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ARTICLE

IN DEFENSE OF THE DEBT LIMIT STATUTE

ANITA S. KRISHNAKUMAR*

The debt limit statute is a critical feature of the federal budget process and prompts frequent legislation to increase the government's borrowing authority. In this Article, Professor Anita S. Krishnakumar examines the history of the debt limit statute as well as its function in the fiscal constitution. The Article deconstructs several popular criticisms of the debt limit statute, arguing that the criticisms exaggerate and that the statute in fact serves two important roles: first, the statute is the last remnant of congressional control and accountability over the national debt; second, it acts as an important institutional check on party and interest group politics. The Article ends by suggesting several reforms to the existing debt statute framework, aimed at increasing congressional accountability for the debt consequences of federal spending and taxing choices, as well as at curbing some of the dangers associated with the current framework.

The federal Constitution unequivocally vests power over fiscal matters in the hands of Congress.¹ But the Constitution provides no specific guidance as to how the nation’s fiscal policymaking should be conducted. Accordingly, Congress has shaped its own implicit “fiscal constitution” of statutes, internal rules, and legislative and administrative procedures that govern the fiscal policymaking process.² One key feature of this fiscal constitution is the debt limit statute, originally passed as part of the Second Liberty Bond Act of 1917.³ Prior to the statute’s passage, Congress, pursuant to its constitutional power “to borrow Money on the credit of the United

* Visiting Professor of Law, Touro College of Law. J.D., Yale Law School, 1999; A.B., Stanford University, 1996. This Article is dedicated in loving memory to my father, C. K. Krishnakumar, an intellectual whose interest in the politics and government of his adopted nation inspired, and continues to inspire, my study of the legislative process: This one is for you, Dad; I think you would have liked it. I wish also to thank Michael Abramowicz and Doug Lichtman for helpful comments on earlier drafts, and Julie Becker, Laura Ahn McIntosh, and Nelson Tebbe for their support.

1 See U.S. Const. art. I, § 7, cl. 1 (“All Bills for raising Revenue shall originate in the House of Representatives . . . .”); id. art. I, § 8, cl. 1–2, § 5 (“The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . . . To borrow Money on the credit of the United States . . . . To coin Money, regulate the Value thereof, and of foreign Coin . . . .”); id. art. I, § 9, cl. 7 (“No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”); see also The Federalist No. 48 (James Madison).


States, approved each individual issuance of debt made on the nation's behalf. The debt limit statute delegates some of this borrowing power to the Secretary of the Treasury, granting the Secretary standing authority to issue debt without individual congressional approval, up to a specified limit. The statute is an enduring element of the congressional budget process and the frequent subject of legislation, as perennial deficits repeatedly cause the Treasury to hit the prescribed limit and thereby necessitate legislative action to increase the Treasury's authority to borrow.

Yet the dynamics of the debt limit statute in the federal budget and fiscal policymaking process have been virtually unstudied by legal scholars. This is despite the fact that the size of the national debt has become one of the key political issues of our time, and despite increasing scholarly attention to the legislative process in general and congressional budgeting in particular.

This Article examines the function of debt and the debt limit statute in the fiscal constitution. It argues that the debt limit statute serves two important roles with respect to legislative deliberation over fiscal matters.

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4 U.S. Const. art. I, § 8, cl. 2.
6 See Second Liberty Bond Act, 40 Stat. at 288 ("[T]he Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States . . . not exceeding in the aggregate $7,538,945,460.").
7 See, e.g., Jeannine Aversa, Growing U.S. Debt Will Soon Hit Limit / Treasury Urges Congress To Raise Borrowing Ability Beyond $6.4 Trillion, Houston Chron., Feb. 6, 2003, at 3 (discussing size of national debt and politics surrounding need to raise the debt limit); John M. Berry, Treasury Issues Warning On Debt; Congress Asked To Raise Ceiling, Wash. Post, Feb. 6, 2003, at E1 (discussing political debate over size of national debt and wisdom of raising taxes while debt continues to expand); David S. Broder, Our Children Will Pay For Our Free Lunch; Federal Debt, Miami Herald, Oct. 18, 2004, at 21 (discussing projection that federal debt will increase by $5 trillion in the next ten years and criticizing Congress's fiscal irresponsibility); Federal Deficit; Bush Blindly Spends As Burgeoning Debt Puts Country's Fiscal Future In Jeopardy, Detroit Free Press, Sept. 19, 2004, available at 2004 WL 90643892 (lamenting the growth and size of the national debt).
First, the statute is the last remnant of congressional control or accountability over the national debt—and the primary vehicle through which Congress fulfills its constitutional obligations under Article I, §8 to oversee the borrowing and payment of the public debt. Second, the debt limit statute encourages legislators to consider the interests of the general public and future generations, rather than those of special interests, and thus acts as an important institutional check on party and interest group politics.

As this Article details, the general budget process is party- and interest-group dominated, and involves numerous competing concerns and aggregate figures, among which the annual deficit (borrowing) figure and the status of the national debt are only one of many concerns. Within this framework, debt limit increase bills provide an independent and focused opportunity for Congress to step back and consider the consequences of its deficit-spending decisions, to evaluate its fiscal policies, and even to implement fiscal reform if it decides that it has been borrowing too much too fast.

Such congressional accountability and periodic fiscal reform concerning national borrowing and the debt are crucial features of the fiscal constitution because although the United States is at this time capable of servicing its enormous national debt, recent trends towards inefficient and excessive borrowing portend future economic difficulties if left unchecked. Specifically, whereas the United States once borrowed only occasionally, in order to finance emergencies or its own expansion—i.e., to fund wars, pull itself out of economic depression, or invest in its own infrastructure—in the last several decades it has been borrowing on a consistent annual basis simply to pay the overall cost of programs authorized by Congress and the President. Thus, the last thirty years have seen sustained growth not only in the size of the national debt, but in its proportion relative to the Gross National Product (GNP) and the Gross Domestic Product (GDP). As the proportion of debt to GNP/GDP has increased,

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10 See U.S. Const. art. I, § 8, cl. 2 ("The Congress shall have Power . . . To borrow Money on the credit of the United States . . .").
11 See U.S. Const. art I, § 8, cl. 1 (giving Congress power "to pay the Debts . . . of the United States").
13 In 1974, the national debt was equal to 34.24% of the United States’ GNP/GDP; by 1994 it had risen to 68.91%; and in 2004, despite a period of budget surpluses in the late 1990s, it has climbed back up to 38.6% and is projected to reach 40% in 2007. See John Steele Gordon, Hamilton’s Blessing: The Extraordinary Life and Times of Our National Debt 210 (1997); see also On the Fiscal Year 2005 Budget Proposal: Hearings Before the House Ways and Means Comm., 108th Cong. 27 (2004) (statement of Joshua B. Bolten, Director of the Office of Mgmt. and Budget). This is the figure that economists care about, even more than the absolute dollar amount of the debt, because the ratio shows how much debt the nation can afford to carry, "just as the size of a mortgage that a family can safely carry is determined by that family’s income." Gordon, supra, at 197; see also On the Economic Outlook and the Fed. Budget: Hearings Before the House Budget Comm., 108th Cong. 24 (2004) [hereinafter 2004 Hearings on the Economic Outlook] (statement of Alan Greenspan, Chairman, Fed. Reserve) ("[T]he dangers begin to arise when the ratio of
so too has the “debt servicing burden”—i.e., the percentage of the GDP and government revenue spent servicing the national debt. If this trend continues, the American people will be forced to give up more and more of their income in order to pay interest to their (in many cases overseas) creditors, which in turn will lead to a persistent decline in the dollar’s international value and, therefore, purchasing power. Indeed, no less an authority than Federal Reserve Chairman Alan Greenspan has expressed concern about future debt-to-GDP ratios and a consequent decline in living standards if national borrowing continues on its current path. The debt limit statute plays a vital role in this context because although its existence has not stopped the trend towards increased borrowing, it has slowed that trend by acting as a catalyst for budget-reform and budget-balance measures aimed at reducing national borrowing.

But despite its virtues, the debt limit statute is far from perfect. Indeed, inside the Beltway it is much-maligned as an unnecessary anachronism and, worse, as a dangerous “weapon” used by Congress to force the President to make uncomfortable compromises on issues unrelated to the debt. For this and other reasons, the Government Accountability Office

14 See, e.g., 2004 Hearings on the Economic Outlook, supra note 13, at 27 (testimony of Alan Greenspan) (“[T]he debt servicing burden obviously increases because the interest payments have got to be paid out of the GDP, or out of the income which is generated by the GDP”). Thus, in 1974, when the national debt was 34.24% of GDP, the percentage of GDP spent repaying interest on the national debt was 1.5%, while in 1994, when the debt rose to 68.91% of GDP, the proportion of GDP spent repaying interest on the debt rose to 2.9%, and in 2004, with the debt at 38.6% of GDP, the percentage of GDP spent repaying interest is estimated at 1.4% and is projected to reach 1.9% in 2007, when the percentage of debt relative to GDP is expected rise to 40%. See U.S. Office of Mgmt. and Budget, Historical Tables, Budget of the United States Government, Fiscal Year 2005 48, 51–52 [hereinafter U.S. Budget FY 2005 Historical Tables] (Table 3.1, Outlays By Superfunction and Function: 1940–2009).


17 See 2004 Hearings on the Economic Outlook, supra note 13 (testimony of Alan Greenspan) (“And all I can say about the current outlook is that the implicit growth rate ... creates debt-to-GDP levels which I would find of great concern ... [W]e could be in a situation in the decades ahead in which rapid increases in the unified budget deficit set in motion a dynamic in which large deficits result in ever-growing interest payments that augment deficits in future years. The resulting rise in the federal debt could drain funds away from private capital formation and thus over time slow the growth of living standards.”).

In Defense of the Debt Limit Statute

(GAO) and Congressional Budget Office (CBO), as well as many economists and budget commentators, have recommended its repeal.9 This Article evaluates the criticisms leveled against the statute and argues that they are both exaggerated and misdirected. The statute is a necessary component of Congress's power to borrow and has proved capable of serving as a useful catalyst for budgetary reform aimed at debt reduction. Rather than be repealed it should be amended, along with certain internal legislative rules and budget procedures, to improve its ability to make Congress more accountable for its borrowing decisions and for the size of the national debt.

In order to appreciate the enduring need for the debt limit statute, it is necessary first to understand the evolution of Congress's borrowing and debt repayment practices—i.e., the evolution of our national debt. Part I of this Article briefly explores the nation's history of debt incurrence and repayment, including adoption of the debt limit statute in 1917 and subsequent modifications to its operation. Part II elucidates the constitutional and institutional role played by the debt limit statute in the deliberative process concerning national borrowing and debt. Part III discusses criticisms leveled at the debt limit and demonstrates that they both exaggerate actual experiences under the debt limit statute and fail to appreciate the statute's beneficial effects. Part IV suggests procedural changes to the statute—and House and Senate rules governing its implementation—designed to facilitate greater congressional deliberation concerning the national debt.

I. THE HISTORY OF THE NATIONAL DEBT AND THE DEBT LIMIT STATUTE

Since the inception of the United States in 1789, Congress has given the Secretary of the Treasury substantial authority over monetary policy, including the issuance and repayment of debt instruments.20 But while Congress initially maintained significant control over the conditions under which national debt could be incurred, over time it increasingly has

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9 See, e.g., Increase in Federal Debt Limit: Hearing Before the Sen. Comm. On Fin., 107th Cong. (2002) (statement of Bruce R. Bartlett, Senior Fellow, National Center for Policy Analysis); CONG. BUDGET OFFICE, THE ECONOMIC AND BUDGET OUTLOOK: AN UPDATE 48-54 (1995); GEN. ACCOUNTING OFFICE, A NEW APPROACH TO THE PUBLIC DEBT LEGISLATION SHOULD BE CONSIDERED (1979); Michael Abramowicz, Beyond Balanced Budgets, Fourteenth Amendment Style, 33 TULSA L.J. 561, 578-79 (1997) (arguing that debt limit is dangerous and calling for reformation of the statute); see also Theodore P. Seto, Drafting a Federal Balanced Budget Amendment That Does What it is Supposed to Do (And No More), 106 YALE L.J. 1449, 1516-17 (1997) (discussing dangers of using debt ceiling increases as the enforcement mechanism for a balanced budget amendment to the Constitution).

20 See, e.g., GORDON, supra note 13, at 24-28 (describing Secretary Alexander Hamilton's role in shaping the terms under which the new United States government would redeem the debts of the old Articles of Confederation government).
delegated even this authority to the Treasury Secretary. Further, although Congress and the Executive followed a careful fiscal policy of balanced budgets and peacetime debt repayment for the first 150-odd years of the nation’s history, they have allowed serial deficits and continuing debt expansion for the last sixty-plus years. The historical evolution of the United States’ debt can be broken down into roughly three periods: 1789–1917, when debt was incurred exclusively to pay for wars and to sustain the economy during a recession, but paid down immediately upon return to peace and prosperity; 1917–1946, when Congress passed the debt limit statute granting the Treasury standing borrowing authority, but continued to manage debt incurrence and repayment in substantially the same manner as before; and 1946 to the present, when changed attitudes towards debt and the debt limit have produced sustained peacetime deficits and virtually no debt reduction.

Section A of this Part describes Congress’s approach to debt issuance and payment prior to 1917. Section B examines the Second Liberty Bond Act (the debt limit statute) and the manner in which it delegates some of Congress’s control over borrowing to the Treasury Secretary. Section C explores the shift in how Congress and the nation have used debt since the 1960s as well as the changing role of the debt limit statute in fiscal policymaking over the past forty years.

As the following historical analysis reveals, the details and philosophy of congressional management of the national debt have changed dramatically in the course of our nation’s history. But significantly, even as our national economy, debt incurrence, and repayment practices have developed, the debt limit statute has given Congress a forum for periodic assessment, criticism, and reform of national borrowing policy, and has forced Congress and the President to be publicly accountable for their borrowing decisions.

A. National Borrowing and Debt Payment Before 1917

The federal government began in 1789 with a public debt of $78 million, inherited from the old national government and the governments of several states. Most of this debt had been incurred in fighting the Revolu-

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22 Adjusted for inflation, this is equivalent to approximately $1.6 billion in 2004. See ROBERT C. SAHR, INFLATION CONVERSION FACTORS FOR YEARS 1665 TO ESTIMATED 2014, at 5, at http://oregonstate.edu/dept/pol_sci/fac/sahr/sahr.htm (last visited Nov. 27, 2004) (using conversion factor of .049 for comparison of 1789 dollars to 2004 dollars; $78 million divided by .049 equals $1.6 billion).
tionary War. From the first, Congress made it a national priority to pay down the country’s debt. In fact, it quickly passed a series of tariffs and excise taxes and, by 1811, managed to cut the nation’s debt down to $48 million.

Congress did not cause the nation to incur debt again until 1812, when the still-fledgling United States once more went to war with England. By the time the war ended, the national debt had risen to over $99 million. Once peace returned, the government again made it a priority to pay down the debt, running significant surpluses in all but a few of the years between 1816 and 1836.

In 1836, on the heels of President Andrew Jackson’s decision to close down the National Bank, the nation experienced its first serious depression. The depression lasted until 1843 and caused the debt to rise to $32 million. Once the depression ended, Congress and the President again began paying down the debt, managing to reduce it to $15.5 million within three years.

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24 Cf. Gordon, supra note 13, at 11, 24, 54.
25 See Act of Aug. 4, 1790, ch. 34, 1 Stat. 138 (repealed) (making a provision for the payment of the debt of the United States). Some eleven other acts were passed in the 1790s directing the Treasury to use surpluses to pay down debt contracted during the Revolutionary War. See id. at note (a) (listing other acts); see also Act of April 29, 1802, ch. 32, 2 Stat. 167 (repealed) (making appropriations for the extinguishment of the public debt, to be paid to the commissioners of a “sinking fund” established to repay the government’s bond issues); Act of Feb. 11, 1807, ch. 12, 2 Stat. 415 (making provisions for the redemption of the whole public debt of the United States).
27 See Act of Mar. 24, 1814, ch. 29, 3 Stat. 111 (repealed) (authorizing a loan for a sum not exceeding $25 million); see also Gordon, supra note 13, at 47–48. In 2004 dollars, that is the equivalent of authorizing the nation to borrow $255 million. See Sahar, supra note 22, at 6 (using conversion factor of .098 for comparison of 1814 dollars to 2004 dollars; $25 million divided by .098 equals $255 million).
28 See Historical Statistics Tables, supra note 26, at 1118. Adjusted for inflation, that is equivalent to approximately $1 billion in 2004 dollars. See Sahar, supra note 22, at 6 (using conversion factor of .098 for comparison of 1814 dollars to 2004 dollars; $99 million divided by .098 equals $1 billion).
29 See, e.g., Act of Mar. 3, 1817, ch. 87, 2 Stat. 379 (repealed) (directing commissioners of the sinking fund to use surpluses above a certain amount to purchase or redeem the public debt); Act of Apr. 24, 1830, ch. 78, 4 Stat. 396 (authorizing Treasury Secretary to apply sums greater than $10 million to the payment or purchase of the principal of the public debt).
30 See Gordon, supra note 13, at 53, 207 (Federal Debt Statistics Table).
31 See id., at 62–64.
32 See Historical Statistics Tables, supra note 26, at 1118 (Federal Debt Statistics Tables for 1836–1843). In inflation-adjusted dollars, this is equal to approximately $780 million in 2004. See Sahar, supra note 22, at 6 (using conversion factor of .043 for comparison of 1846 dollars to 2004 dollars; $15.55 million divided by .043 equals $362 million).
33 See Historical Statistics Tables, supra note 26, at 1118 (Federal Debt Statistics Tables for 1846). This is equivalent to approximately $362 million in 2004 dollars. See Sahar, supra note 22, at 6 (using conversion factor of .043 for comparison of 1846 dollars
The Mexican War in 1847 led Congress to create its first "automatic" appropriation—authorizing the Treasury to pay interest and principal on the debt as it became due, without obtaining specific congressional approval.\textsuperscript{34} Within a few years of the war's end, Congress again began running surpluses and paying down the debt.\textsuperscript{35}

In the 1860s, the Civil War erupted, taking military outlays and the national debt to unprecedented heights.\textsuperscript{36} To help fund the war, Congress authorized Treasury Secretary Jay Cooke to issue debt in the form of "five-forty" bonds, so-named because they could not be redeemed before five years, or after forty.\textsuperscript{37} Cooke employed newspaper advertising to persuade a vast number of average citizens to purchase war bonds, thereby inventing the modern bond drive.\textsuperscript{38} Congress also imposed an array of new wartime taxes—including excise taxes, stamp taxes, transportation taxes, advertising taxes, and a federal tax on income—and created a Bureau of Internal Revenue to supervise the assessment and collection of these taxes.\textsuperscript{39}

By the end of the Civil War, the national debt had risen over forty-fold, from a pre-war level of approximately $58.5 million, to $2.75 billion in 1866, the first year of peace.\textsuperscript{40} But once peace returned, Congress again ran surpluses and pared down the debt.\textsuperscript{41} In fact, from 1866 to 1893, Congress ran eighteen straight surpluses.\textsuperscript{42} In 1917, American involvement in World War I again raised government expenditures to new levels. With former Treasury Secretary Jay Cooke's Civil War bond drive as a model, the Treasury began a series of.

\textsuperscript{34} See Act of Feb. 9, 1847, ch. 7, 9 Stat. 123 (providing for the payment of any interest on the public debt); see also GORDON, supra note 13, at 65.

\textsuperscript{35} See GORDON, supra note 13, at 66.

\textsuperscript{36} See id. at 68. When the war began in April 1860, federal spending for all departments totaled only $172,000 a day, paid for almost entirely by tariff and land sale revenue; within three months, war spending alone was costing $1 million a day. See id. In inflation-adjusted 2004 dollars, that is the equivalent of going from spending $3.7 million a day to $21.3 million a day in just three months. See SAHR, supra note 22, at 7 (using conversion factor of .047 for comparison of 1860 dollars to 2004 dollars; $172,000 divided by .047 equals $3.7 million and $1 million divided by .047 equals $21.3 million).

\textsuperscript{37} See Act of Mar. 3, 1864, ch. 27, 13 Stat. 13 (repealed 1864) (supplementing the act entitled "An Act to provide Ways and Means for the Support of the Government"). In the meantime, the bonds paid six percent interest, in gold. See id.

\textsuperscript{38} See GORDON, supra note 13, at 78.

\textsuperscript{39} See Act of July 1, 1862, ch. 119, 12 Stat. 432 (providing internal revenue to support the government and to pay interest on the public debt).

\textsuperscript{40} See Historical Statistics Tables, supra note 26, at 1118. In inflation-adjusted 2004 dollars, this is the equivalent of an increase in the national debt from $1.2 billion to $31 billion. See SAHR, supra note 22, at 7 (using conversion factor of .047 for comparison of 1859 dollars to 2004 dollars; $58.5 million divided by .047 equals $1.2 billion; and a conversion factor of .089 for comparison of 1866 dollars to 2004 dollars; $2.75 billion divided by .089 equals $31 billion).

\textsuperscript{41} See Historical Statistics Tables, supra note 26, at 1118 (post-1866).

\textsuperscript{42} See Historical Statistics Tables, supra note 26, at 1118. The official total debt figures printed in these tables appear to rise in small amounts during some years in this period, but that is because of accounting technicalities. See id.
World War I bond drives to raise revenue for military outlays. The government also sharply increased federal income taxes to assist with war-time funding, dropping the exemption level to encompass much of the middle class as well as ratcheting up the marginal rates. As a result of the war, the national debt increased by a factor of twenty, leaping from $1.2 billion in 1916 to a high of $25.48 billion in 1919, and federal revenues soared from $761 million in 1916 to $5.1 billion in 1919.

Thus, from 1789 to 1917, Congress's approach to debt was conservative. Although the government was unafraid to incur debt, it preferred to meet its expenses with tariff and tax revenue, and borrowed only when faced with the exigent circumstances of war or economic recession. Moreover, once these exigencies abated, Congress immediately began to pay down and reduce the debt it had incurred.

B. The Second Liberty Bond Act of 1917 and Its Initial Use

1. Provisions of the Original Debt Limit Statute

Prior to World War I, Congress separately authorized each issuance of bonds, notes or other securities made to finance government activities. This included determining the interest rate and term for the debt instruments to be used. During the war, however, Congress passed the

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43 See, e.g., First Liberty Bond Act, Pub. L. No. 65-3, 40 Stat. 35 (1917) (authorizing the issue of $2 billion in war bonds "to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes"); see also GORDON, supra note 13, at 103.

44 See ELLIOT BROWNLEE, FEDERAL TAXATION IN AMERICA: A SHORT HISTORY, 58-78 (2004); see also GORDON, supra note 13, at 104.


46 See HISTORICAL STATISTICS TABLES supra note 26, at 1117. This is the equivalent of approximately $276.3 billion 2004 dollars. See CPI, supra note 45 (using consumer price index of 17.3 for 1919).

47 See HISTORICAL STATISTICS TABLES supra note 26, at 1117. This is the equivalent of approximately $1.31 billion 2004 dollars. See CPI, supra note 45 (using consumer price index of 10.9 for 1916).

48 See HISTORICAL STATISTICS TABLES, supra note 26, at 1106 (showing Federal Debt Statistics Tables for 1916–1919). This is equivalent to $55.3 billion in 2004. See CPI, supra note 45 (using index of 17.3 for 1919).


50 See, e.g., Act of July 26, 1886, ch. 265, 14 Stat. 255 (specifying that bonds authorized under a previous act, for the purpose of aiding in railroad and telegraph line construction from the Missouri River to the Pacific Ocean, "may be issued in denominations greater than one thousand dollars"); Act of Mar. 31, 1848, ch. 26, 9 Stat. 217 (authorizing borrow-
Liberty Bond Acts\textsuperscript{51} to facilitate fulfillment of the government's rapidly increasing financing needs. The Second Liberty Bond Act, passed in September 1917,\textsuperscript{52} is widely known as the basis for the modern debt limit statute.\textsuperscript{53} The first section of the Act provides that:

[T]he Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate $7,538,945,460 and to issue therefore bonds of the United States . . . .

The bonds herein authorized shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding four per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe.\textsuperscript{54}

The Act thus gave the Secretary of the Treasury standing authority to borrow as and when he deemed appropriate (i.e., "from time to time," ) to meet national expenses, up to a maximum limit of $7.538 billion.\textsuperscript{55} The Act also expanded the Secretary's discretion over the form, denomination, and terms and conditions of the bonds to be issued, although Congress refused to relinquish complete control over the rates of interest to be paid.\textsuperscript{56}

In addition to the bonds authorized in section 1, the Act granted the Treasury Secretary general authority to borrow, from time to time, "such sum or sums as in his judgment may be necessary" in the form of (1) certificates of indebtedness, up to an aggregate limit of $4 billion;\textsuperscript{57} and (2) war-


\textsuperscript{52} See 40 Stat. at 288 (subtitled "An Act to authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes").

\textsuperscript{53} See, e.g., WINTERS, supra note 5.

\textsuperscript{54} See § 1, 40 Stat. at 288.

\textsuperscript{55} This translates to approximately $110.48 billion in 2004. See CPI, supra note 45 (using consumer price index of 12.8 for 1917).

\textsuperscript{56} See § 3, 40 Stat. at 289–90.

\textsuperscript{57} See § 5, 40 Stat. at 290. This translates to $58.625 billion in 2004. See CPI, supra note 45 (using consumer price index of 12.8 for 1917).
savings certificates, up to a limit of $2 billion.\textsuperscript{58} Again, the Secretary was given broad discretion over the offering terms for the certificates, such as price, redemption conditions, and even the rate of interest.\textsuperscript{59}

Notably, the Act also authorized the Treasury Secretary, "for the purpose of more effectually providing for the national security and defense and prosecuting the war," to purchase on behalf of the United States the obligations of foreign governments then engaged in war with the enemies of the United States, and appropriated $4 billion for such purchases.\textsuperscript{60} This authority was to end upon termination of the war with Germany.\textsuperscript{61} Other provisions of the Act dealt in detail with the convertibility of bonds, tax exemptions, the deposit of proceeds from the sale of bonds and certificates, the postal service's obligation to assist in the advertising, sale, and delivery of bonds, and restrictions on the further issue of bonds.\textsuperscript{62} Moreover, as a check on the additional authority given to the Treasury Secretary, the Act required the Secretary to submit annual reports to Congress detailing all expenditures made under it.\textsuperscript{63}

The Third and Fourth Liberty Bond Acts, passed in 1918, amended the Second Liberty Bond Act to increase the authorized limits on government issuances of bonds, credits to allied governments, and certificates of indebtedness.\textsuperscript{64} The Victory Liberty Loan Act, passed in 1919, further amended the statute to authorize the government to issue up to $7 billion\textsuperscript{65} in Treasury notes, above and beyond the bonds, certificates, and credits

\textsuperscript{58} See § 6, 40 Stat. at 291. This is the equivalent of approximately $29.31 billion in 2004 dollars. See CPI, \textit{supra} note 45 (using consumer price index of 12.8 for 1917).

\textsuperscript{59} See §§ 5, 6, 40 Stat. at 290–91. The only limitations the Act placed on the terms of the war-savings certificates were that (1) no one person could be sold more than $100 worth of certificates at any one time; and (2) no one person could hold such certificates in an aggregate amount exceeding $1,000 at any one time. See id.

\textsuperscript{60} See \textit{id.} § 2. Again, this is equivalent to approximately $58.625 billion dollars in 2004. See CPI, \textit{supra} note 45 (using index of 12.8 for 1917).

\textsuperscript{61} See § 2, 40 Stat. at 288–89.

\textsuperscript{62} See \textit{id.} §§ 3, 4, 7–9, 11.

\textsuperscript{63} See \textit{id.} § 10.

\textsuperscript{64} Specifically, the Third Liberty Bond Act increased the authorized issue of bonds from $7 billion to $12 billion, the appropriation for purchases of allied governments' obligations from $4 billion to $5.5 billion, and the limit for outstanding certificates of indebtedness from $4 billion to $8 billion. See Third Liberty Bond Act, Pub. L. No. 65-120, §§ 1, 2, 4, 40 Stat. 502, 503–04 (1918). In inflation-adjusted dollars, this is equivalent to raising the authorized issue of bonds from $102.6 billion to $149.1 billion, the appropriation for purchases of allied governments' obligations from $58.6 billion to $86.3 billion, and the limit for outstanding certificates of indebtedness from $58.6 billion to $99.4 billion. See CPI, \textit{supra} note 45 (using index of 12.8 for 1917 and 15.1 for 1918). The Fourth Liberty Bond Act further increased the limit on authorized issues of bonds to $20 billion and the limit on appropriations for purchases of allied governments' obligations to $7 billion. See Fourth Liberty Bond Act, Pub. L. No. 65-192, §§ 1, 2, 40 Stat. 844 (1918). Adjusting for inflation, this is equivalent in 2004 dollars to an increase to $248.5 billion on authorized issues of bonds and to $87 billion on the limit on appropriations for purchases of allied governments' obligations. See CPI, \textit{supra} note 45 (using consumer price index of 15.1 for 1918).

\textsuperscript{65} This is approximately equivalent to $75.9 billion in 2004. See CPI, \textit{supra} note 45 (using consumer price index of 17.3 for 1919).
previously authorized by the Second Liberty Bond Act and its amendments.\textsuperscript{66} As in the earlier Bond Acts, Congress in the Victory Liberty Loan Act delegated discretion over the terms of the notes to the Treasury Secretary.\textsuperscript{67}

Thus, although the original debt limit statute granted the Treasury Secretary standing authority to borrow and eliminated congressional control over some of the more minute details of debt issuance, Congress continued to maintain a heavy hand in supervising the particulars of national borrowing under this first iteration of the statute.

2. Debt Incurrence and Repayment from World War I to World War II (1920–1946)

Following World War I, Congress and the Treasury resumed the pre debt limit pay-as-you-go-except-during-war-or-depression approach to fiscal policy. To this end, Congress took two steps aimed at reducing its $25 billion post-war debt. The first was to continue the nation’s long-standing peacetime practice of controlling spending and using government surpluses to pay down the national debt.\textsuperscript{68} As post-war Secretary of the Treasury Andrew Mellon later explained, “Since the war two guiding principles have dominated the financial policy of the Government. One is the balancing of the budget, and the other is the payment of the public debt. Both are in line with the fundamental policy of the government since its beginning.”\textsuperscript{69} The second step was the passage of the Budget and Accounting Act of 1921.\textsuperscript{70} The Budget and Accounting Act required submission of an annual budget from the executive branch, created the Bureau of the Budget (now the Office of Management and Budget), and established the General Accounting Office.\textsuperscript{71} All of these changes were designed to create cohesion in the national budget and to facilitate budget balance.\textsuperscript{72} In all, the post-war government managed to cut federal spending by fifty percent between 1920 and 1927, and to reduce the national debt from $24.3 billion to $16.9 billion by 1929.\textsuperscript{73}

\textsuperscript{67} See id.
\textsuperscript{68} See, e.g., GORDON, supra note 13, at 110.
\textsuperscript{69} ANDREW MELLO, TAXATION: THE PEOPLE’S BUSINESS 25 (Macmillan 1924).
\textsuperscript{70} See Budget and Accounting Act of 1921, Pub. L. No. 67-13, 42 Stat. 20 (1921).
\textsuperscript{71} See id. §§ 201, 207, 301.
\textsuperscript{73} See HISTORICAL STATISTICS TABLES, supra note 26, at 1114 (Federal Outlay Statistics Table for 1789–1970); id. at 1117 (Federal Debt Statistics Table for 1791–1970). The $24.3 billion in 1920 is the equivalent of $227.9 billion in 2004, and the $16.9 billion in 1929 is equivalent to $185.4 billion in 2004. See CPI, supra note 45 (using consumer price index of 20 for 1920 and 17.1 for 1929).
With the onset of the Great Depression in 1930, this trend shifted dramatically. As in earlier periods of depression, the collapse of the economic markets caused government revenues to decline substantially, from $4 billion in 1930 to less than $2 billion in 1932 and 1933. The decline resulted in passive deficits, so-called because they derive from falling tax receipts in difficult economic times, rather than from deliberate spending increases. Instead of attempting to balance these passive deficits with tax increases, which they feared would create even greater economic havoc, President Franklin Roosevelt and the Democratic Congress enacted an array of New Deal programs designed to create jobs and provide federal relief to the working class. As a result, federal government outlays increased from $4.6 billion to $9.06 billion during the eight-year period from 1933 to 1940. During this same period, the national debt climbed from $22.5 billion to $43 billion. Shortly thereafter, in early 1941, Congress made an important procedural change to the debt limit statute: It replaced the different limits set for different types of debt instruments (i.e., bonds vs. certificates of indebtedness vs. war-savings certificates vs. notes) with one aggregate limit for all types of debt issued by the Treasury.

The depression of the 1930s was followed almost immediately by American involvement in the Second World War. The war years added
$220 billion to the national debt, bringing the cumulative total to $269 billion in 1946.81 In response to the funding demands of the war, Congress increased the debt limit set in the Second Liberty Bond Act (as amended) several times82 and raised taxes on the middle class.83 By the time the war ended, the United States government had run straight deficits for sixteen years.84

Despite this unprecedented string of deficits, congressional action under the debt limit statute from World War I through World War II remained substantially similar to its previous approach to national borrowing. Although the absolute amount and duration of debt incurrence during this period was staggering, such borrowing remained consistent with the old consensus that debt could and should be incurred in times of war and economic depression. In fact, the only deviation from prior norms was the government's creation of new program spending in the midst of the depression (although it was not new for outlays to increase during a depression, such increases never before had been so steady and sharp,85 nor had they been the result of deliberate government expansion of program spending).

C. National Borrowing and the Debt Limit Statute Since World War II

The post–World War II era has been marked by three periods of shifting priorities and politics regarding the national debt and the debt limit statute. From 1946 to 1960, the government slowly moved away from its focus on balanced budgets and debt reduction as the "first object" of fed-

81 See Historical Statistics Tables, supra note 26, at 1117 (providing Federal Debt Statistics Table for 1791–1970). This cumulative total is equivalent to approximately $2.59 trillion in 2004 dollars. See CPI, supra note 45 (using 1946 consumer price index of 19.5).
83 See Brownlee, supra note 44, at 112.
84 See Historical Statistics Tables, supra note 26, at 1105 (showing Federal Finances Statistics Table for 1929–1970).
85 During the depression of the 1830s, for example, outlays rose from a range of $17 million to $23 million from 1832 to 1835 to between $24 billion and $37 billion from 1836 to 1842. See Historical Statistics Tables, supra note 26, at 1114–15 (Federal Outlays Statistics Table for 1789–1970). Similarly, during what some historians have termed the depression of the 1890s, see Gordon, supra note 13, at 90, outlays increased from a range of $318 million to $383 million from 1890 to 1893 to between $352 million and $605 million from 1894 to 1899. See id. Compare this with the depression of the 1930s, during which outlays increased from a range of $3.1 billion to $4.6 billion from 1929 to 1933 to between $6.5 billion and $9.06 billion from 1934 to 1940. See id.
eral fiscal policy in a post-war period. In the 1960s and 1970s, American politicians embraced the philosophy of British economist John Maynard Keynes, resulting in nearly uninterrupted deficits and debt expansion, as well as in congressional use of the debt limit statute to criticize executive fiscal policy. This trend continued and expanded in the 1980s and 1990s, when votes to increase the debt limit began to be used by some as vehicles for budget reforms aimed at debt reduction and by others as a legislative weapon in congressional-executive battles over fiscal policy.

1. National Debt in the 1940s and 1950s

As with previous wars, the end of World War II brought back national surpluses, but now the government no longer was committed to balancing the budget and paying down the debt. Increasingly influenced by British economist John Maynard Keynes, American politicians had begun to abandon their focus on debt reduction as the key to economic prosperity. Keynes' macroeconomic model characterized government debt as "borrowing from oneself"—with the nation's debits canceled out by its citizens' credits—and justified deliberate peacetime deficits when government spending was deemed necessary to ensure stable economic growth. Also contributing to the political shift away from absolute insistence on balanced budgets and debt repayment were national experiences during the Great Depression, when: (1) the Hoover Administration's efforts to balance the budget by increasing tariffs and taxes only further destabilized the economy and (2) an array of new government programs requiring substantial peacetime federal spending took root.

This is not to suggest that budget balance and debt reduction played no role in post-World War II federal fiscal policy; in fact, the government ran surpluses for four of the first six years following the war, and reduced the debt in three of those years. And in 1946, Congress inaugurated the

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86 See GORDON, supra note 13, at 129.
87 7 CONG. AND THE NATION, supra note 49, at 42; see also GORDON, supra note 13, at 129.
88 See HISTORICAL STATISTICS TABLES, supra note 26, at 1105 (providing Federal Finances Statistics Tables for 1929–1970) (showing an annual surplus in 1947 after sixteen straight years of deficits).
89 See 7 CONG. AND THE NATION, supra note 49, at 42; see also JAMES M. BUCHANAN & RICHARD E. WAGNER, DEMOCRACY IN DEFICIT: THE POLITICAL LEGACY OF LORD KEYNES 134–42 (1977) (providing a straightforward discussion of Keynes's economic philosophy as applied to political governance regarding the national debt); GORDON, supra note 13, at 129–41.
90 See discussion supra Part I.B.2.
91 See id.
92 See HISTORICAL STATISTICS TABLES, supra note 26, at 1105 (providing Federal Finances Statistics Tables for 1929–1970). The three post-war years in which the debt decreased were 1947, 1948, and 1951. See id. at 1118 (showing a decrease from $271 billion in 1946 to $257 billion in 1947 and $252 billion in 1948, and a decrease from $257 billion in 1950 to $255 billion in 1951).
post-war period by decreasing, rather than increasing, the debt limit. 93
Significantly, three of the government's post-war surpluses occurred during years when the United States was involved in fighting the Korean War. 94

In the eight years from 1953 to 1960, however, this trend began to shift, as the government ran an almost equal number of deficits and surpluses 95 and Congress, in response to requests from Treasury and the President, enacted several increases to the statutory debt limit. 96 During the 1950s, Congress began passing a portion of these increases as "temporary" extensions that expire on a particular date, in the hope of limiting long-term debt growth and encouraging the debt to shrink in the future. 97 Congressional-executive interactions with respect to the debt limit remained, for the most part, harmonious during this period, 98 although Congress did not always increase the debt limit by as much as the President requested. 99


In the 1960s, the Keynesian economic philosophy that had begun to influence American politicians in the 1940s and 1950s took firm root, and came to dominate American fiscal policy as well as to provide political justification for continued federal spending on New Deal programs and spend-

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93 See Public Debt Act of 1946, Pub. L. No. 79-455, 60 Stat. 316 (1946). This amendment lowered the limit from $300 billion to $275 billion. Id. In 2004 dollars, that is a decrease from $2.89 trillion to $2.65 trillion. See CPI, supra note 45 (using average consumer price index of 19.5 for 1946).

94 See HISTORICAL STATISTICS TABLES, supra note 26, at 1105 (providing Federal Finances Statistics Table for 1929-1970).


99 See WINTERS, supra note 5.

97 One interesting exception to this general inter-branch cooperation occurred in 1953, when the Senate tabled a bill responding to the Treasury's request for an increase in the debt ceiling, and then adjourned without further action. See CONG. AND THE NATION, supra note 96, at 394. Given Congress's failure to act, the U.S. Treasury eventually used $500 million of its "free gold" supply to stay within the debt ceiling. See id.

98 In 1958, for example, although the President requested an increase of $10 billion in the permanent debt ceiling, plus a $3 billion increase in the temporary limit for two years, Congress authorized a permanent increase of only $8 billion, plus a $5 billion increase in the temporary ceiling for one year. See Act of Sept. 2, 1958, Pub. L. No. 85-912, 72 Stat. 1758 (1958); CONG. AND THE NATION, supra note 96, at 394. Similarly, in 1959 the President asked for a permanent ceiling of $288 billion with a one-year increase in the temporary ceiling to $295 billion, but received a $285 billion raise in the permanent limit plus a $10 billion increase in the temporary limit; in 1962, the President requested a ceiling of $308 billion through fiscal 1963 but received a temporary increase to $300 billion for fiscal 1962 (although Congress later relented and passed a temporary increase to $308 billion). See Act of July 1, 1962, Pub. L. No. 87-512, 76 Stat. 124; Act of Mar. 13, 1962, Pub. L. No. 87-414, 76 Stat. 23; Act of June 30, 1959, Pub. L. No. 86-74, 73 Stat. 156; CONG. AND THE NATION, supra note 96, at 394-95.
ing on new programs, without increasing taxes. Thus, although the economy grew and government revenues increased throughout the decade (going from $92.5 billion in 1960 to $193.7 billion in 1970), outlays consistently consumed all of the extra funds. Indeed, the 1960s produced what arguably are the biggest sources of backdoor spending in the federal budget—i.e., “entitlements” including Social Security, Medicare, and Medicaid, which obligate the government to pay benefits, without limit, to all who qualify for program benefits. During this decade, Congress raised the debt limit several times and the national debt grew by nearly one-third, from $286 billion in 1960 to $371 billion in 1970. To be sure, some of this increase in outlays was caused by the Vietnam War—but the war, which cost approximately $173.2 billion, accounted for less than 8% of the total $1.4 trillion in outlays spent by the government from 1961 to 1970, and less than 7% of the total $2.5 trillion in outlays spent from 1965 to 1976 (the budgetary period for which the costs of the war have been measured).
The 1960s also initiated a new phase in congressional-executive relations concerning the debt limit statute, as Southern Democrats and Republicans in Congress began using votes on debt limit increase requests as occasions to attack the fiscal policy of the Kennedy and Johnson administrations.\(^{108}\)

The 1970s continued the spending and debt expansion trend of the 1960s, producing an increase in the national debt from \$381\ billion in 1970 to \$909\ billion in 1980.\(^{109}\) Significantly, this 245% increase in the debt occurred despite the fact that rapid inflation bumped numerous taxpayers into higher marginal brackets and caused a 267% growth in revenues during the same period, from \$193\ billion in 1970 to \$517\ billion in 1980.\(^{110}\)

The rapid rise of the debt during the 1970s had two procedural consequences for the fiscal constitution: enactment of the Congressional Budget and Impoundment Control Act of 1974 (the "Budget Act of 1974")\(^{111}\) and the addition of the "Gephardt Rule" to the standing rules of the House of Representatives.\(^{112}\) The Budget Act of 1974 was inspired by President Nixon's efforts to curtail congressional spending through the impoundment of funds appropriated by Congress.\(^{113}\) Its drafters designed it to create a cohesive congressional budget and thereby inspire greater congressional control and responsibility with respect to budget aggregates.\(^{114}\) The Act's creation of a centralized budget process with aggregate priorities set by a single budget committee, rather than several appropriations subcommittees, increased party control and manipulation of the budget process at the expense of diverse floor deliberation.\(^{115}\)
The burgeoning of the debt in the 1970s also produced the "Gephardt Rule" in response to the difficult political situation confronting members of Congress, who faced increasingly frequent votes to raise the statutory debt limit.\(^{116}\) Failure to increase the limit would result in default on the government's loan obligations; but many members refused to vote in favor of an increase, either in protest against the fiscal irresponsibility of serial deficits or for fear of the reelection consequences (political challengers had begun using incumbents' debt limit votes against them in subsequent campaigns).\(^{117}\) In order to avoid the unpleasantness of perennial debt limit votes and insulate debt limit increases from the political pressures that often caused them to fail in the House,\(^{118}\) the House of Representatives crafted a change in its standing rules and passed it as part of a temporary extension to the debt limit in 1979.\(^{119}\) House Rule XXIII (formerly Rule XLIX), known as the "Gephardt Rule": (1) automatically increases the debt limit whenever the concurrent budget resolution sets the limit at a level different from that otherwise in effect for the relevant period; (2) presumes or renders this level approved by the House upon passage of the budget resolution; and (3) provides for enrollment of a bill setting the debt limit at this presumed level to be sent to the Senate without a separate vote by the House.\(^{120}\)

Thus, whereas Congress in the 1960s came to view legislation increasing the statutory debt limit as inevitable, in the 1970s it came to view such legislation as a painful, if necessary, evil from which political cover was required.


\(^{118}\) See, e.g., H.R. 12641, 95th Cong (1978) (raising temporary debt ceiling to $849.1 billion defeated by vote of 167-288). See also 39 Cong. Q. Almanac 239 (Mary Cohn ed., 1983).


3. Debt and the Debt Limit Statute in the 1980s and 1990s

The 1980s continued the debt expansion trends of the previous two decades, as federal spending on entitlements and the Star Wars program escalated steadily with no correlation to revenues. 121

The decade also wrought noticeable shifts in Congress’s use of the debt limit statute. First, Congress in 1983 eliminated the distinction between permanent and temporary debt ceilings. 122 By this time, it had become clear that the use of temporary debt limit increases not only was failing to restrict the growth of the national debt, but was resulting in the need for multiple debt limit votes, sometimes within a few months of each other. 123 Elimination of the temporary ceiling was designed to ease political pressures associated with the debt limit by reducing the number and frequency of debt limit votes. It also gave the Treasury Secretary greater flexibility, since he or she no longer would face automatic reversion of the debt ceiling to a substantially lower limit upon expiration of the temporary limit, and thus could refinance and shuffle funds to remain technically within the limit for some time even after borrowing hit the permanent debt ceiling. 124

Second, as deficits spiraled out of control in the early part of the decade, members of Congress resolved to do something about it other than symbolically vote against periodic debt limit increases. Support grew for some kind of legislative reform aimed at reversing the historical trend away from balanced budgets and debt reduction. 125 In 1985, a bipartisan team of senators used a vote on debt limit increase legislation as a vehicle to pass the Gramm-Rudman-Hollings Deficit Reduction Act (GRH). 126

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121 See Statistical Abstract Tables, supra note 104, at 322 (Federal Receipts, Outlays and Debt Statistics Table for 1960–2003). The national debt more than tripled during the 1980s, going from $994.8 billion in 1981 to $3.21 trillion in 1990, as the government passed an enormous tax cut. See id.; Gordon, supra note 13, at 166. Adjusted for inflation, the debt still more than doubled, increasing in 2004 dollars from $2.05 trillion to $4.61 trillion. See CPI, supra note 45 (using consumer price index of 90.9 for 1981 and 130.7 for 1990).


124 See 39 Cong. Q. Almanac, supra note 118, at 240.

125 Cf. Wildavsky & Caiden, supra note 72, at 128 (noting that the Gramm-Rudman-Hollings Deficit Reduction Act was passed in an environment of “dismay at ever-rising deficits” and as a rider to the “annual misery of raising the debt ceiling”).

126 See Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-
sought to control national borrowing and force budgetary balance by enacting predetermined deficit (i.e., borrowing) maximums for each of the next five fiscal years.127

The deliberations over GRH delayed passage of the debt limit increase that year until long after the deadline by which the Treasury Department had indicated that it would hit the permanent ceiling set by the last debt limit bill.128 As a result, the government experienced a debt limit crisis from September 3, 1985 through December 11, 1985.129 During the crisis, the Treasury Secretary avoided a default by engaging in a series of financial maneuvers, including redeeming Treasury securities held by the Civil Service Retirement and Disability Fund earlier than scheduled and disinvesting Social Security trust funds to create cash with which to pay pension benefits due to retirees during the crisis period.130

In response to the 1985 debt limit crisis experience, Congress in 1986 amended federal trust fund law to expand the Treasury Secretary’s authority to stave off default during future crises. Specifically, Congress authorized the Secretary to declare a “debt-issuance suspension period” if he determines that the government has reached a point where additional borrowing would cause it to breach the debt limit.131 During such “debt-issuance suspension periods” Congress granted the Treasury Secretary permission: (1) to suspend automatic investment in the Civil Service Retirement and Disability Fund, if such investment would cause the government to exceed the legal debt limit; and (2) to sell or redeem securities or other assets held by the Fund before maturity, if necessary to prevent the government from exceeding the public debt limit.132 Congress also contemplated separate legislation prohibiting the Secretary from disinvesting Social Security trust funds in the future, but failed to pass such a bill.133

The national debt continued its steady climb during the 1990s as well, although the government ran a few surpluses from 1998 to 2000.134

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128 See 41 Cong. Q. Almanac 457 (Mary Cohn ed., 1985).
129 See Gen. Accounting Office, supra note 19, at 3.
132 See id. §§ 8348(j), 8348(k) (added to Title V by Pub. L. No. 99-509 (1986)).
133 See H.R. 5050, 99th Cong. (1986); see also 42 Cong. Q. Almanac 594 (Mary W. Cohn ed., 1986).
134 The reason for this apparent discrepancy is that the debt subject to limit includes not only debt actually borrowed by the government from the public, but also intra-governmental debt owed by one arm of the government to another, for example, treasury securities held by the Social Security and other retiree trust funds. Intra-governmental debt continues to rise even when the government runs a budget surplus and pays down the debt held by the
During the 1990s, as in the 1980s, members of Congress started viewing votes on debt limit increase legislation less as political suicide and more as a vehicle for passage of budget-reform or other unrelated legislation. Procedurally, the House of Representatives began to waive the Gephardt Rule designed to provide political cover on debt limit votes.\(^3\) And in 1995, the Gingrich-led 104th Congress openly and brazenly sought to use legislation increasing the debt ceiling to force President Clinton to accept sweeping reforms, including a seven-year plan to balance the budget—although the tactic backfired infamously.\(^3\)

A popular 1990s proposal for a Balanced Budget Amendment similarly sought to use the debt ceiling as its primary enforcement mechanism.\(^3\)

In 1999–2000, in light of projected surpluses, Congress proposed lowering the debt limit for the first time in fifty-three years.\(^3\) Despite substantial support in the House, however, the proposal never was enacted.\(^3\)

Even if the proposal had passed, any reduction in the statutory limit would have been temporary and illusory. This is because intra-governmental debt—generated through the mandatory investment of Social Security and other trust fund surpluses in treasury securities—is included in the amount subject to the statutory limit, which means that the debt subject to limit can rise even while the government is running budgetary surpluses.\(^4\)

It is too early to evaluate meaningfully trends regarding the national debt and the debt limit statute in the first decade of the twenty-first century. But three tentative observations are possible. First, the enormous tax cuts,\(^4\) increased spending,\(^4\) and return of deficits in the last four

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\(^{3}\) See PHILIP D. WINTERS, CONG. RES. SERV., No. RS21111 THE DEBT LIMIT: THE NEED TO RAISE IT AFTER FOUR YEARS OF SURPLUSES, CRS-1 (2002); CONG. BUDGET OFFICE, DEBT SUBJECT TO LIMIT, supra note 19, at 47.


\(^{136}\) See, e.g., 51 CONG. Q. ALMANAC 2-65 (Jan Austin ed., 1995); Gettinger, supra note 18, at 1400 (noting comment by House Speaker Newt Gingrich that he was "eyeing" the debt limit bill as a "hammer" to force the President to accept Republican reforms).

\(^{137}\) See S.J. Res. 1, 104th Cong. (1995). See generally Seto, supra note 19 (providing a thorough discussion of this proposed Amendment and the manner in which it sought to use the debt limit).


\(^{139}\) See 146 CONG. REC. H4722 (daily ed. June 20, 2000) (recording House vote on H.R. 4601 at 419 ayes to 5 nays).

\(^{140}\) See WINTERS, supra note 134, at CRS-1.


\(^{142}\) See U.S. BUDGET FY 2005 HISTORICAL TABLES, supra note 14, at 22 (Summary of Receipts, Outlays, and Surpluses or Deficits(-): 1789–2009) (showing rapidly increasing annual spending during the period between 2000 to 2004, including annual increases of
years demonstrate that the surpluses of 1998–2001 were not the result of a sustained or pervasive change in government attitudes towards budget balance or debt reduction. Second, Republicans in Congress seem to be returning to the debt limit avoidance tactics of the 1980s by, inter alia, resurrecting the Gephardt Rule in 2003 after eight years of disuse. Third, President George W. Bush's efforts to fund a massive war on terror without raising taxes—and while in fact cutting taxes—portend exponential expansion of the national debt, particularly when viewed against the national history and precedent of paying for major wars with a combination of tax increases and federal borrowing, rather than federal borrowing alone.

Thus, the period from 1980 to the present seems to have cemented the trend begun in the 1960s, in which serial deficits and a mounting national debt are the norm, and government surpluses the aberration. Indeed, in the past forty years the Treasury has made almost no effort to pay down the debt, and the national debt figure has not declined once during that period.

II. THE CONSTITUTIONAL AND INSTITUTIONAL ROLES OF THE DEBT LIMIT STATUTE IN THE NATION'S BORROWING AND DEBT REPAYMENT PROCESS

As government attitudes towards debt incurrence and repayment have changed over the last fifty years, so too have attitudes towards the debt ceiling and debt limit statute. The ceiling has gone from being viewed as a statutory fixture to be raised only in times of war or economic depression to being considered more of a legal index that must be raised every year or few years—in response to requests from the Treasury or the President—in order to sustain general, unspecified, government spending. Moreover, the debt limit statute as a whole has transformed from a mere dele-

\[ \text{\$150 billion in each year from 2001 to 2004); see also Jonathan Weisman, Conservatives Dispute GOP Budget Claims, WASH. POST, Dec. 26, 2003, at A6 (observing that President Bush and the Congress had enacted three straight years of double digit increases in federal spending).} \]\n
\[ \text{\text{143} See U.S. BUDGET FY 2005 HISTORICAL TABLES, supra note 14, at 22 (showing return of budget deficits in 2002 and 2003, as well as projected deficits for 2004–2009, following four years of surpluses).} \]\n
\[ \text{\text{144} See Ornstein, supra note 135. There also was some talk about attaching the debt limit increase to the 2002 Supplemental Appropriations Bill in order to insulate it. See, e.g., Bill Ghent, House Debt Ceiling Passage Clears Way for Supplemental, CONG. DAILY, June 28, 2002, available at http://www.govexec.com/dailyfed/0602/062802cdam1.htm.} \]\n
\[ \text{\text{146} See HISTORICAL STATISTICS TABLES, supra note 26, at 110 (Federal Debt Statistics Table for 1940–2004); STATISTICAL ABSTRACT TABLES, supra note 104, at 322 (Federal Receipts, Outlays and Debt Statistics Table for 1960–2003).} \]
gation to the Treasury Secretary of specific borrowing authority to a general grant of borrowing power that even includes permission/ratification of fiscal maneuvering to circumvent the debt ceiling when Congress delays in increasing it. These developments have led some to label the statutory debt limit a dangerous anachronism that threatens national default, and to call for its repeal.\footnote{147 See discussion infra Part III.}

While such criticism is not entirely without merit, it derives from a superficial understanding of the statute’s operation. Upon careful evaluation, it is clear that the statute retains enduring value. First, the statute plays a constitutionally necessary role in effecting congressional control and accountability over borrowing and the national debt. Second, it serves as an important intra-institutional check on special interest and behind-closed-doors party dominance over national fiscal policy.

A. Constitutional Principles of National Borrowing and Debt Payment

Congress’s authority over policy concerning the national debt stems from Article I, Section 8, Clauses 1 ("to pay the Debts") and 2 ("to borrow Money on the credit of the United States").\footnote{148 U.S. CONST. art. I, § 8, cl. 1, 2.} On its face, the first imposes a fiscal obligation on Congress while the second confers broad fiscal authority. But as with many provisions in our Constitution of limited federal powers, this is not all that the clauses dictate or demand. Inherent in the clauses’ language is a sense of balance, of congressional control and accountability for national borrowing and the debt it creates. From these clauses, we can derive three principles of congressional borrowing and debt payment.

First, a Principle of Regulated Borrowing: Congress has the power to regulate the terms and conditions under which the nation borrows funds. The power to borrow money encompasses power to regulate the terms on which the money will be borrowed—e.g., to fix interest rates, loan format, maturity dates, and to decide from whom the government shall borrow. Indeed, during the early years of our nation’s history, it was established that Congress’s power to borrow included the incidental power to incorporate a national bank from whom it would borrow, thereby creating conditions under which national borrowing could take place safely and efficiently.\footnote{149 The preamble of the bank legislation broadly stated that the bank was “conceived . . . [to] be very conducive to the successful conducting of the national finances” and “[to] tend to give facility to the obtaining of loans, for the use of the government, in sudden emergencies.” Act of Feb. 25, 1791, ch. 10, 1 Stat. 191; see also J. Randy Beck, The New Jurisprudence of the Necessary and Proper Clause, 2002 U. ILL. L. REV. 581, 605 (citing 2 ANNALS CONG. 1897–1900 (1791) (debates about the constitutionality of the national bank)).} The Principle of Regulated Borrowing also entails congressional control over the terms on which the government repays its debt.
Thus, for instance, one of the first controversies that faced the newly minted Congress in 1790 involved whether the old national debt should be redeemed at face value or present market value.\textsuperscript{150}

Second, a Principle of Borrowing and Debt Control: It is Congress’s prerogative and duty to decide how much the nation will borrow and for what purposes. The power to borrow money would be merely administrative if it did not entail control over the amount and basis for borrowing. Thus, inherent in the power to borrow is an obligation, as the branch most closely connected to the populous, to exercise judgment in deciding when and under what circumstances to commit the nation and the public to indebtedness.

Third, a Principle of Repayment: Debts incurred on behalf of the United States must be honored, and Congress has the power and obligation to ensure that payments are made on the national debt. This principle derives both from the plain language of Clause 1, empowering Congress to “pay the Debts” of the United States,\textsuperscript{151} and from the history of our federal constitution. It is well-established that one of the primary concerns motivating the Constitutional Convention in 1787 was the Framers’ frustration with the Articles of Confederation and the fledgling United States’ inability to pay its Revolutionary War debts thereunder.\textsuperscript{152} Indeed, the Federalist Papers, published with the purpose of convincing the American public to ratify the new constitution, specifically cite the necessity of ensuring repayment of the Union’s “debts to foreigners” as a reason for creating the federal government and constitution.\textsuperscript{153} Moreover, they specifically tie the need for a federal taxing power to a “plan of extinguishment” for outstanding national debts.\textsuperscript{154}

In addition, the structure of Article I, Section 8 implies that Congress is to be accountable to the people regarding its decisions about national borrowing and repayment of the debt with which it saddles the nation. The first clause of Article I, Section 8 confers both the power to tax and the power to pay debts; the power to borrow is conferred immediately thereafter, in the section’s second clause. This structure is no accident. The three powers are listed together because they are interrelated. As noted above, the founding fathers created the power to tax with repayment of the national debt in mind, and payments on the debt can be

\textsuperscript{150} See, e.g., GORDON supra note 13, at 24–28. The terms of the redemption were controversial because many of the original holders of the old national debt had sold it, at far below face value, to wealthy merchants who would now reap a windfall if the debt were redeemed at its full face value. See id.

\textsuperscript{151} U.S. CONST. art. I, § 8, cl. 1.


\textsuperscript{153} THE FEDERALIST No. 15, at 91 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

made only if revenue is raised by the federal government. Further, the power to pay debts counterbalances the power to borrow, or incur debt, and the power to tax is both a present alternative to the power to borrow and a future means of raising funds with which to repay monies borrowed in the present.

It is axiomatic that the founders intended for Congress to be directly accountable to the people concerning any tax burdens imposed upon the public—hence the explicit constitutional requirement that all legislation for raising taxes originate in the popularly elected House of Representatives.\(^5\) The side-by-side location of Congress’s constitutional powers to tax, pay debts, and borrow money at least implies that the public accountability required of Congress in the tax context also should apply to congressional decisions in the related fiscal contexts of national borrowing and debt repayment.

Finally, the borrowing and debt payment clauses create a limitation on executive power. Congress’s power to borrow is a check and a balance against the executive branch and precludes the President from directing the Treasury to issue debt whenever he believes it appropriate. Indeed, Congress’s “power to borrow Money” would mean nothing if the President could instigate national borrowing without congressional consent; likewise, congressional authority to pay the nation’s debts would be for naught if the executive could redirect funds allocated by Congress for debt repayment.

**B. Institutional Benefits of the Debt Limit Statute**

As political scientists extensively have theorized, there are a number of institutional dynamics inherent in the legislative process that are exacerbated and can produce less than ideal outcomes in the context of fiscal policymaking. The debt limit statute acts as a check, or counterbalance, that can alleviate some of the problems produced by these institutional dynamics. This Part of the Article first reviews political theories that highlight flaws in the legislative fiscal policymaking process and then examines how the debt limit statute and debt ceiling help counteract some of these flaws.

1. **Pluralist or Interest Group-Based Dynamics**

Pluralist, or interest group, theories describe the legislative process as driven by organized interests who compete against each other for policies that benefit their members. Legislators act as “brokers” between various interests and enact into law some combination of what different interest

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\(^{155}\) See U.S. Const. art. I, § 7, cl. 1.
groups request. Some pluralist or public choice theories see government officials as little more than rubber stamps validating policies created by interest groups. Within this framework, not all interests are equal: organized, financially well-supported groups exercise disproportionate influence upon legislators and legislation is said to become skewed in their favor. Average citizens, whose interests are diffuse and outweighed by the costs of interest group formation, lose out as their position goes unrepresented. From a fiscal perspective, these theories suggest that government spending and the national debt will have a tendency to spiral out of control as a result of excessive congressional acquiescence to requests from organized, well-funded interest groups. The diffuse public interest in controlling spending and minimizing national borrowing and debt, meanwhile, will lack advocates and thus will have little effect on fiscal policymaking.

2. Decision Theory and Party Control Dynamics

Decision theories of legislation emphasize the effect of institutional rules and structures on policymaking outcomes. Arrow’s Theorem, for instance, asserts that most decisions made by majority vote in Congress are not truly majoritarian, but rather are a function of the rules that govern the presentation, debate, and voting structure of various policy choices. Some decision theorists have focused on majority party control of internal congressional rules as a method of effecting party leaders’ interests and policies at the expense of more balanced and representative legislation. In the budget context, scholars have posited that party control of the budget committees, budget resolutions, and rules governing deliberation over budget legislation has led to top-down budgeting based on majority party leaders’ priorities. Indeed, negotiations concerning budget priorities some-

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158 See Mancur Olson, Jr., The Logic of Collective Action 141–43 (1965); see also Elmer Schattschneider, The Semi-Sovereign People: A Realist’s View of Democracy in America 31 (1960).
162 See, e.g., Neal E. Devins, Budget Reform and the Balance of Powers, 31 WM. & Mary L. Rev. 993, 994, 997 (1990) (observing that “[a]ppropriations decisions, for example, are made by a handful of powerful legislators who ensure majority passage through ‘log rolling’” and the “enormous budgetary power wielded by a select group of legislators”); Garrett, The Congressional Budget Process, supra note 9 at 715–16; see also Charles Tiefer, supra note 8, at 435–47 (discussing congressional Republicans’ extraordinary use of inter-
times occur outside of Congress, behind closed doors between party leaders, leaving majority preferences and concerns unaccounted.\footnote{Garrett, The Congressional Budget Process, supra note 9, at 717 (citing Krishnakumar, supra note 127, at 589, 595, 603).}

Further adding to the problems caused by interest group politics and party dominance in the budget process was the switch, in early 1975, from a seniority system for appointment of House committee and subcommittee chairmen, to a system in which committee chairmen are selected by vote of the majority party caucus every two years.\footnote{See House Rule X, cl. 5(a)(1) (“The standing committees specified in clause 1 shall be elected by the House at the commencement of each Congress, from nominations submitted by the respective party caucuses.”).} While the seniority system allowed experienced committee chairmen, safe in their seats and their chairmanships, to consider the national interest when making budget policy, the new system has put the budget in the hands of legislators with a greater need to please both their constituents at home and fellow party members in order to ensure reelection to Congress and their chairmanships, respectively.\footnote{See GORDON, supra note 13, at 159.}

3. Deliberative Theories and Dynamics

By contrast, republicanism, or deliberative, theories offer a less pessimistic view of the legislative process. Such theories derive from the Madisonian vision, expressed in Federalist No. 10,\footnote{See THE FEDERALIST No. 10 (James Madison).} of factions checking factions, and hold that congressional procedure should be structured to encourage deliberation, information gathering and sharing, so as to create careful and considered legislative outcomes.\footnote{See, e.g., HENRY HART, JR. & ALBERT SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 154, 695 (William Eskridge, Jr. & Philip Frickey eds., 1994); see also Cass R. Sunstein, Interest Groups in American Public Law, 38 STAN. L. REV. 29 (1985).} Deliberative theories place significant emphasis on the selection of rules and procedures that provide incentives for individual legislators to develop policy expertise and to share policy-relevant information with fellow legislators.\footnote{See KEITH KREHBIEL, INFORMATION AND LEGISLATIVE ORGANIZATION 5 (1991).} An ideal deliberative legislature is one in which collective benefits are reaped from individual legislators’ information gathering and policy expertise, and distributive spending is kept in check by legislative majorities rather than disproportionately doled out to well-funded special interests.\footnote{See id. at 6.} In other words, legislative procedure is designed to promote enactment of laws aligned with median chamber preferences, rather than to give something
to everyone at the expense of the collective good or to allow one party to railroad its preference past the other.\textsuperscript{170}

To this end, deliberative theories prefer a multi-layered legislative process that encourages individual legislators to gather information and present policies aimed at the collective, public good, over a system that allows quick and easy enactment of new laws.

\textbf{C. The Debt Limit Statute as Check and Balance}

The debt limit statute plays an important role in the fiscal constitution both by helping Congress to fulfill its constitutional obligations under the borrowing and debt repayment clauses and by ameliorating many of the institutional problems inherent in the legislative process that produce the national budget and fiscal policy.

First, the debt limit statute facilitates congressional fulfillment of the Regulated Borrowing Principle by providing a mechanism through which Congress can maintain control over the terms of national borrowing. Various sections of the statute require Congress, \textit{inter alia}, to prescribe the forms of debt that the Treasury Secretary may issue, set boundaries regarding the debt’s maturity period, and provide guidelines for the Secretary to work within when fixing the maximum amount of a particular type of security that any one person may hold.\textsuperscript{171} Within limits delineated by Congress, the statute also delegates authority to the Secretary of the Treasury to regulate specific conditions governing the issuance of government debt, including the rate of interest, the conditions for redemption, and the sales price.\textsuperscript{172} Thus, the statute enables Congress both to delegate and to check executive branch borrowing authority.

Second, the debt limit statute helps Congress maintain ultimate authority over the amount of national borrowing, thereby enabling Congress to abide by the Principle of Control. It is no longer practically feasible for Congress to approve each individual issuance of government debt, as it did prior to 1917. Although the statute does not preserve the close connection between national borrowing and a specific purpose that once existed—e.g., bonds issued to the public to raise money for war\textsuperscript{173}—it at least maintains congressional control over the absolute amount that the nation borrows. Further, debt limit increase bills have inspired additional legislation, such as GRH, that is designed to restore a more direct correla-

\begin{footnotes}
\item[170] See id.
\item[172] See id. §§ 3105(c)(4)–(5), 3107; see also 4 CONG. AND THE NATION: 1973–1976 70 (Patricia Ann O’Connor ed., 1977) (discussing amendments to the statute that increase the dollar limit on the amount of long-term bonds the Treasury is authorized to sell at interest rates above 4.25%)
\item[173] See WINTERS, supra note 5.
\end{footnotes}
tion between congressional spending and borrowing and to strengthen congressional control over the annual amount borrowed.\textsuperscript{174}

Third, the debt limit statute helps Congress to fulfill its obligation to ensure payment of the nation’s debts (the Principle of Repayment) and to be accountable to the public. Most straightforwardly, the statute is the vehicle that Congress uses to appropriate funds for the redemption and retirement of outstanding government debt.\textsuperscript{175} But perhaps more importantly, the statute’s requirement that Congress vote periodically to increase the debt limit provides public accountability for Congress’s borrowing and debt repayment practices.

In addition to facilitating Congress’s fulfillment of its constitutional obligations, the debt limit statute counteracts some of the institutional problems inherent in the federal budget process and helps foster the deliberative ideal of congressional operation. Specifically, the necessity of periodic votes to raise the statutory debt limit forces Congress to address the size of the national debt, as well as the need to minimize it for the public and the future generations who ultimately will have to repay it. These are issues that have no interest group advocate and that benefit a diffuse, unorganized class of citizens. Debt limit increase votes compel Congress to face up to the aggregate, collective consequences of its spending concessions to individual interest groups.\textsuperscript{176} Compulsion of such aggregate considerations was, of course, one of the goals of the 1974 Budget Act,\textsuperscript{177} but the process created by that Act has failed miserably in forcing Congress to reckon with the consequences of its actions. In fact, some have argued that the Act has resulted in “escapist budgeting,” whereby members of Congress collude with each other to set spending and other budget targets at high levels and then pass out spending concessions to members and interest groups, all while claiming credit for staying within the targets set

\textsuperscript{174} See Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No 99-177, 99 Stat. 1037. GRH operated by fixing specific deficit (i.e., borrowing) targets for the next five years; if, based on CBO and OMB estimates, Congress was unable to reduce deficits to these levels in its annual budget, then an automatic sequestration procedure would kick in and implement across-the-board cuts on various government spending programs in an amount sufficient to cause the annual deficit to meet the predetermined borrowing (deficit) target. GRH was enacted with the idea that sequestration would never have to be used; the deficit (i.e., borrowing) caps and the threat of across-the-board cuts were supposed to force Congress and the President to exercise greater restraint in spending and borrowing on the nation’s behalf. See Stith, supra note 2, at 633–52; Krishnakumar, supra note 127, at 598–99 and accompanying citations to the statute.


\textsuperscript{176} To be sure, the connection between congressional spending and borrowing highlighted by votes to increase the debt ceiling remains loose and oblique. But the remedy for this is greater congressional accountability, to make Congress explain the reasons or purpose for which it is borrowing, not, as some have suggested, the elimination of the debt ceiling and of congressional involvement in the issuance of national debt. See infra Part IV.A.1.

\textsuperscript{177} See, e.g., Fisher, supra note 113, at 37.
In Defense of the Debt Limit Statute

in the budget resolution.\textsuperscript{78} Within this framework, publicly visible votes to increase the debt limit have proved one of the few effective media for shaming Congress and for inspiring serious reforms and summits focused on debt reduction.\textsuperscript{79}

More specifically, there are a number of ways in which the debt limit increase process motivates members of Congress to behave in a more fiscally responsible manner than they do in the annual budget and appropriations context. First, debt limit increase legislation serves a scolding and "make amends" function. Even if members of Congress do not themselves care about deficits or the growth of the debt, they perceive that the public does care and pays at least some attention to debt limit increase votes, as evinced by Congress members' reluctance to vote in favor of such legislation and the fact that congressional challengers often use an incumbent's "yes" vote against the incumbent in election campaigns.\textsuperscript{80} This fear, or attention to public perception, in turn makes members of Congress more likely to think in terms of and vote along with debt reform measures introduced by their more fiscally conservative colleagues, in part as reparations for their prior uncontrolled spending.

Second, debt limit increase legislation falls under the jurisdiction of the Senate Finance and the House Ways and Means Committees, rather than the party-dominated Budget Committees.\textsuperscript{81} Thus, the debt limit statute and the passage of debt ceiling increases remove some of the emphasis on majority party priorities from the fiscal policymaking process. As discussed in Part II.B.2, the congressional budget process lends itself to being commandeered by majority party leaders, absent significant input from other members of Congress, and can tend to contain disproportionate concessions to the interest groups favored by that party. Votes to increase the debt limit make majority party members publicly accountable for the consequences of their budget priorities, as highlighted by members' reluctance to take debt limit votes and by inventions such as the Gephardt Rule.\textsuperscript{82} Moreover, such votes give average majority party members, minority members, and the traditionally fiscally conservative members of the Senate Finance and House Ways and Means Committees a voice in the national borrowing process as well as a chance to elucidate the link (often

\textsuperscript{78} See, e.g., id. at 37-38; Louis Fisher, The Politics of Shared Power: Congress and the Executive 206 (2d ed. 1987).

\textsuperscript{79} See infra Part III.B (discussing specific instances in which debt limit votes inspired legislative reform or summits aimed at debt reduction).

\textsuperscript{80} See, e.g., Ghent, supra note 144 (discussing political difficulty of debt limit increases and efforts to shield such legislation by passing it along with supplemental appropriations measures); 7 Cong. Q. Service, supra note 49, at 42-43; Kingdon, supra note 117, at 49, 122, 181-82, 267.


\textsuperscript{82} See text accompanying note 254; see also sources cited supra notes 180-181.
intentionally obfuscated by majority party leaders) between government budget policies and the need for national borrowing.\footnote{See, e.g., Treasury Revises Debt Ceiling Deadline to Mid-May, CONG. DAILY, May 1, 2002, Appropriations (quoting comments by members of Congress regarding the relationship between the Bush Administration's $1.35 trillion tax cut and the need for a $450 billion increase in the debt limit in 2002); see also It's All In How You Look At It, CONG. DAILY, May 16, 2002, Budget (describing the statutory debt limit as a "powerful political tool for the minority" and a "powerful reminder" of the necessity for structural reform of Social Security and Medicare).}

Third, and related to the second, interest groups do not plague, or even truly participate in, the debt limit increase process the way they do in the appropriations and general budget processes. Strategically, it makes sense for special interest groups to lobby members over forcefully concerning annual appropriations bills that immediately affect them, because these bills determine whether there will be money available in the coming months for the programs these groups want.\footnote{See WILDAVSKY & CAIDEN, supra note 72 (explaining that appropriations must be voted each year if program funding, including funding for government agencies, is to continue).} In fact, such interest groups often have special relationships with members of the appropriations committees that hold jurisdiction over the funding of their projects, and thus are able to exert influence effectively during this process.\footnote{See, e.g., Dan M. Kahan, Democracy Schmemocracy, 20 CARDOZO L. REV. 795, 801 (1999) (arguing that "Congress is in its least deliberative cast of mind in the appropriations process, where members routinely auction off government largesse to the interest groups that are best positioned to support members' reelects"); see also WILDAVSKY & CAIDEN, supra note 72, at 53 (describing the relationship between "specialized publics" and government agencies, and these agencies' ongoing contacts with appropriations committees).} Debt limit legislation, however, raises no immediate concerns about the funding for next month's operations. While interest group lobbyists certainly are capable of recognizing the connection between how much the debt limit is increased and the availability of funding for their operations one or two years down the line, that connection is remote and non-threatening.\footnote{See Elizabeth Garret, Rethinking the Structures of Decisionmaking in the Federal Budget Process, 35 HARV. J. ON LEGIS. 387, 415 (1998) (explaining that interest groups have limited incentives to become actively involved in macrobudgeting legislation because they cannot be certain how such big picture fiscal decisions will affect their particular programs).} Hundreds of individual appropriations combine to make up the annual deficit (amount of national borrowing), so no one interest group has any reason to think that its particular appropriations will be cut in order to stay within the new debt limit, even if the limit set for the next year or two dictates an overall cut in expenditures. This is especially true for interest groups that are entrenched with their respective appropriations committee members.

In fact, special interests may well want to distance themselves from the larger debate about the debt limit, for fear of identifying themselves or their programs as related to or even responsible for the deficit and mounting debt. Further, even if a particular interest group believed that the level at which the debt limit was being set would require future cuts in its fund-
ing and wished to lobby against this, the group would not be as well placed to do so: it is the Senate Finance and the House Ways and Means Committees that handle debt limit legislation, not the appropriations committees with whom the interest group may have special influence.  

Fourth, the debt limit statute serves a deliberative function, encouraging members of Congress to live up to the deliberative principles expressed in republicanism theories of legislative behavior. Specifically, the single-issue nature of debt limit increase legislation enables those members of Congress who are so inclined to devote greater attention to consideration of the national debt, and the fiscal policy that engendered it, than is possible in the time-pressured annual budget process. In fact, the budget appropriations and reconciliation processes have grown so time-pressured and complicated that adequate deliberation no longer is possible on the myriad provisions of annual funding or entitlement legislation, let alone on "tangential" issues such as the impact that such budget legislation will have on the national debt. Because deliberations about debt limit legislation are passed as separate legislation outside the appropriations and reconciliation processes (unless Congress makes the increase part of an omnibus appropriations or reconciliation package), they provide an independent opportunity for discussions about the national debt and the reasons for its growth and give members of Congress who are truly concerned with the size of the debt a forum in which to suggest changes aimed at putting the nation's fiscal house in order.  

This Article does not intend to suggest that debt limit increase bills, which are themselves time-sensitive, must-pass legislation, provide a perfect forum for deliberation about the national debt. The point rather is that they provide at least some forum for such deliberation. In fact, debt limit increase bills have served not only as vehicles for bipartisan fiscal reform

187 See, e.g., Edward A. Zelinsky, James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions, 102 YALE L.J. 1165, 1182-83 (1993) (arguing that the broad jurisdiction of the House Ways and Means and Senate Finance committees keeps them freer from interest group influence and capture than committees with jurisdiction over one substantive area, such as the Agriculture Appropriations Subcommittees).

188 See supra Part II.B.3.

189 See Devins, supra note 9, at 396-99 (1988); Krishnakumar, supra note 127, at 616-18.

measures, but as catalysts for subsequent negotiations about debt reduction. As discussed earlier, in 1985, a vote to increase the statutory debt limit produced bipartisan debt reduction legislation in the form of the Gramm-Rudman-Hollings Act.\textsuperscript{191} Debate over increases in the debt limit ceiling in 2002 similarly prompted a bipartisan proposal to control government spending and reduce the deficit, although the proposal did not ultimately become law.\textsuperscript{192} Likewise, debt limit increase legislation passed in 1979 carried an amendment directing the House and Senate Budget committees to draw up plans for balancing the fiscal 1981 and fiscal 1982 budgets\textsuperscript{193} and legislators in 1987 used the debt limit increase bill (in the wake of the Supreme Court’s ruling in \textit{Bowsher v. Synar})\textsuperscript{194} to force the Reagan Administration to engage in discussions about a fix for the GRH sequestration procedure and other procedural reforms to the budget process.\textsuperscript{195}

\section*{III. Debunking Popular Criticisms of the Debt Limit Statute}

Despite the deliberative benefits it provides, the debt limit statute is far from popular. In fact, it has been the subject of substantial criticism and calls for repeal from a number of political observers and commentators.\textsuperscript{196} Such critics level three main charges against the statute: (1) it is an unnecessary anachronism; (2) it functions as a legislative pawn; and (3) it creates threats to the nation’s credit rating. These criticisms both exaggerate flaws in the statute’s operation and overlook the continuing, constitutionally important, role that the statute plays in the fiscal policymaking process.

\subsection*{A. Reports of the Debt Limit’s Irrelevance Are Exaggerated}

Critics claim that the evolution of congressional fiscal processes has rendered the statutory debt limit an anachronism, and bills to raise it are no more than retrospective “housekeeping” legislation that serve to effect spending decisions previously made by Congress.\textsuperscript{197} In other words, they

\textsuperscript{191} See \textit{supra} text accompanying note 126; see \textit{infra} text accompanying notes 208–209.
\textsuperscript{192} See, e.g., Feingold, Gramm Developing Proposal To Reduce Deficit, CONG. DAILY, Apr. 8, 2002, Budget.
\textsuperscript{194} 478 U.S. 714 (1986).
\textsuperscript{195} See, e.g., Elizabeth Wehr, Budget Talks Set as Congress Raises Debt Limit, 45 CONG. Q. WKLY. REP. 985 (1987).
\textsuperscript{196} See, e.g., \textit{supra} note 19.
argue that the debt limit has become merely a mechanism for allowing government borrowing to catch up to government spending, rather than for creating borrowing policy. This criticism oversimplifies the relationship between government spending and government borrowing and ignores the role that the debt limit plays in checking executive borrowing. First, general government spending decisions never have been tied directly to borrowing decisions, even in the period before the debt limit statute was passed. Rather, during the pre-debt limit era, Congress passed legislation authorizing the Treasury to borrow a specified amount for a given purpose—e.g., to fund war-time spending decisions that either currently were being made or in the near future would be made. Procedurally, this is not much different from what modern debt limit increase legislation does. In fact, the main difference in the two regimes is substantive—i.e., whereas pre-debt limit authorizations of debt issuance arose in connection with a specified purpose, the debt limit statute and modern debt limit increases authorize the Treasury to borrow up to a specified amount, for any, unspecified, purposes.

Further, while the need to raise the debt limit might be considered retrospective housekeeping necessitated by prior government spending, the accumulation of which has caused the debt ceiling to be reached, the determination of how high to set the new limit is a prospective one requiring congressional evaluation of how much the nation should be allowed to borrow to meet upcoming spending needs. Nor is the amount by which the debt limit must be increased a foregone conclusion; in fact it is a subject on which Congress and the President have disagreed on a number of occasions, each time with the President advocating higher increases than Congress has been willing to authorize. In this sense, modern debt limit increase decisions are not unlike pre-1917 decisions to authorize
borrowing for upcoming (wartime) spending needs, in an amount determined by Congress.

Second, if the debt limit statute were repealed, and the Treasury Department given permanent, standing authority to incur debt, Congress would abdicate its control over the power to borrow and expand executive branch authority over government borrowing to an extent impermissible in our separation of powers system. For without the debt limit, all control over debt issuance would shift to the Treasury Secretary, a member of the President’s Cabinet, leaving the President effectively in command of government borrowing. The suggestion that such a transfer of power would have no noticeable effect on the nation’s borrowing policy because it relates to a “housekeeping” matter is at best unconsidered. Indeed, such a transfer of power might well amount to an unconstitutional delegation of legislative power to the executive branch.\(^9\)

There is a reason that those who drafted the constitution located the power to borrow, along with the power to tax, in the legislative rather than the executive branch: they wanted to keep these important fiscal powers close to the American people rather than give the electorally removed President unfettered discretion to make decisions that would affect the people’s pocketbooks.\(^9^9\) Indeed, absent the need for congressional consent to issue debt, the President could cause the government to borrow well beyond anticipated amounts, with little public accountability. The President would have an incentive to underplay or even obfuscate the expected cost of programs or tax policies favored by his party, secure in the knowledge that he controlled the government’s ability to issue debt to pay for these policies and that such debt could be incurred with impunity, absent a public vote or debate in Congress. Congress could of course seek to revise

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\(^9\) Because the federal constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States,” U.S. CONST. art. I. § 1, courts have held that Congress generally cannot delegate its legislative power to another branch. See Field v. Clark, 143 U.S. 649, 692 (1892). However, modern courts also have recognized the practical necessity of allowing Congress to delegate some of its power, and thus allow such delegation where Congress lays down “intelligible principles” to guide (or cabin) the delegatee’s exercise of power. See Mistretta v. United States, 488 U.S. 361, 372 (1989). Although its constitutionality does not appear ever to have been questioned, the debt limit statute seems to be a valid delegation of Congress’s borrowing authority to the Treasury Secretary because it places several constraints or guidelines on the Secretary’s authority, see supra Part I.B.1 and text accompanying notes 154–155, as well as maintains congressional control over the absolute borrowing amount through the debt ceiling. If, however, the statute were eliminated, and the Treasury Secretary given unfettered authority to borrow, the “intelligible principles” rule, and the nondelegation doctrine, might well be violated.

\(^9^9\) See, e.g., The Federalist No. 58, at 394 (James Madison) (Jacob E. Cooke ed., 1961) (arguing that Congress’s “power over the purse, may in fact be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people”); 3 The Founders’ Constitution 377 (Philip B. Kurland & Ralph Lerner eds., 1987) (debate of Mar. 1, 1793) (reporting comment made by James Madison shortly after ratification of the constitution that “appropriations of money [are] of a high and sacred character; [they are] the great bulwark which our Constitution [has] carefully and jealously established against Executive usurpations”).
programs or policies once their true costs became clear down the line, but it would lack the ready-made public forum for calling attention to such costs that currently is provided by deliberation on votes to increase the debt limit.\textsuperscript{201}

Third, elimination of the debt limit statute would absolve Congress of its accountability for government borrowing and the size of the national debt and could cause Congress to abandon entirely its duty to manage the level of the nation's indebtedness (the Principle of Control).\textsuperscript{202} In fact, Congress could conspire with the President in an effort to hide from the public the consequences of the government's budget policies. In other words, repeal of the debt limit statute could encourage the worst tendencies of interest group politics—i.e., rampant logrolling with little incentive at any level of government to worry about the growth of the national debt and its effect on the diffuse, unorganized general public, let alone on future generations. These potential ramifications of eliminating the debt limit demonstrate that it is much more than an inconsequential "catch-up" mechanism, but in fact an important check against congressional and executive fiscal irresponsibility.

In truth, the reason that debt limit increases appear to constitute mere housekeeping legislation is because they fail to connect the government borrowing they authorize with a purpose, as was the case earlier in the nation's history. But the solution to this problem is to reform the statute to create greater correlation between spending purposes and borrowing, not to eliminate the debt limit statute and congressional control over national borrowing altogether.

\textbf{B. The Legislative Pawn Myth}

There is a pervasive belief among political commentators that Congress regularly uses debt limit increases as a tool or vehicle for enacting numerous unrelated measures that could not garner enough support to pass on their own or to force the President to accept policies he otherwise would veto.\textsuperscript{203} But this belief is the product of collective misconception. In fact, for instance, when President George W. Bush's enormous and underestimated tax cuts and defense spending necessitated nearly $1.4 trillion in increases to the debt limit in 2002 and 2003, Congress was able to use the debt limit votes to bring to light the true costs of these measures. See, e.g., Press Release, Sen. Tom Carper, Carper Statement on passage of Tax Cut Bill and Debt Limit Hike (May 23, 2003), available at http://carper.senate.gov/press/03/05/052303.html (last visited Nov. 16, 2004) (describing Bush tax cut bill as "clouded by smoke and mirrors that mask its true costs" and citing evidence that bill would cost $1 trillion, rather than the $350 billion estimate given by Republicans); 149 Cong. Rec. S7092 (daily ed. May 23, 2003) (statement of Sen. Sarbanes). Had these debt limit votes not been necessary, and had President Bush's Treasury Secretary instead had carte blanche to issue debt without congressional review, these costs likely would not have been brought to the public's attention.
an analysis of the final version of debt limit increase legislation passed by Congress in the past twenty-five years demonstrates that increases to the limit usually are passed in "clean" form, without unrelated attachments.

Specifically, the statutory debt limit was increased forty-two times in the twenty-five-year period between 1978 and 2002, inclusive. Of the forty-two bills enacted to raise the debt limit during this period, thirty were passed in clean form with no amendments or additional provisions hitching a ride to the must-pass increase. Further, of the remaining twelve bills, five contained only minor amendments implementing procedural changes to the debt limit statute itself—e.g., the Gephardt Rule, and modifications in the amount of long-term bonds that the Treasury can issue.

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Thus, only seven of forty-two debt limit increase bills passed in twenty-five years carried amendments that did not specifically affect the debt limit statute. Three of these seven bills, moreover, contained amendments that did relate to the national debt, although they did not modify the debt limit statute. These were the Long-Muskie amendment to a 1979 debt limit increase, which required Congress and the President to present balanced budgets for fiscal years 1981 and 1982;\textsuperscript{207} the Gramm-Rudman-Hollings amendment to a 1985 debt limit bill, requiring deficit (and therefore debt) reduction for the next five years;\textsuperscript{208} and the Gramm-Rudman amendment to a 1987 debt limit bill,\textsuperscript{209} which reaffirmed GRH and revised the sequestration procedure invalidated by the Supreme Court in \textit{Bowsher v. Synar.}\textsuperscript{210}

In other words, only four of forty-two bills passed to increase the debt limit in the past twenty-five years—that is, less than ten percent—have served as vehicles for the enactment of measures wholly unrelated to debt issuance, debt accounting, or the debt ceiling.\textsuperscript{211} Of course, these statistics do not account for the number of times that members of Congress offered unrelated amendments to debt limit increase legislation, but only for the number of times they succeeded in attaching amendments to such legislation. There is an institutional cost, in terms of time and deliberation, to the consideration of such would-be amendments even if they ultimately are rejected,\textsuperscript{212} and there certainly is room for reform of the debt

\begin{itemize}
\item Act of May 25, 1984, Pub. L. No. 98-302, 98 Stat. 217 (increasing the amount of long-term bonds that could be issued and providing additional administrative authority to the Treasury Secretary); Act of May 26, 1983, Pub. L. No. 98-34, 97 Stat. 196 (adding provision eliminating the temporary part of the debt limit, making the entire debt limit permanent, and increasing the amount of long-term bonds that could be issued); Act of Sept. 29, 1979, Pub. L. No. 96-78, 93 Stat. 589 (containing an increase in the amount of long-term bonds that could be outstanding and establishing House Rule XLIX to make House approval of increases in the debt limit automatic upon passage of the budget resolution).
\item 478 U.S. 714 (1986).
\item See \textit{Contract with America Advancement Act of 1996}, Pub. L. No. 104-121, 110 Stat. 847 (attaching unrelated measures including an increase in the Social Security earnings limit, an expansion of small-business access to federal courts to challenge federal regulations, as well as the line-item veto conference report); Act of Nov. 8, 1989, Pub. L. No. 101-140, 103 Stat. 830 (attaching unrelated amendment repealing nondiscrimination rules dealing with employee benefit plans in tax code); Act of Nov. 14, 1985, Pub. L. No. 99-155, 99 Stat. 814 (attaching unrelated provision to extend several expiring acts, including a cigarette tax for one month, and a debt-related provision requiring restoration of Social Security Trust Funds); Act of June 6, 1980, Pub. L. No. 96-264, 94 Stat. 439 (attaching unrelated repeal of oil import fee imposed under President Carter under the Trade Expansion Act of 1962; after being vetoed by Carter, this provision became law as a result of a congressional override).
\item See, e.g., \textit{4 Cong. and the Nation}, supra note 172, at 63 (discussing Senate efforts to attach unrelated measures, including legislation pertaining to federal financing for presidential election campaigns, which although dropped before passage of the final ver-
limit statute to discourage even the offering of such unrelated amend-
ments, as discussed below in Part IV. But even absent reform, the fact
that less than ten percent of debt limit increase bills passed between 1978
and 2002 carried non-debt-related amendments demonstrates the lie in
the perception that the debt limit statute promotes the undesirable or nonma-
joritarian enactment of measures that otherwise would not garner enough
votes to pass Congress.

Nor has the debt limit proved an effective vehicle for forcing the Presi-
dent to accept legislation he otherwise would veto. On the contrary, his-
tory teaches that presidents are quite willing to veto debt limit increase
legislation, despite its must-pass nature, when such legislation contains pol-
icy measures that the executive branch cannot stomach. Congressional
efforts to blackmail the President into accepting massive fiscal policy
reforms by attaching the "Contract with America" agenda to a debt limit
increase backfired spectacularly in 1995. A congressional attempt to
trap the President into changing a controversial oil import policy in 1980
likewise met with a veto. Significantly, these are the only two times Con-
gress actually has attached to debt limit legislation unrelated measures it
knows the President to oppose, rather than merely contemplated such
measures but then dropped them from the bill's final version. In fact, aside
from the oil import amendment in 1980, the few non-debt-related amend-
ments that Congress has attached to debt limit increase legislation have
involved popular measures to which the President had no objection.

Thus, fears or criticisms that debt limit legislation serves as a legis-
lative pawn and a weapon against the President are greatly exaggerated
and do not support calls for repeal of the debt limit statute or ceiling. In-
deed, to the extent that debt limit increase legislation can be used to in-

\[ \text{Professor's Footnotes} \]

213 See 51 CONG. Q. ALMANAC, supra note 136, at 2-63 to 2-65 (1995); WILDAVSKY &
CAIDEN, supra note 72, 325-26.

214 See DEBT LIMIT INCREASES, supra note 204, at CRS-2. Congress then overrode the
veto, making its preferences law, but it failed in its effort to get the President to acquiesce
in the policy change.

215 See 52 CONG. Q. ALMANAC, supra note 204, at 2-25-2-27 (characterizing Social
Security earnings limit and small business court access amendments to 1996 debt limit bill as
"sweeteners"); id., at 2-25 (calling amendment to 1996 debt limit increase bill that increased
the Social Security earnings limit "widely popular"); 45 CONG. Q. ALMANAC 19 (Robert W.
Merry ed., 1989) (describing 1989 amendment repealing nondiscrimination regulations
dealing with employee benefits as "popular"). It is true that debt limit increase legislation
helped carry budget reform in 1985 (GRH) and forced promises for budget negotiations
and balance in 1987 and 1979, respectively. But those debt limit bills did not "force" any-
thing upon the President; President Reagan favored GRH in 1985, and a promise to negoti-
ate towards deficit reduction was not a substantive concession to which President Carter
was opposed in 1979. See, e.g., George Hager, Reconciliation: Finding Ways Around Dis-
aster, 37 CONG. Q. WKLY. REP. 2864, 2864 (1995) (observing that Reagan initially supported
GRH and "jumped to endorse it publicly").
In Defense of the Debt Limit Statute

C. The Debt Limit and Threats to the Nation’s Credit

Finally, the debt limit has been criticized for creating situations that threaten the credit and financial standing of the United States government.\(^{216}\) Specifically, critics complain that congressional efforts to attach unrelated amendments or fiscal reform packages to debt limit increase legislation bog Congress down and delay enactment of the increase legislation itself, sometimes until after the date when the current limit is reached. This in turn can bring the nation to the “brink” of default on its outstanding obligations, as the Treasury is left without authority to borrow additional funds needed to make timely payments on its loans.\(^{217}\) The threat of default, even absent actual default, is said to cause market uncertainty regarding the United States’ ability to honor its financial obligations and accordingly to cost (or threaten to cost) the nation in elevated premiums and yield rates.\(^{218}\)

Of the criticisms leveled against the debt limit statute, this is the most legitimate. But it too is exaggerated. While it is true that debt limit increase bills sometimes become delayed, Congress always ultimately has passed them.\(^{219}\) In fact, in the eighty-six years since the debt limit statute was enacted, the nation never once has defaulted on its obligations. Moreover, debt limit crises, during which a real possibility of default emerges as a result of congressional delays in raising the debt ceiling, have been few and far between.\(^{220}\) Indeed, the lessons learned from the most infamous such crisis in 1995 will likely discourage future excessive delay in raising the debt ceiling, teaching Congress that there is a public price to pay for holding the debt limit hostage, even in pursuit of budget balance or debt reduction, and that Congress rather than the President would bear the political blame for provoking a debt limit default.\(^{221}\)

Moreover, if and when a debt limit crisis does occur, Congress has created a safety net by providing the Treasury Secretary with authorization to engage in a number of maneuvers that allow the government to stay


\(^{217}\) See id.; Abramowicz, supra note 19, at 578–79.

\(^{218}\) See Press Release, supra note 216.

\(^{219}\) 58 Cong. Q. Almanac Plus, supra note 204, at 6-11.


\(^{221}\) See Wildavsky & Caiden, supra note 72, at 330–35.
technically within the debt limit, and thus to prevent default, until a debt ceiling increase is enacted. These maneuvers include delaying auctions of marketable securities, suspending investment in the Civil Service Retirement and Disability Fund, and selling securities or other assets held by the Fund before maturity.222 Once the limit has been raised, Congress has instructed the Treasury Secretary to undo the effects of its crisis-period maneuvering by restoring investments and paying interest to any affected funds.223 Thus, little to no harm actually has come to the nation’s credit or financial standing even during the limited periods in its history when congressional foot-dragging has raised the spectre of government default.224

But although the likelihood of default on government obligations is hypothetical and exaggerated, and although Congress and the Treasury have invented ample maneuvers to stave off default, the situation created by congressional failure to enact a debt limit increase before the prior limit has been reached is undesirable and should be discouraged. The maneuvers engaged in by the Treasury Secretary, with Congress’s consent, are essentially accounting tricks designed to enable the Treasury to borrow beyond the statutory limit without specific congressional authorization. This is problematic from both a political and a constitutional viewpoint because: (1) Treasury gimmickry with government trust funds and auctions creates an appearance that the rules governing those entities are manipulable and that Congress views these funds as less than sacred, and (2) such maneuvering circumvents, for a limited period of time, the legislative check on national borrowing. But again, the answer to these problems is not to eliminate the debt limit statute or the debt ceiling; it is to reform the statute so as to remove, or at least minimize, the incentives and opportunity for excessive congressional delay in passing debt limit increases, as discussed in Part IV.

D. State Experiences with Debt Limits

While state debt limits differ in some respects from the federal debt limit statute, they do offer some transferable lessons. Most notably, the state experience demonstrates the inaccuracy of popular criticisms that debt limits serve no useful function and bear no connection to borrowing policy.


223 See 5 U.S.C. § 8348(j)–(k).

224 U.S. Treasury maneuverings sometimes can create minor additional interest costs for the government, but these amounts are negligible relative to the size of the national debt. See, e.g., Press Release, supra note 216 (discussing $20–30 million interest cost resulting from delay in timing of a note auction—this interest cost amounts to .0003% of the $7.3 trillion national debt).
Most state constitutions contain some form of debt limitation.225 These limitations take various forms, ranging from outright prohibitions against incurrence of state debt226 to different forms of caps on the amount of debt that may be incurred227 to requirements that issuances of state debt be approved by public referendum or legislative supermajority.228 Many state constitutions, however, also contain amendments that permit debt incurrence, beyond the general limit, for specific purposes.229 Although there are a number of ways states can and do get around these limits,230 the limits generally have served as some form of check on borrowing and the growth of state debt.231

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227 Some state constitutions, like the federal statute, limit state debt to a maximum dollar figure. See Ariz. Const., art IX, § 5 ($350,000 limit); Colo. Const. art. XI, § 3 ($100,000); Neb. Const. art. XIII, § 1 ($100,000); Ohio Const. art. XII, §§ 1, 3 ($750,000); Or. Const. art. XI, § 7 ($50,000); Tex. Const. art. III, § 49 ($200,000); Va. Const. art. X, § 9 (setting limit but permitting issuance of revenue bonds, if authorized by two-thirds of the voters). Others limit the incurrence of new debt as a percentage of total revenue or of assessed value. See Ga. Const. art. VII, § 14 (no new debt if debt service exceeds 10% of total revenue from the preceding fiscal year); Haw. Const. art. VII, § 13 (debt service may not exceed 18.5% of average general fund revenues in the state over the past three fiscal years); Nev. Const. art IX, § 3 (debt limited to 1% of assessed value); Utah Const. art. XIV, § 1 (debt limited to 1.5% of value of taxable property).

228 A handful of states set a maximum cap on debt but require a public referendum or legislative supermajority even for the issuance of debt that does not exceed the cap. See Kan. Const. art. XI, §§ 6-7 (referendum), Wyo. Const. art 16, §§ 1, 2 (referendum), S.D. Const. art. XIII, part 1. Another set of states permits unlimited debt, but only if the incurrence of debt is approved by public referendum. See Fla. Const. art. VII, § 11; Idaho Const. art. VIII, § 1; Ky. Const. § 50; Mo. Const. § 37; N.J. Const. art. VIII, § 3; N.Y. Const. art. VII, § 11; N.C. Const. art. V, § 3; Pa. Const. art. VIII, § 7; R.I. Const. art. of amend. XXXI, § 1. A few states permit unlimited debt without a referendum if the debt is approved by a legislative supermajority. See Del. Const. art. VIII, § 3 (three-quarters of each legislative chamber must approve); Ill. Const. art. IV, § 9(b) (three-fifths of each chamber must approve); Mass. Const. art. 62 (two-thirds of each chamber must approve). Another group of states requires both a legislative supermajority and approval by public referendum. See Cal. Const. art. XVI, § 1; Me. Const. art. IX, § 14; Mich. Const. art. IX, § 15.

229 See Sterk & Goldman, supra note 225, at 1316.

230 See, e.g., Charles W. Goldner, Jr., State and Local Government Fiscal Responsibility: An Integrated Approach, 1991 Wake Forest L. Rev. 925, 936–37 (1991) (describing "inventiveness and creativeness" of state finance officers in circumventing state debt limits and listing some of their methods); Kiewiet & Szakaly, supra note 226, at 65–64 (noting that "constitutional debt limitations are not insurmountable obstacles"); Sterk & Goldman, supra note 225, at 1330–33 (discussing state debt limit "escape devices," including "special fund" financing for particular projects, leasing arrangements whereby states pay "rent" instead of pay interest on bonds, and the creation of quasi-independent "public authorities" that can borrow to accomplish a specific project).

231 See, e.g., S. REP. No. 104-5, at 11 (1995), reprinted in U.S.C.C.A.N. (commenting that "continued deficit spending by the States has been a rarity" and that "more States incur
State experiences with debt limitations differ from the federal experience in that state debt limitations effectively require state legislators (supermajority states) or the public (referendum states) to approve specific instances of debt issuance, for specific purposes. Even when states seek to end-run debt limits without submitting to referendum or supermajority votes, such end-runs typically meet with legal challenges and require resolution in court, where judges evaluating the compliance of legislative issuances of debt with the state constitution tend to focus—either overtly\textsuperscript{232} or covertly\textsuperscript{233}—on the purpose for which debt is used. Thus, state issuance of debt seems to maintain some of the borrowing-purpose connection and accountability that is missing at the federal level, by requiring the functional equivalent of the pre-1917 federal debt issuance system—i.e., individual votes and approval of each and every debt issuance (above the constitutionally established maximum).

Notably, one empirical study of state debt limitations has found that states that prohibit debt incurrence altogether, by placing a dollar limit on debt incurrence, or requiring approval by public referendum before debt may be incurred are particularly effective at controlling or minimizing state debt issuance.\textsuperscript{234} The study interestingly also has found that legislative supermajority requirements for raising constitutional debt limitations are ineffective, and in fact tend to lead to greater debt incurrence than does the absence of debt limitations altogether.\textsuperscript{235} The authors of the study suggest that this is because supermajority requirements produce borrowing logrolls in which legislators exchange costly favors in order to assemble the higher number of votes necessary to pass a debt limitation increase. They argue that this should serve as a lesson for Congress about the uselessness of balanced budget and other debt reduction proposals that seek to limit debt incurrence through the use of a supermajority voting requirement.\textsuperscript{236}

The state experience with debt limits thus indicates that the existence of a borrowing maximum tends to have some minimizing effect on

\textsuperscript{232} See, e.g., Sterk & Goldman, supra note 225, at 1348–51 (describing Virginia Supreme Court’s “animating purpose test,” which upholds projects it believes fall within the realm of “proper governmental function” and rejects projects that do not).

\textsuperscript{233} See id. at 1340–48, 1351–58 (arguing that judicial review of Kentucky, Illinois, Virginia, and Florida legislatures’ special fund and public authorities borrowing decisions effectively operates as a “second look” at the decision to incur debt, with courts upholding those borrowing decisions whose purpose they approve and invalidating those which they do not approve).

\textsuperscript{234} See Kiewiet & Szakaly, supra note 226 at 63, 93.

\textsuperscript{235} See id. at 93.

\textsuperscript{236} See id.
the amount that legislatures borrow, particularly if there must be public involvement and accountability before the maximum can be exceeded. Analogizing to the federal context, this data suggests that the existence of a statutory debt ceiling acts as a check against excessive executive and congressional borrowing, and that the public accountability associated with debt limit increase votes serves as an incentive for Congress to minimize the overall amount of debt incurred on the nation's behalf.

IV. PROPOSALS FOR REFORMING THE DEBT LIMIT STATUTE AND INTERNAL LEGISLATIVE PROCEDURES

In order to adequately address both the constitutional obligations and the practical criticisms concerning national borrowing discussed in earlier parts of this Article, suggested reforms to the debt limit statute and debt ceiling increase procedures should proceed from a few basic principles: (1) there should be greater congruence between government borrowing and its purpose; (2) Congress should be accountable to the public for its borrowing decisions and for the size of the national debt; (3) incentives for, and the likelihood of, delays in passing debt limit increases that cause the debt ceiling to be breached should be eliminated or at least minimized; and (4) while there is nothing wrong with national debt and some level of debt financing is necessary and even desirable for government projects, congressional debate and deliberation over methods for controlling the size of the debt should be encouraged. To these ends, this Article recommends the following reforms.

A. Changes in Internal Legislative Rules

1. Rule Changes that Promote Congressional Accountability

The following proposals aim to give the debt limit statute additional teeth (or replace some of the teeth that have been removed in the past by resourceful legislators) and prevent members of Congress from using debt limit legislation as a mere catch-up mechanism\(^ {237} \) rather than to face up to the aggregate consequences of their borrowing and spending policies. First, the House of Representatives should repeal the Gephardt Rule providing for automatic increases in the debt limit as stated in the budget resolution. This Rule operates as a legislative sleight-of-hand that enables the House to avoid public accountability for its borrowing choices and, as a result, encourages abdication of Congress's constitutional duty to manage or control the amount of debt incurred. The Principle of Borrowing and Debt Control,\(^ {238} \) derived from the power to borrow and the duty to repay debt, re-

\(^ {237} \) See supra Part III.A.

\(^ {238} \) See supra Part II.A.
quires more from Congress than the automatic approval of a borrowing figure chosen by the Treasury, President, or even the budget resolution (which after all is crafted by the Budget Committee and party leaders); it requires congressional contemplation of the need and purpose for additional debt incurrence and some evaluation of the debt repayment path on which the nation is headed. The Gephardt Rule allows most members of Congress (435 of 535) to escape this public reckoning by making the amount of debt limit increases seem automatic, inevitable, and technical. Moreover, it closes off opportunities for individual members of the House to bring to the fore any concerns they might have about the reasons for congressional borrowing. In short, the Gephardt Rule makes congressional decisionmaking about debt issuance a veiled rather than publicly visible process and thus serves the needs of majority party leaders, and at times the President, at the expense of the congressional rank and file.\textsuperscript{1}

Second, Congress should institute a new procedural rule, perhaps as part of the debt limit statute itself, requiring that increases in the debt limit be passed as a separate piece of legislation, independent of omnibus budget reconciliation bills or continuing resolutions. Inclusion of a debt limit increase in omnibus budget legislation provides even greater insulation and opportunity for shirking accountability on debt limit votes than does the Gephardt Rule. Like the Gephardt Rule, such bundling allows members of Congress to duck their accountability for raising the debt limit by rendering the vote to increase merely a side-note to a much larger measure. Worse, bundling exacerbates the problems of the Gephardt Rule by extending its political insulation to both chambers of Congress, since omnibus budget reconciliation legislation and continuing resolutions shepherd debt limit increases through the Senate as well as the House. Further, bundling of debt limit bills with omnibus budget legislation enables the President, particularly if his party controls Congress, to push through debt limit increases suited to his budget priorities with little public accountability for the correlation between the two.\textsuperscript{2}

Third, Congress should implement a rule requiring that all tax and entitlement legislation passed outside the budget process contain a statement of its expected impact on the size of the national debt and the time frame within which the government will hit the existing debt ceiling. Such a rule would require Congress to spell out for the public the conse-

\textsuperscript{239} See, e.g., Ornstein, supra note 135, available at http://www.rollcall.com/pub/features/Welcome_Congress/welcome_congress/263-1.html (noting that the Gephardt Rule tends to be favored by the party in the majority and citing Republicans' resurrection of the Rule in 2003 following much complaining about it during periods of Democratic control of Congress).

\textsuperscript{240} See, e.g., 9 CONG. AND THE NATION, 1993–1996 55 (Ann O'Connor et al. eds., 1997) (discussing how the Clinton Administration and the Democratic leadership circumvented "lengthy debate" and controversial amendments and passed debt limit increase with "virtually no debate" and "little fanfare" by incorporating the increase into the omnibus reconciliation bill).
quences, in debt terms, of tax cuts and expenditures as well as entitlement spending increases. Moreover, it would create some political cover for Congress at times when it raises taxes or cuts spending, by counter-balancing these unpopular legislative acts with an automatic, required report on the beneficial consequences such measures will have on the national debt.

2. Rule Changes that Minimize Delays in the Debt Limit Process

In addition, both houses of Congress should institute a procedural rule requiring that any amendments offered to a debt limit increase bill be germane. "Germaneness," in this context, should mean related to the debt limit statute itself or related to the incurrence or repayment of debt. Thus, the rule should be defined to permit amendments such as GRH and the Long-Muskie amendment implementing deficit (i.e., "debt incurrence") targets and balanced budgets (i.e., a "no debt incurrence" rule), respectively.\footnote{A germaneness rule of this type would facilitate the timely passage of debt limit increases by removing from the process the prolonged consideration of unrelated measures that sometimes delays enactment of the increase.} Such a rule would go further, in a sense, than the germaneness requirement contained in the Gephardt Rule, since it also would apply to the Senate. But, unlike the Gephardt Rule, it simultaneously would encourage, rather than cut off, congressional deliberation and proposals aimed at debt control.

B. Changes to the Debt Limit Statute

1. The Definition of Debt Subject to Limit

Under the current statute, the debt subject to limit—the amount included in the statutory figure Congress periodically must raise—is composed of two types of debt: Treasury-issued debt held by the public (individuals or non-government entities) and intra-governmental Treasury debt held by government accounts (mostly trust funds).\footnote{This means that the debt subject to limit is both an over- and under-inclusive reflector of how much money the government has borrowed. It is over-inclusive because it...}
counts as federal debt money that is invested in Treasury bonds by government accounts such as the Social Security Trust Fund, even though such money is invested automatically whenever the trust funds run a surplus, and is in fact unrelated to whether the federal budget runs a surplus or a deficit. It is under-inclusive because it omits some debt issued by the Treasury—e.g., silver certificates, as well as almost all federal agency debt.

Although the relative amount of federal debt excluded from coverage under the statutory debt limit is small, this discrepancy should be corrected in order to render the debt subject to limit a more accurate reflector of the amount of money borrowed (and owed) by the government, and to comply with the constitutional requirement that Congress authorize and manage government borrowing. Similarly, intra-governmental debt held by trust funds and the like should be excluded from the debt subject to limit figure, since it does not in any way reflect debt issued to the public. Removal of intra-governmental debt from the debt limit calculus would enable the debt subject to limit to decline in years when the government runs a surplus, resulting in a number of advantages. First, such a structure would reward Congress and the President publicly for keeping the nation’s fiscal house in order and thus would create an extra incentive for such debt reduction. Second, such a structure would allow the statutory debt limit to be lowered if the nation were to put itself on a path to debt reduction, something that is not practical under the current system, in which the debt subject to statutory limit can climb (because of trust fund investments) even in years when the amount of debt held by the public falls. Indeed, it is because of trust fund investments that the debt subject to limit continued to rise from 1998 to 2001, despite budget surpluses and a decline in the amount of debt held by the public.

2. Timing and Statements of Purpose

Timing is an important external factor in the debt limit process, exerting subtle pressure and influence on the shape that debt limit legislation takes. A debt limit increase that becomes due in April or May will be handled, debated, and presented to the public differently than one that becomes due in September or October. Hence an important question: Where in the budget cycle should debt limit increases ideally be considered? At

244 See id.
246 See WINTERS, supra note 134, at CRS-1 and n.1 (estimating the amount of federal debt excluded from the debt limit, as of the end of fiscal year 2001, to be approximately $101 billion, and calculating that the debt limit currently accounts for 98.3% of total federal debt).
247 See id. at CRS-2.
In Defense of the Debt Limit Statute

first blush, it might seem that increases in the debt limit should be made a fixed or mandatory part of the annual budget, to be debated and discussed at the budget resolution stage and passed as part of appropriations or reconciliation legislation in the fall. After all, if forcing Congress to pay more attention to the correlation between spending and national debt is a primary goal of debt limit reform, then tying debt legislation to spending legislation would appear to be a logical solution. But this Article does not advocate such an approach, for a number of reasons.

First, experience teaches that folding the debt limit into omnibus budget legislation results in less, not more, deliberation about government borrowing. The budget appropriations and reconciliation processes already are complicated and demand congressional attention to a vast array of funding and revenue issues; as it is, members of Congress often do not have enough time to read, let alone deliberate about, all of the provisions in omnibus budget bills. When debt limit increases become part of this mix, they both detract from the time spent on other budget matters and receive less attention than they would as stand-alone legislation. Indeed, congressional leaders sometimes purposely have wrapped debt limit increases in omnibus budget legislation precisely to avoid extended deliberation over. Moreover, enveloping debt limit increases in comprehensive budget legislation can result in "escapist budgeting," as members of Congress use the large legislative vehicle of omnibus bills to barter concessions while collectively looking the other way regarding the effect on the size of the national debt.

In order to avoid these problems while still maintaining some connection between congressional spending and borrowing, debt limit increases should be scheduled so that they become necessary in November or December of each year. This could be accomplished by amending

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248 The debt limit is already part of the budget resolution in that the resolution lists the anticipated impact of its spending or revenue totals on the limit. And appropriations and reconciliation legislation have sometimes in the past carried debt limit increases. See, e.g., Act of Oct. 19, 1990, Pub. L. No. 101-444, 104 Stat. 1030; Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388 (1990); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312. But that is different from requiring that the budget resolution become a forum for debate about how much the debt limit should be increased (rather than merely listing a figure derived by adding and subtracting other predetermined figures) and from mandating that debt limit legislation always or only be passed as part of an appropriations or reconciliation bill.

249 See Devins, supra note 9, at 396–400 (describing limitations on deliberations of continuing resolutions, in particular for the fiscal year 1988 continuing resolution); Krishna-kumar, supra note 127, at 616–18 (discussing failure by most members of Congress to read the text of the 1995-96 budget reconciliation bill and majority party leader Bob Dole's lack of familiarity with some portions of the legislation).

250 See 9 Cong. and the Nation, supra note 240, at 55 (noting that the Democratic leadership "got around" threats of budget-related amendments and lengthy deliberations by incorporating the debt-limit increase into the reconciliation bill in 1993 and that "[a]s the leadership hoped, the short-term bill passed with little fanfare").


252 Congress, with the aid of its research organizations, has proved rather apt at calcu-
the debt limit statute to require that Congress increase the debt ceiling by no more than the amount necessary to sustain anticipated government borrowing through the next one year; internal congressional rules could then establish that the increases be structured to last until the following November or December. The purpose of this timing is twofold: first, it places consideration of the debt limit on the heels of appropriations and/or reconciliation legislation, but late enough that in most years, the appropriations and reconciliation processes themselves should not be disrupted; second, it should enable congressional leaders, if consideration of debt limit increase legislation becomes bogged down, to back the vote on such legislation against a congressional recess for Thanksgiving or Christmas in order to force Congress to take timely action. This tactic of using the pressure of a recess to compel finalization of debt limit legislation has proved surprisingly successful in the past. Further, scheduling debt limit increases on the heels of budget legislation requires Congress immediately to account to the public for the consequences of its budget decisions.

Indeed, the passage of debt limit legislation at the end of the budget cycle should be used as a mechanism for explanation, projection, and contemplation of reform regarding the debt. Specifically, the debt limit statute could be amended to require that legislation increasing the limit provide not just a new numerical debt ceiling, but also a statement of how much Congress expects the different categories of government spending—e.g., the thirteen sets of appropriations, entitlements, tax expenditures or cuts, interest on the debt to cost over the next year (based on the budget just passed) and by how much Congress expects revenues to fall short of the sum of these costs (or to exceed costs if the budget is in surplus that year). The debt limit statute should require Congress to spell out the

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meaning of these numbers by, for instance, making statements such as, "The nation needs to borrow $X$ dollars to keep the Department of Education operating at existing levels"; "We need to borrow $Y$ dollars to pay for military spending/war"; or "We need to borrow $Z$ dollars to fund health entitlements at the current level because the population eligible is expected to rise." Such required explanations would restore some of the defined connection between congressional borrowing and its purpose that used to exist when Congress specifically authorized each issuance of government debt.

In this vein, the debt limit statute also could be amended to require that legislation increasing the debt ceiling contain a summary explaining the projected national debt for the next five years, assuming continued spending at the current levels. The Treasury Department currently provides Congress with five-year projections for different categories of debt, but not in connection with debt limit increases, and Congress does not share this information with the public.\textsuperscript{254} Requiring Congress to include such projections as part of the debt limit increase, it is hoped, would inspire greater congressional deliberation about government borrowing and the size of the national debt and possibly encourage proposals for reform aimed at debt reduction.

**CONCLUSION**

None of these reform proposals can force Congress to stop running budget deficits or even to make significant efforts to pay down the debt. But the goal of these proposals is to use the existing structural framework of the debt limit statute to make Congress focus more on—and share more with the public regarding—the debt consequences of its spending and taxing choices, rather than allow Congress to hide from these issues as it has sought to do for many of the past thirty years.
