents to repay the lenders who helped the feds finance the war against them.

The congressional Republicans, who had stripped the Supreme Court of jurisdiction to hear appeals on Reconstruction, anticipated judicial resistance to this, so Congress crafted a clause in the 14th Amendment that prohibited anyone from challenging the federal debt that the states would soon collectively be assuming.

The clause reads, “The validity of the public debt of the United States, authorized by law ... shall not be questioned.” Unpacking this clause, we see two underlying values.

Obviously the phrase “shall not be questioned” is not intended to curtail the freedom of speech of persons — as that is a natural right largely immune from governmental interference — but rather the official acts of the states and the judiciary. Stated differently, when the feds assessed the Southern states for their share of the interest on the federal debt, those states could not challenge that assessment in court because the debt they were paying was for a war that had been waged against them. A fair reading of the debates on the 14th Amendment in Congress and elsewhere clearly manifests this congressional concern.

The second underlying value from the clause is that the public debt of the federal government must be “authorized by law.”

Now back to Biden’s red light/green light dilemma.

Big-government types, corporations, banks, the military industrial complex — those who have enriched themselves on federal government largesse — as well as most folks in Congress, academics like Harvard Professor Laurence Tribe and Biden all read the 14th Amendment to embody a legal principal that permits endless debt without express authorization because it “shall not be questioned.”

Yet, such a reading is not only not countenanced by history; it is not even fairly derivable from the plain language of the amendment. In its plain English words, the amendment permits the federal government to incur debt — not to pay all invoices, not to keep the American economy afloat, not to permit politicians to keep campaign promises, not even for emergencies — but only when authorized, not by the president, but “by law.”

Congress — controlled as it has been by the big-government mentality for the past 100 years, still saddled with debt from World War I, congenitally incapable of living within its means, insidiously reckless enough to incur bills but not raise the money with which to pay them — nevertheless has not authorized by law any debt beyond what is currently on the books.

So, can the president incur debt that is not authorized by law? No. Can he choose which federal laws to enforce and which ones to ignore? No.

When two statutes conflict — thou shalt spend, thou shalt not borrow — can the president decide what the laws mean and how they should be applied? Of course not. He is only the president; he is not the judiciary. Since 1803, it has been the exclusive charge, duty and competence of the judicial branch to say what the laws and the Constitution mean — not Congress and not the president.

Whomever has an unpaid bill to the feds should simply sue them. This will force the courts to resolve the red light/green light dilemma. It might even embarrass Congress into fiscal sanity. But don't hold your breath waiting for that.

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