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ALEXANDER'S ESSAY
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WHAT POWER TO TAX AND SPEND?

The Question Americans Should Be Asking

"The Constitution, which at any time exists, 'till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all." --George Washington

Barack Hussein Obama's refusal to send a Balanced Budget Amendment (BBA) to the states as condition of House Speaker John Boehner's support for raising the national debt ceiling has pushed federal funding negotiations to the precipice of the Treasury Department's 2 August default deadline. Boehner has retreated on the House's "cut, cap and balance" plan and its BBA provision is no longer a stipulation in negotiations. He has also reduced the "cuts" in the House plan, and may acquiesce to the larger debt ceiling increase the Democrats want in order to avoid another debt ceiling battle prior to the 2012 elections.

Notably, most House conservatives, including the Tea Party freshmen, are standing with Boehner, choosing a pragmatic approach until 2012, when they hope to strengthen their numbers in the House and Senate, and retake the presidency.

The current budget debate was the first serious consideration of a BBA since it was advocated by President Ronald Reagan in the 1980s and later passed by the House as part of the Republican Contract with America in 1995. (At that time, it received 300 votes, including 72 Democrats.)

Now, as then, Leftist Democrats in the Senate have created a formidable gauntlet to its passage because it would severely undermine their power to redistribute wealth, power that is the only assurance of their perpetual re-election. A BBA would sunset their dynasty.

So, where to from here, and what question *should* conservatives be asking? First, let me offer a brief review of the current budget/debt crisis.

The current legal limit (ceiling) on outstanding U.S. debt is $14.29 *trillion*. The federal government currently spends about $10 billion *every day*, and about $4 billion of that is borrowed with guarantees that future generations of Americans will repay the principal and interest.

The House budget plan, as of today, allows a $900 billion increase in the debt ceiling, but includes cuts of approximately that amount over 10 years, which is to say it is not a "net-net" plan to balance the budget now, and does not reverse debt accumulation.

Obama's 2012 budget is $3.7 trillion. Conservative estimates are that his "budget plan" will add more than $12 trillion in debt over the next decade. The only way the U.S. can remain solvent under those circumstances would require colossal tax increases and fiscal policies that inflate the economy -- both of which will break the back of free enterprise and ultimately lead to more taxes and inflation until the whole charade collapses.

This debt bomb poses the most significant threat to Essential Liberty in our nation's history. Our editorial team outlined this mounting national security threat back in 2004.

Across the nation, 49 of 50 states have some form of balanced budget requirement. The federal government, however, recognizes no such limitations and for three decades has been spending far more than it takes in.

Not only must the debt accumulation be stopped, it must be reversed.

To accomplish this reversal, the most pressing question in the current debate is not "which budget plan is better?" Rather, it is "By what authority does the central government collect taxes, and on what items is it authorized to spend those combined taxes and accumulated national debt?"

To answer that question, let's review the limitations on taxing and spending our Constitution imposed upon Congress before the courts twisted Rule of Law into the so-called "living constitution," which is subject to the rule of men. Under the latter, Congress has unlawfully assumed the authority not only to collect and spend taxes on any objects it desires (in order to perpetuate re-election), but to regulate everything else. (For the record, the cost of that regulation is estimated at $1.75 trillion annually -- more than twice the total income taxes collected in 2010.)

This unlawful spending and regulation is in abject violation of our elected officials' oaths to "support and defend" our Constitution, and a breach of trust in their contract with the American people, which has created a perilous national security crisis. But on the question of their constitutional authority, former House Speaker Nancy Pelosi infamously claimed, "Nobody questions that."

To get a sense of how enormous the outlaw-spending crisis has grown, I quote Obama Treasury Secretary Tim Geithner's efforts to shock Republicans into submission this week: "Just remember, this is the United States of America. We write 80 million checks a month. There are millions and millions of Americans that depend on those checks coming on time. ... We cannot put those payments at risk and we do not have the ability to limit the damage on them if Congress fails to act in time."

By what authority is the central government taxing and borrowing to distribute *80 million* checks a month?

The "General Welfare Clause" in Article 1 Section 8 of the Constitution provides, "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States..."

During the constitutional ratification debates, our Founder's made clear that taxation in support of expenditure for the "general welfare" of the nation was subject to severe limits.

Alexander Hamilton, our nation's first Treasury secretary, argued for a somewhat more expansive interpretation of "general welfare," while James Madison, our Constitution's author, reiterated that the enumerated powers contained therein strictly limited the context of "general welfare."

Madison's view prevailed. As president, Madison vetoed a federal highway bill in 1817 because such expenditures were not authorized by our Constitution and, moreover, were clearly the responsibility of the states, as specified in the Tenth Amendment.

According to Madison, "It has been urged and echoed, that the 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,' amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defence or general welfare."

However, wrote Madison, "If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one."

In Federalist No. 45, Madison declared, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce. ... The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State."

As for extra-constitutional taxation, Madison was unequivocal: "I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents."

The authentic interpretation of expenses authorized by our Constitution was sustained until the War Between the States, when Abraham Lincoln stretched them beyond constitutional bounds.

But the wholesale adulteration of our Constitution began with Franklin Delano Roosevelt's regime. Under duress of economic depression, he implemented such extra-constitutional programs as the Social Security Act, Federal Housing Administration, Home Owner's Loan Corporation, the Tennessee Valley Authority and a plethora of other "New Deal" federal spending programs, not one of which was authorized by our Constitution.

In 1936, the Supreme Court (U.S. v Butler) cemented this broad and unprecedented interpretation of the General Welfare Clause in alliance with FDR -- and the rest is history.

The High Court's interpretation far exceeded its constitutional authority. In Federalist No. 81, Alexander Hamilton made it clear that this sort of judicial activism was illegitimate: "[T]here is not a syllable in the [Constitution] which directly empowers the national courts to construe the laws according to the spirit of the Constitution." That notwithstanding, what our Constitution authorizes

versus what the courts via judicial diktat have since interpreted it to authorize have rendered Rule of Law null and void. The resulting debt crisis is a menacing threat to Liberty.

So, what's the solution?

Thomas Jefferson warned, "To preserve independence ... we must not let our rulers load us with perpetual debt. We must make our election between economy and Liberty, or profusion and servitude. ... The fore horse of this frightful team is public debt. Taxation follows that, and in its turn wretchedness and oppression."

A BBA is a good way to limit outlaw spending. However, there is no chance of a BBA passage with a Democrat administration and Democrat-controlled Senate. And if a BBA did pass, it could result in tax *increases* indexed to budget increases if it does not require a supermajority to raise taxes, a spending cap to keep the "balance" from perpetual increases, a provision to protect it from tax increases forced by judicial diktat, and a provision to ensure it is not construed as to affirm the constitutional authority of current spending programs -- most of which have no such authority.

Moreover, no amendment will suffice until the authority of our Constitution is restored, and that will require a broad challenge from "the People," and the first step in that challenge was born in the Tea Party movement this past election cycle. That momentum must be sustained if there is any hope to preserve Liberty.

On that authority, Jefferson noted, "Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction. ... If it is, then we have no Constitution. ... In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

Alexander Hamilton wrote, "A sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government. ... [T]he present Constitution is the standard to which we are to cling. Under its banners, bona fide must we combat our political foes -- rejecting all changes but through the channel itself provides for amendments."

George Washington, in his farewell address to the nation, wrote, "The basis of our political systems is the right of the people to make and to alter their constitutions of Government. But the Constitution, which at any time exists, 'till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all. ... If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Obama and his arrogant socialist cadres believe they are smarter than our Founders. They certainly believe they can outsmart most of the American People. Unless more of us begin to ask relevant questions about Rule of Law and constitutional authority, they may be right on the latter contention.

(A note of thanks to my colleague, Matthew Spalding, constitutional scholar at the Heritage Foundation, for research assistance on this essay.)

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(Please pray for our Armed Forces standing in harm's way around the world, and for their families -- especially families of those fallen Soldiers, Sailors, Airmen, Marines and Coast Guardsmen, who granted their lives in defense of American liberty.)