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***[Virginia Prescott] I'm Virginia Prescott and this is Civics 101, the podcast refresher course on the basics of how our democracy works.***

***Today, a widely misunderstood but fervently debated topic: the debt ceiling. What is it? How is it determined, and what does it mean politically and economically to raise or lower the debt ceiling? Michael Dorf is with us to bring the debt ceiling down to earth. He's law professor at Cornell University.***

***Hello and welcome Michael.***

[Michael Dorf] Thank you. Hello.

***[VP] What is the debt ceiling?***

[MD] Tthe debt ceiling is a federal statute that was first enacted in 1917 and has been periodically updated since then, which sets a dollar limit on the size of the debt that the United States can owe. It includes both debt owed to the public and to the private sector. And in addition it includes debt that is held internally that is from one government account to another so that the total figure is a little bit artificially inflated but it's still a pretty large number.

***[VP] It's sometimes compared to a limit that a credit card company places on spending for a consumer, is that an accurate comparison?***

[MD] No I think that's sort of backwards. The debt ceiling doesn't prevent the United States from taking on obligations. What it does is it prevents the government from borrowing to meet those obligations. So if you want to have a better credit card analogy it might be something like this. So suppose somebody does holiday shopping and racks up $2000 of bills on their credit card and then they decide you know what. I'm only going to be able to pay for $1000 of that, but my debt ceiling is five hundred so I can only borrow 500 to cover the remaining thousand.

That means you're going to stiff somebody, in this case the credit card company, by five hundred dollars. So what this debt ceiling does is it prevents the federal government from borrowing sufficient money to pay for debts it already owes.

***[VP] So the debt ceiling, you think just from its name it sounds like a way of reining in or topping off government spending. Is it?***

[MD] Well that's somewhat misleading. The spending is determined by the budget and by the non-discretionary elements of federal spending through entitlements. The debt ceiling doesn't prevent the government from having to pay that amount. It just says the government is not going to pay it or are not going to borrow the money to pay it. And therefore as I said sort of stiff people who are owed the money.

The Congress has another means to control the size of the debt which is it can adjust the laws governing how much they're going to spend, just spend less or how much it's going to raise you tax more. That is to say debt is entirely a function of the difference between revenues and expenditures.

What the debt ceiling does is to put an artificial cap on it that’s unrelated to the actual difference between expenditures and revenues. And so it seems like it's unnecessary and indeed it is unnecessary. There is really no other countries in the world that have a debt ceiling. They control their debt in the same way that you ordinarily would by controlling spending relative to taxes.

***[VP] How is the debt ceiling the amount determined?***

Really it's a function of how much time Congress wants to give itself until the next debt ceiling crisis.

So they look at projected shortfalls of revenue over the next period and they figure well, in about a year we'll have racked up another X billion dollars of debt. So we're going to raise the debt by X billion dollars and that would be effectively giving themselves another year. They could say we're going to look two years out and give themselves you know twice that amount or whatever the appropriate figure is. But it's really just an arbitrary number that is reached in highly political negotiations.

You would wonder, well which side in such negotiations wants to keep that number smaller, and the answer is whichever side thinks that having another debt ceiling crisis sooner rather than later is going to give them additional leverage.

***[VP] So why and when was the debt ceiling created here in the U.S?***

So interestingly prior to 1917 there was no debt ceiling, but there also wasn't really regular borrowing. The federal government did borrow money, but each time it borrowed substantial sums of money Congress would pass a specific law that was authorizing that borrowing. Typically a bond issue. The purpose of the debt ceiling originally was actually to empower the federal executive branch to borrow money without having to go back to Congress each time.

So when the Treasury floats a bond it's relying on the authority that's provided in the same original statute as to the debt ceiling, so that was a kind of a delegation from Congress to the executive branch saying here, go ahead, borrow money without having to come back to us each time.

And that worked pretty well until we started running sufficient deficits that the debt outstripped the debt ceiling. At that point the logical thing to have done would have been for Congress to have left in place the authorization to the executive to borrow and to have said you can't borrow more money than you need, right, only borrow enough to make up the difference between revenues and expenditures.

So that would be a kind of informal debt ceiling but it would be one that would move exactly with the path of the debt and would be controllable by Congress simply by controlling spending and taxes but wouldn't have this artificial quality that de-links it from the actual level of debt.

***[VP] So Congress can raise the debt ceiling, or lower I guess. So these threats of government shut down, for example, that have been used in several cases in American history, is that just politics?***

[MD] Well so I would I want to distinguish between a government shutdown and a debt ceiling crisis. Government shutdowns occur when Congress doesn't allocate funding for particular measures either because they fail to pass a budget or they fail to pass a continuing resolution that extends the existing budget. Each of the government shutdowns we've had in the past few decades have been a result of that kind of a standoff. a failure to enact a budget. The government never defaulted in any of those cases, that is to say there was sufficient borrowing authority for the government to meet its outstanding obligations.

It's just that additional and new services weren't being provided because there was insufficient money allocated there wasn't any money allocated.

***[VP] I understand the distinction there. But what has happened over and over again in recent history is that there's a request to raise the debt ceiling and threats of a government shutdown. So is that just politics?***

[MD] The first time that the debt ceiling was really tied to the possibility of a government shutdown was in 1995 in the confrontation between the Republican controlled House of Representatives under Speaker Newt Gingrich and the presidency of President Bill Clinton. The Congress said that we are not going to raise the debt ceiling unless we get a budget to our liking. So there was a kind of link between the threat of a government shutdown with the failure to pass a budget and a threat to refuse to raise the debt ceiling.

Now, President Clinton essentially won that confrontation. He told Congress, I'm not going to sign a bill that doesn't raise the debt ceiling and I'm not going to sign a bill that raises the debt ceiling only on the condition that it does everything the Republicans want rather than what I want in the end. Speaker Gingrich backed down on the debt ceiling threat. The government did shut down temporarily because the budget wasn't passed in time.

I think once that happened the debt ceiling had been weaponized. And so then in future situations not just with respect to government shutdowns but just in general when we approached the limit of the borrowing authority under the debt ceiling members of Congress, mostly Republicans but also some Democrats when you had Democratic control of Congress and Republican president, Congress would sometimes say hey we're not going to raise the debt ceiling unless you give us what we want.

Now what [they wanted] typically was some cuts in spending that the members of Congress who are demanding those cuts had been unable to achieve through the ordinary budget process.

But in principle there's no reason why the threat to refuse to raise the debt ceiling has to be linked to budgetary issues. One could say if you don't give us what we want with respect to the death penalty or with respect to abortion or some completely extraneous issue we're going to vote against a debt ceiling increase, thus essentially holding the government hostage and indeed the global economy hostage as a means of obtaining some political benefit.

***[VP] So let's play that out, let's say that the party with enough votes follows through and refuses to raise the debt ceiling, the likely consequence would be the U.S. defaulting on its loans. What happens next?***

[MD] My view is that at the point that you've described the president has no good options, because you can fail to pay people who are owed money, which is a violation of not only the laws that authorize that but of a provision of the 14th Amendment. You can try to tax people who don't by statute own any additional money. That seems virtually impossible. Or you can just borrow the money you need, which is a violation of the debt ceiling statutes and none of those is a good option.

The assumption is the government would try to prioritize its spending obligations. The difficulty is once it does that then you could imagine financial markets getting very nervous about who's not going to get paid and there would be a flight from the dollar, a flight from bonds and credit markets, and the whole global economy could seize up.

***[VP]*** ***How about bills attempting to eliminate debt ceilings that have been floated at least in the recent past by Democrats. What would happen if that were to pass?***

[MD] So that would be great, from my perspective, and I should say it's not really a partisan matter in the most recent events. We saw Democrats using the debt ceiling as a kind of leverage against Republicans. I think it will generally be the party that does not have the White House that's more likely to try to use the debt ceiling as a form of leverage.

And that's why I think there is some hope that there will be a bipartisan consensus to get rid of the debt ceiling, recognizing that it's only really use is as a threat and that if anyone ever carries through on the threat either because they miscalculate or because they make an error in judgment and think it wouldn't be such a big deal to default, that would be disastrous.

And so there might be an opportunity here to eliminate the debt ceiling and I want to emphasize eliminating the debt ceiling would not mean that Congress would be acquiescing in a mountain of debt. Congress still would have all of the tools it needs to control the growth of the debt simply by controlling the path of spending and taxation.

***[VP] So you're pointing out the complexity and the nuances and in some ways the straightforward understanding of something that I think is cast in a very clear way, at least politically. Do you think the public really understands the debt ceiling?***

[MD] No I think the public, aided by politicians who want to confuse the public, typically have two confusions. One is this. People often confuse deficits with debt. A deficit is the difference between money coming into the government and money going out of the government. In any given year the debt is the accumulated total of that over time with interest payments, so that's one confusion, a second confusion is people confuse the level of debt set by the debt ceiling with the amount of money the government owes. The amount of money the government owes is not a function of the debt ceiling, it's a function of again the accumulation of deficits and interest payments on the national debt.

But as a result of those confusions it's relatively easy for politicians to demagogue using the debt ceiling as a way of saying that government spending is out of control. So government spending may or may not be out of control, I don't have a position on that, that's a fundamentally political judgment. But if you think government spending is out of control or you disagree with tax policy or you even think that it's a bad idea for the government to have more debt than it has or the amount of debt it has, that's really got nothing to do with the debt ceiling, but because the word debt appears in both conversations, it's relatively easy to fool people.