FOREWORD: THE CONSTITUTION AND PUBLIC FINANCE—WHY NOW AND WHY EVER?

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Each year, the *Washington University Law Review* publishes an issue featuring papers presented at our annual symposium. This year's symposium, held at the Law School on September 26, 2025, focused on the general theme of "Taxing, Spending, and the Constitution." This symposium began to take shape almost two years ago, after the 2024 presidential election but before the inauguration, in a conversation about three emerging and interconnected issues of law and public finance that we thought might combine to make for a good symposium.

What were those issues? The first was *Moore v. United States*, decided in June of 2024.[1] *Moore* presented an important (if mildly abstruse) constitutional question: whether the Sixteenth Amendment permits Congress to tax "unrealized" gains without apportionment among the states.[2] Because the Constitution requires that "direct" taxes be apportioned by state population—and because apportionment is impractical for many modern taxes—expanding the "direct" category necessarily limits Congress's taxing power.[3] Lurking in the background of the *Moore* case was the related question—both urgent and contested in our modern age of inequality[4]—of whether Congress has the constitutional power to tax *wealth*.[5] In the end, *Moore* declined to answer the question about unrealized

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1. 602 U.S. 572 (2024).
2. Petition for Writ of Certiorari, *Moore*, 602 U.S. 572 (No. 22-800).
3. *See generally* Conor Clarke & Ari Glogower, *Apportioned Direct Taxes*, 79 TAX L. REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5314120 [https://perma.cc/4J26-TR5E].
4. *See* Emmanuel Saez & Gabriel Zucman, *Progressive Wealth Taxation*, 2019 BROOKINGS PAPERS ON ECON. ACTIVITY 437; EMMANUEL SAEZ & GABRIEL ZUCMAN, THE TRIUMPH OF INJUSTICE: HOW THE RICH DODGE TAXES AND HOW TO MAKE THEM PAY (2019); THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., 2014). *But see* Wojciech Kopczuk, *Comment on "Progressive Wealth Taxation"*, 2019 BROOKINGS PAPERS ON ECON. ACTIVITY 512.
5. *See* Joseph Fishkin & William E. Forbath, Opinion, *Want to Tax the Rich for Real? Pay Attention to This Supreme Court Case.*, N.Y. TIMES (Dec. 10, 2023), https://www.nytimes.com/2023/12/10/opinion/supreme-court-wealthy-taxes.html [https://perma.cc/MF3Y-JSGH]; Opinion, *Is a U.S. Wealth Tax Constitutional?*, WALL ST. J. (June 14, 2023), https://www.wsj.com/opinion/wealth-tax-ninth-circuit-moore-v-u-s-charles-and-kathleen-moore-supreme-court-constitution-6cdfba92 [https://perma.cc/RT4X-Y62K]; Transcript of Oral Argument at 128, *Moore*, 602 U.S. 572 (No. 22-800) (Justice

gains in general,[6] and dropped only a couple of tantalizing and elusive tea leaves on the related question of wealth taxation.[7] Yet *Moore* spawned a wide new body of research on both the historical and legal questions at stake in the case[8] and in constitutional tax issues more broadly.[9] (Not to mention new litigation[10] and policy development—such as California's proposed tax on billionaire wealth, which is motivated in part by the concern that constitutional obstacles to redistributive wealth taxation at the federal level make such taxes more urgent at the state level.[11]) Constitutional issues concerning the taxing power appear alive and well—pondered within and without the ivory tower—notwithstanding the Delphic, nothingburger qualities of the *Moore* opinion itself.

The second issue was spending—appropriations law. The first Trump Administration took several notable steps to control appropriated funds, including the withholding of congressionally appropriated security assistance for Ukraine[12] and the reprogramming of Department of Defense funds to construct a border wall, after Congress declined to appropriate the

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Kavanaugh: "If there were a federal tax on the value of someone's property, you agree that's a direct tax—or—or on the value of someone's holdings, you agree that's a direct tax that would have to be apportioned, correct or not?").

6. 602 U.S. at 598 ("For their part, the dissent and the opinion concurring in the judgment focus primarily on the realization issue—namely, whether realization is required for an income tax. We do not decide that question today.").

7. After mentioning the government's argument that "a hypothetical unapportioned tax on an individual's holdings or property (for example, on one's wealth or net worth) might be considered a tax on property, not income," the Court summarily explained: "Those are potential issues for another day, and we do not address or resolve any of those issues here." *Id.* at 599.

8. *See, e.g.*, David M. Schizer & Steven Gow Calabresi, *Wealth Taxes Under the Constitution: An Originalist Analysis*, 77 FLA. L. REV. 1401 (2025); John R. Brooks & David Gamage, *The Original Meaning of the Sixteenth Amendment*, 102 WASH. U. L. REV. 1 (2024); Alex Zhang, *Rethinking* Eisner v. Macomber*, and the Future of Structural Tax Reform*, 92 GEO. WASH. L. REV. 179 (2024).

9. *See, e.g.*, Ari Glogower, *The Constitutional Limits to the Taxing Power*, 93 FORDHAM L. REV. 781 (2024); Daniel Hemel, *Formalism, Functionalism, and Nonfunctionalism in the Constitutional Law of Tax*, 2024 SUP. CT. REV. 327; Clarke & Glogower, *supra* note 3; Conor Clarke, Moore*: The Overlooked Excise Power*, 181 TAX NOTES FED. 1759 (2023).

10. *E.g.*, French v. Comm'r of Internal Revenue, T.C.M. (RIA) 2025-057 (T.C. 2025); United States v. Jackson, No. 3:16-CV-5096, 2025 WL 1483383 (W.D. Mo. Feb. 26, 2025); Motion to Dismiss, United States v. Ver, No. 2:24-cr-103 (C.D. Cal. dismissed Oct. 14, 2025) ("Bitcoin Jesus" case).

11. Brian Galle, David Gamage & Darien Shanske, *Money Moves: Taxing the Wealthy at the State Level*, 113 CALIF. L. REV. 635 (2025). Professor Galle helped draft California's new proposed tax on billionaires, which proponents hope to get on the 2026 ballot. Troy Wolverton, *Fears of California Billionaire Exodus Overblown, Tax Proponent Says*, S.F. EXAMINER (Feb. 11, 2026), https://www.sfexaminer.com/news/politics/billionaire-tax-author-argues-for-its-fairness-necessity/article_47e0cf1a-ac8a-4b72-9fce-04a996dffe76.html [https://perma.cc/4BVC-3SFJ].

12. Emily Cochrane, Eric Lipton & Chris Cameron, *G.A.O. Report Says Trump Administration Broke Law in Withholding Ukraine Aid*, N.Y. TIMES (Jan. 17, 2020), https://www.nytimes.com/2020/01/16/us/politics/gao-trump-ukraine.html [https://perma.cc/56F3-6ESW].

requested amounts.[13] Before and after the 2024 election, Russell Vought—now the Director, and at the time the expected Director, of the Office of Management and Budget—and others in Trump's inner orbit expressed a desire to assert greater executive control over appropriated funds.[14] In part, this was based on the view that the Impoundment Control Act—the primary federal legislation that channels and limits presidential discretion over appropriations generally—was unconstitutional and that the President had inherent Article II discretion over spending.[15] Vought's view is that Congress's power of the purse is the power to set "a ceiling," "not a floor."[16] More than a year later, the second Trump Administration has indeed asserted far more control over spending—including withholding billions in foreign-aid spending,[17] widespread spending delays,[18] and a memo (quickly rescinded) ordering widespread grant freezes.[19] These efforts have again triggered litigation[20] and have started to spark renewed scholarly interest in

13. Charlie Savage, *Trump to Tap Other Military Money for Wall Before Emergency Funds*, N.Y. TIMES (Feb. 19, 2019), https://www.nytimes.com/2019/02/19/us/ politics/trump-border-wall-emergency-funds.html [https://perma.cc/6ZWD-92P5].

14. Zachary Price, *A Primer on the Impoundment Control Act*, LAWFARE (Jan. 28, 2025), https://www.lawfaremedia.org/article/a-primer-on-the-impoundment-control-act [https://perma.cc/56KU-P9GV] ("During his 2024 campaign, President Trump indicated that he planned to 'restore executive branch impoundment authority to cut waste, stop inflation, and crush the Deep State.' Russell Vought, Trump's pick to lead the Office of Management and Budget (OMB), the agency that oversees spending for the executive branch, repeated this promise at his Senate confirmation hearing on Jan. 15.").

15. *See* Mark Paoletta & Daniel Shapiro, *The President's Constitutional Power of Impoundment*, CTR. FOR RENEWING AM. (Sept. 10, 2024), https://americarenewing.com/the-presidents-constitutional-power-of-impoundment/ [https://perma.cc/Y3NK-NUEP]; Hannah Grabenstein, *How Trump's Rescission Request Draws on the Centuries-old Concept of Impoundment*, PBS NEWS (Feb. 10, 2025), https://www.pbs.org/newshour/politics/what-you-need-to-know-about-impoundment-and-how-trump-vows-to-use-it [https://perma.cc/FPJ8-DN54] (Vought: "The president ran on the notion that the Impoundment Control Act is unconstitutional. I agree with that.").

16. Cameron Joseph, *As Congress Codifies Government Cuts, Russell Vought Promises More to Come*, CHRISTIAN SCI. MONITOR (July 17, 2025), https://www.csmonitor.com/USA/Politics/monitor_breakfast/2025/0717/russell-vought-trump-congress-budget [https://perma.cc/BY9P-MZ9D] ("We are not saying that the power of the purse does not belong with Congress. It absolutely does. It is one of the most constitutional foundational principles. But . . . it's a ceiling. It is not a floor. It is not the notion that you have to spend every last dollar of that.").

17. Amy Howe, *Supreme Court Allows Trump Administration to Withhold Billions in Foreign-Aid Funding*, SCOTUSBLOG (Sept. 26, 2025), https://www.scotusblog.com/2025/09/supreme-court-allows-trump-administration-to-withhold-billions-in-foreign-aid-funding/ [https://perma.cc/4QFR-FALA].

18. Bo Erickson, *Trump Funding Delays Testing Congress' Power May Be Intensified. How Will Republicans Respond?*, REUTERS (Aug. 15, 2025), https://www.reuters.com/legal/government/trump-could-soon-challenge-congress-with-rare-funding-cancellation-2025-08-15/ [https://perma.cc/5PCW-FH4D].

19. Natalie Andrews, Liz Essley Whyte & Michelle Hackman, *White House Rescinds Order to Freeze Federal Assistance, Grants*, WALL ST. J. (Jan. 29, 2025), https://www.wsj.com/politics/policy/trump-administration-rescinds-order-to-freeze-federal-aid-funding-45729ca1 [https://perma.cc/PA3R-SLVZ].

20. *See, e.g.,* Dep't of State v. AIDS Vaccine Advoc. Coal., 145 S. Ct. 753 (2025); New York v. Trump, 769 F. Supp. 3d 119 (D.R.I. 2025), *aff'd in part and vacated in part*, 171 F.4th 1 (1st Cir. 2026); Nate Raymond, *Trump Administration Cannot Implement 'Sweeping' Funding Freeze, US Court Rules*, REUTERS (Mar. 17, 2026), https://www.reuters.com/legal/government/trump-administration-cannot-implement-sweeping-funding-freeze-us-court-rules-2026-03-17/ [https://perma.cc/HK75-UX23].

a doctrinal area that probably had its last big moment in the sun in the age of Nixon.[21]

And, third, tariffs. Trump has long described himself as a "tariff man"[22] and has waxed nostalgic for the tariff-laden twenty-fifth presidency of William McKinley.[23] But it was in the run-up to his second term, and its early days, that this long-professed fondness began to reshape global policy. A week before the inauguration for his second term, he fantasized about replacing the Internal Revenue Service with an "External Revenue Service,"[24] and on day one of his second term he issued a memo to relevant agency heads pushing an "America First Trade Policy."[25] Major tariff actions—centrally justified by expansive readings of the International Emergency Economic Powers Act (IEEPA) and related trade authorities—soon followed. The administration announced sweeping, across-the-board duties on imports from major trading partners and threatened further escalation as leverage in bilateral negotiations. As we write, events are moving quickly: The Supreme Court has recently held the President's IEEPA tariffs unlawful, and the President has promised more.

Those three topics roughly track the three symposium panels and the organization of the ten papers published in this volume. The first panel of the day, "Spending and the Allocation of Public Authority," featured Samuel Bagenstos, Matthew Lawrence (also representing his co-author Nicole Huberfeld), and Zachary Price.

Samuel Bagenstos—who, in addition to a distinguished academic career, served as general counsel for both the Office of Management and Budget and the Department of Health and Human Services during the Biden Administration[26]—brings a perspective informed by practice to what he calls "a unique body of federal law."[27] He asks whether the apparent collapse of an interbranch model of appropriations law should prompt

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21. *See* Train v. City of New York, 420 U.S. 35 (1975); State Highway Comm'n v. Volpe, 479 F.2d 1099 (8th Cir. 1973); Campaign Clean Water, Inc. v. Ruckelshaus, 361 F. Supp. 689 (E.D. Va.), *remanded sub nom.* Campaign Clean Water, Inc. v. Train, 489 F.2d 492 (4th Cir. 1973), *vacated and remanded*, 420 U.S. 136 (1975); *see also* Zachary S. Price, *Trumpian Impoundments in Historical Perspective*, 78 STAN. L. REV. 19 (2025).

22. Opinion, *'I Am a Tariff Man'*, WALL ST. J. (Dec. 4, 2018), https://www.wsj.com/articles/i-am-a-tariff-man-1543965558 [https://perma.cc/MN6T-DZKU].

23. David E. Sanger, *Why Is This Long-Dead President Trump's New Hero?*, N.Y. TIMES (Jan. 22, 2025), https://www.nytimes.com/2025/01/22/us/politics/william-mckinley-trump.html [https://perma.cc/P2EX-PRLF].

24. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Jan. 14, 2025, 10:28 AM), https://truthsocial.com/@realDonaldTrump/posts/113827650534234057 [https://perma.cc/X3LS-TZBR].

25. Exec. Order No. 14,150, 90 Fed. Reg. 8337 (Jan. 20, 2025).

26. *Samuel R. Bagenstos*, MICH. L., https://michigan.law.umich.edu/faculty-and-scholarship/our-faculty/samuel-r-bagenstos [https://perma.cc/Q523-9249].

27. Samuel R. Bagenstos, *The Crisis of Appropriations Law*, 103 WASH. U. L. REV. 1719, 1719 (2026).

changes in the law. According to Bagenstos, appropriations law and practice developed such that judicial intervention was largely unnecessary. The longstanding theory was that Congress would police the Executive through the annual budget cycle—and the Executive, fearing retaliation, would comply. If Congress could enforce compliance politically, courts need not intervene. But, as Bagenstos explains, the first and second Trump Administrations have changed this: "[R]eality is increasingly diverging from" a stable vision of interbranch relations.[28] His paper goes on to explore congressional solutions to address the unfolding new normal created by the Trump Administration's aggression and a supine Congress.

Nicole Huberfeld and Matthew Lawrence further emphasize the changes spurred by the second Trump Administration and discuss legal interventions that are increasingly necessary to address changes in spending law. In particular, they argue that doctrine has so far failed to appreciate important differences between statutory spending conditions and executive spending conditions. Statutory spending conditions are familiar, and the law is relatively well developed. But executive conditions present distinct constitutional concerns—such as whether they encroach on congressional powers of appropriations and spending. Huberfeld and Lawrence argue that courts and scholars should begin to map those differences—a project their paper begins.

Finally, Zachary Price examines the appropriations presidentialism of the current Trump Administration through a different lens: its enlistment of private resources to perform public functions. Price draws a distinction between resource-dependent executive powers (meaning they exist insofar as Congress provides resources for them) and resource-independent executive powers (meaning a President can perform them on his own) and argues that restrictions inherent in resource-dependence are important to constrain the executive branch's power. He discusses historical examples—from George Washington to recent debates over federal marijuana enforcement—and then carries his framework to the present administration, highlighting "the importance of maintaining the executive branch's dependence on congressionally controlled resources for key functions."[29]

The second panel, "Tariffs: Historical Insights and Modern Implications," featured one of us (Conor Clarke) and Ari Glogower; Susan Morse (representing her co-authors Shu-Yi Oei and Diane Ring); and Lawrence Liu and Alex Zhang. Their papers remain timely in light of

28. *Id.* at 1733.

29. Zachary S. Price, *Public Functions and Private Resources*, 103 WASH. U. L. REV. 1813, 1821 (2026).

Learning Resources and the President's apparently indefatigable commitment to tariffs.

Ari Glogower and Conor Clarke explore the history of tax and tariff delegations, a central issue in the debates over the Trump Administration's tariffs[30]—and one debated by the justices in *Learning Resources*.[31] They trace Congress's early practice with respect to both external and internal taxes, emphasizing that Founding-era tariff statutes were typically detailed and that the limited delegations they contained were driven by functional necessities of tax design rather than by any understanding that the President could determine the objects or rates of taxation. They argue that this history reveals a consistent structural principle: Congress delegated what it had to but retained control over core policy choices. Modern claims of sweeping presidential tariff authority sit uneasily with constitutional structure and early practice.

Susan Morse, Shu-Yi Oei, and Diane Ring focus on the role of the Origination Clause in debates over presidential tariffs. They argue that, although the Origination Clause does not provide a strong limit on President Trump's power to enact his 2025 tariffs under IEEPA, it has underappreciated significance for how we should read statutes authorizing revenue-raising tariffs more broadly. The authors explore the Origination Clause in its historical context and discuss the ways it acts as an effective (and ineffective) tool today.

Rounding out the trio of tariff papers is an essay by Lawrence Liu and Alex Zhang exploring how tariffs—usually considered a highly regressive form of taxation—could be made more progressive. The authors note that other forms of regressive taxation—like consumption taxes—can be designed with principles of progressive distribution in mind. Why not tariffs, too? After discussing the rise of progressivity over the past century, the authors examine recent tariffs and suggest design changes to improve progressivity.

The third panel—"Constitutional Constraints, Constitutional Structure, and Taxation"—featured Brian Galle; David Gamage and Darien Shanske; Miranda Perry Fleischer; and Christine Kim (representing her co-authors Noam Noked and Reuven Avi-Yonah).

Brian Galle asks whether—in the wake of *Moore v. United States* and ongoing revenue problems—the United States should continue moving towards consumption taxes. His answer is no. Professor Galle explores why consumption taxes (like value-added taxes and cash-flow consumption

30. Conor Clarke & Ari Glogower, *Tariffs and the Taxing Power: Historical Lessons for Major Questions and Nondelegation*, 103 WASH. U. L. REV. 1867 (2026).

31. *See* Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026).

taxes) are not a satisfactory response to address inequality. Not only would these consumption taxes struggle to create the progressive tax system that many seek, he argues, but they also carry with them the same constitutional issues (discussed above) that plague wealth taxes.

David Gamage and Darien Shanske explore a broader issue at the intersection of public finance and constitutional law: fiscal federalism. They seek to harmonize conflicting theory and doctrine regarding federal and state fiscal authority by offering up a unified constitutional framework: "Fiscal Federalism Proportionality Review."[32] Their framework aims to promote coherence across fiscal-federalism doctrines by evaluating "(1) the asserted federal interest; (2) the state interest at stake; (3) whether there is reasonable tailoring between means and ends; and (4) whether the federal benefit is proportional to the burden on state autonomy."[33] After outlining their proposal, Professors Gamage and Shanske apply their framework first to federal limits on state revenue powers and then to constitutional limits on federal revenue powers. They emphasize that their flexible framework is also meant to address problems yet to come.

Miranda Perry Fleischer addresses the constitutional friction that can arise between tax exemption and the First Amendment. Professor Perry Fleischer delves into the application of First Amendment viewpoint-discrimination principles to tax exemption for non-profits, and the conflict between many non-profits (most especially universities) and the Trump Administration today. She cautions against the hurried and uneven revocation of tax exemption—aware that the political winds are likely to shift in the future.

Noam Noked, Young Ran (Christine) Kim, and Reuven Avi-Yonah round out our discussion of constitutional issues in taxation by returning to the text of the Constitution itself: the Treaty Clause. Traditionally, tax treaties have required Senate approval under Article II. Increasingly, however, such treaties are being negotiated as executive agreements to avoid the difficulties of formal Senate approval. The three authors examine the rise of executive tax agreements, explore its impact on global tax governance, and discuss the constitutionality of these instruments.

Of course, these papers and topics do not exhaust issues now percolating at the intersection of constitutional law and public finance. For example, in a recent case, the Supreme Court weighed in on the threshold question of what it means to be an *appropriation* for constitutional purposes, reasoning that an appropriation need only identify a source of public funds and

32. David Gamage & Darien Shanske, *Against Doctrinal Siloing: Harmonizing Fiscal Federalism and the U.S. Constitution*, 103 WASH. U. L. REV. 1993, 1995 (2026).

33. *Id.*

authorize their expenditure for designated purposes.[34] And then, of course, there is the Federal Reserve, which has produced its own cottage industry of constitutional litigation and scholarship—most notably over removal protections[35] but also over other aspects of the power and structure of the independent agency.[36] Issues also arise at the state and local level, where balanced-budget requirements and a wave of state-level wealth-tax proposals are generating their own doctrinal disputes.

In short, issues at the intersection of constitutional law and public finance are having a moment. Questions that once seemed technical—control of the budget, tax realization, grant formulas, and the like—have become a primary medium through which foundational constitutional principles are contested.

In what's left of this introduction, we take up one more question: Why? After all, constitutional issues in this area were not always so salient. One nice story that emphasizes this change involves the great tax scholar Boris Bittker, who was asked to present his views on the constitutional limits to the taxing power at a 1987 American Bar Association meeting. Reviewing the issue in preparation, Bittker joked that he might cancel his trip: He had nothing to say.[37] Gillian Metzger has likewise argued that, for many years, appropriations law—the lifeblood of U.S. government activity—has been "ignored" or "marginalized" in various ways.[38] What has changed? Why do constitutional issues in public finance seem to garner so much more attention and interest today?

We do not mean to be obtuse. Many observers will quickly place the relevant changes in norms, practice, and doctrines at the doorstep of an overfamiliar five-letter proper noun: Trump. But we also don't want to be reductionist. Yes, many controversies in law and policy stem from the actions of the Trump Administration—and many of the topics gathered in this volume have something to do with Trump, too. Nevertheless, several broader themes—distinctive to public finance and more general than Trump—are worth drawing out.

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34. Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., 601 U.S. 416 (2024).

35. *See* Trump v. Cook, No. 25A312 (S. Ct. argued Jan. 21, 2026); Maggie Haberman & Colby Smith, *Trump Has Draft of Letter to Fire Fed Chair. He Asked Republicans if He Should Send It.*, N.Y. TIMES (July 19, 2025), https://www.nytimes.com/2025/07/16/us/politics/trump-powell-firing-letter.html [https://perma.cc/N9P4-3RQG].

36. *See* PETER CONTI-BROWN, THE POWER AND INDEPENDENCE OF THE FEDERAL RESERVE (2016); Brian Galle & Aziz Z. Huq, *The Constitutional Money Problem*, 92 U. CHI. L. REV. 333 (2025); Daniel K. Tarullo, *The Federal Reserve and the Constitution*, 97 S. CAL. L. REV. 1 (2024); Aditya Bamzai & Aaron L. Nielson, *Article II and the Federal Reserve*, 109 CORNELL L. REV. 843 (2024).

37. Boris I. Bittker, *Constitutional Limits on the Taxing Power of the Federal Government*, 41 TAX LAW. 3, 3 (1987); *see also* Clarke & Glogower, *supra* note 3 (briefly recounting this story).

38. Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075 (2021).

We begin by noting that every national government has a public finance system—some method of transferring resources from private to public (and back again as needed).[39] The United States government need not, as a matter of first principles, do many of the specific things it does, such as print commemorative coins[40] or fund research on how shrimp respond to stress.[41] But the United States, and every government like it, must have a basic system of public finance in place if it is to do anything at all. The construction of such a system is a consideration almost antecedent to (or at least always intermingled with) questions about the proper ends of government—that is, what it should pay for and why.[42] This truism—that governments must raise money to spend it—makes public finance a persistent focal point of conflict.

That basic feature of government also generates additional reasons why public finance is a distinctive crucible for constitutional conflict in the United States. First, the Constitution says a lot about it. The U.S. Constitution does not contemplate a Department of Justice or a Department of the Interior (much less a Board on Geographic Names[43] or an Arctic Research Commission[44]). But it does contemplate a Treasury,[45] the coining and valuing of money,[46] and taxes[47]—along with procedural and substantive limitations specific to taxes.[48] There are clauses on borrowing,[49]

39. Of course, the contours of this claim can get complicated. What is a government? What are public and private? We make the broad descriptive claim without exploring these contours, but for some discussion see generally Conor Clarke & Henry Hansmann, *Special-Purpose Governments*, 92 U. CHI. L. REV. 633 (2025).

40. JACOB R. STRAUS, CONG. RSCH. SERV., IF10262, COMMEMORATIVE COINS: AN OVERVIEW (2026).

41. Nell Greenfieldboyce, *'Shrimp On A Treadmill': The Politics of 'Silly' Studies*, NPR (Aug. 23, 2011), https://www.npr.org/2011/08/23/139852035/shrimp-on-a-treadmill-the-politics-of-silly-studies [https://perma.cc/9G9R-E4YB].

42. ADAM SMITH, THE WEALTH OF NATIONS bk. 5, ch. 2, pt. 2, 777 (Edwin Cannan ed., Mod. Libr. 1937) (1776) ("The subjects of every state ought to contribute towards the support of the government . . . ."); JOHN LOCKE, TWO TREATISES OF GOVERNMENT § 140, at 163 (Ian Shapiro ed., Yale Univ. Press 2003) (1690) ("It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it.").

43. 43 U.S.C. § 364.

44. 15 U.S.C. § 4102.

45. U.S. CONST. art. I, § 9, cl. 7.

46. U.S. CONST. art. I, § 8, cl. 5.

47. U.S. CONST. art. I, § 8, cl. 1.

48. U.S. CONST. art. I, § 7, cl. 1; *see also* Susan C. Morse, Shu-Yi Oei & Diane M. Ring, *The Origination Clause and the President's Tariffs*, 103 WASH. U. L. REV. 1897 (2026). For the limits, see U.S. CONST. art. I, § 9, cl. 4 ("No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken."); U.S. CONST. art. I, § 8, cl. 1 ("[A]ll Duties, Imposts and Excises shall be uniform throughout the United States.").

49. U.S. CONST. art. I, § 8, cl. 2 ("The Congress shall have Power . . . . To borrow Money on the credit of the United States.").

appropriations,[50] and accounting;[51] there are various provisions that mediate between the federal and state governments on financial matters.[52] Arguably, the Constitution says more about public finance than any other substantive area of law. And, because the Constitution has a lot to say, it makes sense that American conflicts over public finance would have more of a constitutional valence than a counterfactual world where the entire public finance system flows from something like the Necessary and Proper Clause.[53]

And it is unsurprising—given all these textual commitments, the importance of the subject, and the specific important history that preceded the Constitutional Convention and ratification—that there would also be a distinct *post*-ratification constitutional history of practice concerning public finance. Many of the early Republic's most testing moments concerned money: the treatment and assumption of the Revolutionary War debt, the First Bank of the United States, and the Whiskey Rebellion—just to name a few.[54] And many of the legal institutions crafted in those early years continue to shape debates over constitutional structure today. In 2020, for instance, the Supreme Court held that statutory removal protections for the director of the Consumer Financial Protection Bureau violated the separation of powers.[55] In her dissent, Justice Kagan relied on longstanding history to support the statutory provision, claiming that Congress has long given "a measure of independence to financial regulators."[56] One of the earliest U.S. financial institutions was the Sinking Fund Commission—tasked with managing the war debt by purchasing debt securities and composed of five members, including the Chief Justice.[57] Today, all sides of the Court seem to agree that this history is special—and of special importance. In the recent *Trump v. Wilcox* litigation, the Supreme Court

50. U.S. CONST. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.").

51. *Id.* ("[A] regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.").

52. U.S. CONST. art. I, § 10, cl. 2 ("No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports."); U.S. CONST. art. I, § 10, cl. 3 ("No State shall, without the Consent of Congress, lay any Duty of Tonnage.").

53. *See* U.S. CONST. art. I, § 8, cl. 18 ("The Congress shall have Power . . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.").

54. For a general discussion of these and related issues, see MAX M. EDLING, A HERCULES IN THE CRADLE: WAR, MONEY, AND THE AMERICAN STATE, 1783–1867 (2014); for some discussion of the debt-related history, see Conor Clarke, *The Debt Limit*, 101 WASH. U. L. REV. 1417, 1430 (2024).

55. Seila L. LLC v. Consumer Fin. Prot. Bureau, 591 U.S. 197 (2020).

56. *Id.* at 285 (Kagan, J., dissenting).

57. An Act Making Provision for the Reduction of the Public Debt, ch. 47, 1 Stat. 186 (1790); *see also* Christine Kexel Chabot, *Is the Federal Reserve Constitutional? An Originalist Argument for Independent Agencies*, 96 NOTRE DAME L. REV. 1, 32–52 (2020).

granted an emergency stay that affirmed robust presidential removal power over many independent agencies but carved out an exception for the Federal Reserve, describing it as "a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States."[58] The Supreme Court's increasing reliance on originalism and history-and-tradition as interpretive lodestars has made such historical inquiries—what Hamilton did at Treasury and how the First Congress structured its tariff statutes—more important.

Finally, the renewed importance of these issues may simply reflect polarization, gridlock, and growing skepticism of the administrative state—all features of the age of executive lawmaking in which we now find ourselves. For many reasons—sorting and institutional change among them—Congress is widely seen as doing less landmark legislating; more of the important policy decisions are determined by the President and in the executive branch.[59] Conflict over the annual appropriations process has become a recurring nightmare—as have fights over the control, interpretation, and execution of existing funding authorities. And we are in the middle of a moment of legal skepticism about the scale and scope of the administrative state.[60] If constitutional law is increasingly used to restrict that state, it is only natural that arguments about public finance would be employed as well—as arguably we see in *Moore* and other cases.

The papers collected in this volume do not offer a broad theory of the moment—though they respond to it in various ways. They are a mix of doctrinal mapping, historical recovery, and normative critique—each proceeding from the conviction that the law of public finance is no technical backwater. We hope readers will treat the volume not as a unified statement about where constitutional public finance is heading but as evidence of how much careful work the field now demands and as an invitation to undertake it.

58. Trump v. Wilcox, 145 S. Ct. 1415, 1417 (2025).

59. The literature on this issue is vast. For some classic starting points, see SARAH A. BINDER, STALEMATE: CAUSES AND CONSEQUENCES OF LEGISLATIVE GRIDLOCK (2003), and David R. Jones, *Party Polarization and Legislative Gridlock*, 54 POL. RSCH. Q. 125 (2001).

60. Gillian E. Metzger, *Foreword: 1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1 (2017).