Taxation Without Representation

How Trump's Tariff Policy Undermines Democracy and International Legal Norms

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What started as a trade war in 2018 – and a domestic policy aimed at recalibrating the U.S. trade policy – has quietly transformed into a tool of hidden taxation, enabling the U.S. executive branch, meaning the President of the United States, to raise revenue and dramatically influence fiscal policy without legislative consent or even minimal participation in the legislative process by Congress. This divergence from legal norms represents a constitutional rupture – what I call the rise of a shadow fiscal state: a parallel tax system designed and executed solely through executive discretion rather than transparency and congressional legislation.

The fiscal logic behind tariff expansion

The United States is in debt and needs revenue. The Republican Party controls Congress and in theory can pass any legislation it wishes. However, the Party is generally more known for favoring populistic tax breaks, not tax hikes. For decades we tried trickle-down economics, but it failed as research shows.

Yet, tariffs can raise revenue. And for historical reasons, years ago Congress delegated the authority to introduce tariffs to the executive branch. On top of that, the judicial branch, respecting the autonomy of the executive branch, has been very reluctant to interfere in the way this authority is being used, since it was always justified by "national security" reasoning. This turned a narrow and specific delegated trade authority into a ripe opportunity for a power-hungry executive branch to reshaping the U.S. federal tax system without Congress' involvement.

Legal framework and executive overreach

U.S. federal trade statutes, such as Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962, authorize the President of the United States to introduce tariffs when he or she determines that the United States' trade rights are being denied or certain national security threats rise. However, none of these statues intend tariffs to be turned into a fiscal tool for domestic debt management. Therefore, using those provisions for this goal reflects a significant abuse of power.

It also raises major constitutional concerns. Under Article I of the U.S. Constitution, the power to tax is granted to Congress. However, when tariffs are used to generate revenue or shape the United States' federal fiscal framework, they function effectively as a hidden federal consumption tax on the American people. Although tariffs are imposed at the border on imported goods, the economic burden of tariffs typically shifts from importers to retailers, and ultimately to domestic consumers, as each step in the supply chain passes on the added costs through higher prices. This leads to a paradox. On the one hand, Congress recently passed the One Big Beautiful Bill Act which among others, made many of the individual tax breaks of the Tax Cuts and Jobs Act of 2017 permanent. On the other hand, and at the same time this was happening, the Executive separately introduced historically high tariffs without the constitutional process that was meant to ensure congressional debate, approval and accountability.

Tariffs as hidden consumption taxes

Eventually, the economic burden of tariffs rolls over and falls primarily on domestic consumers. Hence, tariffs are essentially equivalent to a consumption tax, but in the U.S. contexts, one that is introduced without transparency, public debate, or progressive framework to mitigate the expected economic effects on American

consumers. The result of this is not only a highly regressive federal revenue mechanism, but also an opaque tax system that literally bypasses all the constitutional and democratic safeguards the framers of the U.S. Constitution put in place for this specific purpose to begin with: no taxation without representation.

For example, in 2025, President Trump's tariffs is expected to increase federal tax revenues by $171.1 billion, making it the largest tax increase since 1993. One would expect in a strong and functioning democracy that such a dramatic tax hike would go through all the checks and balances to be finalized. Yet it was exactly the opposite. The tax is collected at the border and later passed through to American consumers, who are generally unaware of the fiscal burden imposed. Though this is hardly as dramatic as an attempt of insurrection, or perhaps even a coup d'état, I would argue that in the 21st century, in the western world, this is what a constitutional and democratic crisis looks like.

International law considerations

As if this was not troubling enough, using tariffs for domestic fiscal purposes also places the United States in a potential violation of its international obligations. Under World Trade Organization (WTO) law, tariffs must comply with principles of non-discrimination, necessity, and proportionality. Tariffs imposed for national revenue motives fail all these tests. Such tariffs are neither narrowly designed nor grounded in trade-related purposes. Furthermore, and without getting too technical into this issue, WTO jurisprudence has long acknowledged that even quasi-neutral trade barriers could violate trade rules if those are structured or designed to disadvantages imports. Moreover, exceptions under GATT Article XX and Article XXI require good faith and proportionality. Hard to see how the current situation meets these standards.

The road ahead

The described events reflect a dangerous erosion of the U.S. constitutional governance. By bypassing Congress, the executive branch managed to consolidate an authority that was never given to it, yet without any alarm bells going off. In fact, the lack of transparency, scrutiny, or public debate, served Congress and allowed it to pass populistic tax breaks, while at the same time creating a new shadow fiscal framework without any of the checks and balances the Founders and Framers designed.

Without sounding too dramatic, this new phenomenon risks normalizing taxation without representation, as Congress has no voice in this process and therefore no accountability. Soon, when the American people begin to feel the economic repercussions of this shadow fiscal system, most of them would not realize why this is happening which would in turn fuel further frustration and anger and further help those who seek to weaken democracy and the rule of law.

Restoring fiscal democracy begins with Congress doing its job and taking back the power that was given by the U.S. Constitution but was delegated to the executive branch. There is no question at this point that such power should not be in the hands of the executive branch – sooner or later, it will be abused. Next, a procedural reform is needed to limit the legislative branch's ability to delegate such power to the executive branch or limit the scope of such delegation to much more narrow circumstances. Another approach could be to design a dual-system that distinguishes between "routine" tariff adjustments which may happen as a result of specific changes or events in the global economy, and a complete redesign of the American international trade framework which carries significant economic and fiscal impact, both to the United States and the global economy.

Absent such reform, which I fear the United States is not going to be seeking anytime soon, the United States risks entrenching the current structure and allow the executive branch to deploy and operate solely without much or any congressional oversight. The nation that was once born from a tax revolt rallied by the call "No Taxation Without Representation" is now at a point where the American people either do not care about the issue anymore or do not understand it enough to realize what is happening and what it

means. This issue clearly undermines the U.S. constitutional framework and democracy, but it also significantly shakes and weakens the integrity of the global trading system and other foreign economies. It is not only an American problem.

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