

Trump's Song of Sedition: America's Worst President

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The United States President serves as both head of state and head of government, a relatively rare combination in modern Western countries. The President must lead in matters of policy and in symbolic ways as chief public representative. The record for Donald J. Trump's administration makes assessing his Presidency an alarmingly easy task—as head of both state and government, Trump has proven a monumental failure.

President Trump swore faithfully to execute the office of President and, to the best of his ability, to preserve, protect, and defend the Constitution of the United States. Yet, with few exceptions, Trump has undermined rule of law, blurred separation of powers, enriched himself at public expense, and weakened civil liberties. Moreover, his indecency and lies undermined democracy and the nation he attempted to lead, imperiling the American experiment's future.

Early 21st-century American society inherited a deep, rich tradition of valuing and championing liberty, equality, democracy, and respect for law. Yet, just as these values came under increasing assault from abroad and within, Americans elected a President who valued these traditions less than all earlier presidents. As he shattered norms and traditions and repeatedly violated laws, Trump opened the way for even worse from successors. Here we examine Trump's unprecedented failings as head of state and head of government.

Rule of Law

If we gauge a nation's performance in terms of economic prosperity, peace, freedom, and lack of corruption, the single biggest determining factor in ensuring that performance is citizens' respect for rule of law. Few things, if any, matter more to a nation's success and longevity. Rule of law depends on a citizenry collectively respecting those boundaries. We tell one another and ourselves that the words we ascribe to law—*due process, equality, justice*—carry

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force and meaning. Against cynicism, we believe we are ruled not by raw power, but by these ideas underlying rule of law.

Humanity's greatest achievement may be subordinating government to law. The English achieved some measure of it after eight centuries of struggle, following Alfred the Great's codifying common law (9th century), the Magna Carta (13th century), and the Glorious Revolution (17th century). Through these developments and others like them, law became a shield for the English populace. As an English colony, we inherited this unique achievement that—at the time—made English-speaking peoples the freest in the world. Upon that freedom, American Founders expanded and refined our Constitution and subsequent amendments.

This remarkable inheritance, however, we must treat with care. Throughout Donald Trump's career, including his Presidency, he demonstrated that knew little and cared less about the U.S. Constitution as a constraint on government; Trump repeatedly, boastfully abused legal process against the weak and against anyone who crossed him; explicitly advocated using regulation and prosecution for political score-settling; and regularly expressed open contempt for impartiality, ethical use of legal process, and rule of law to restrain the powerful as well as the common.

Election Lies and Insurrection

Following a failed re-election bid in 2020, Donald Trump worked relentlessly to overturn the results, spurring one of the most dangerous attacks on democracy in American history.¹ Democracy requires the consent of losers: for over 220 years American democracy prided itself on peaceful transfers of power; and in all of that time, no President who lost an election sought to subvert the will of voters and reject Electoral College results—until Donald Trump.² Despite a massive pandemic and faltering economy, Trump's post-election focus remained firmly on overturning election results and undermining the democratic system he

¹ For months leading to Trump's re-election bid in 2020, he worked to undermine Americans' trust in the election—the very essence of our democratic system—with lies about fraudulent mail-in ballots (despite a pandemic leaving many with no option other than mail-in voting).

² Although Abraham Lincoln's election led some southern states to secede, no one doubted, questioned, or undermined the legitimacy of his election.

swore to defend. For weeks Trump spawned and repeated lies and unfounded conspiracy theories about faulty voting machines and destroyed or fabricated ballots—allegations without evidence and allegations universally rejected in over 60 court cases, many presided over by Trump-appointed judges. But with repetition and time, many of Trump’s supporters believed the lies; his victory became a landslide and those who denied it were either naive or part of a vast conspiracy.

Trump used these false election-fraud allegations to justify his lawlessness. “When you catch somebody in a fraud, you’re allowed to go by very different rules,” he argued. “You don’t concede when there’s theft involved. Our country has had enough. We will not take it anymore.”³ Just weeks before his term ended, Trump pressured Georgia’s Republican secretary of state to “find” enough votes to overturn Joe Biden’s win in the state’s Presidential election and threatened state officials with criminal offense if they failed to do his bidding.⁴ Of course, it is both a federal and a state crime to request, solicit, or ask anyone else to falsify returns or falsify reports of votes, precisely what Trump did more than once.⁵ Trump never expressed shame or contrition for his actions. By refusing to accept defeat, Trump repeatedly urged false hope in his supporters and ultimately urged them to violence.

Trump’s insurrectionism frequently included messages to ignore unfavorable court rulings. “These States ‘election laws’ were made up by local judges & politicians, not by their Legislatures,” he tweeted referring to states that voted for Biden. Trump told his followers, “the whole State Election” should be discarded. When the Supreme Court refused to endorse Trump’s legal maneuverings to overturn the election, he huffed, “The U.S. Supreme Court has

³ “Donald Trump Speech ‘Save America’ Rally Transcript January 6,” 6 January 2021, available at <https://www.rev.com/blog/transcripts/donald-trump-speech-save-america-rally-transcript-january-6>.

⁴ Georgia counted its votes three times before certifying Joe Biden’s win in that state by a 11,779 margin.

⁵ Both Georgia state law and federal election law make Trump’s pressure on Georgia officials a criminal act. Georgia law says it is illegal to cause someone else to participate in election fraud—by soliciting, requesting or commanding it. See GA Code § 21-2-604 (2016). At the federal level, anyone who “knowingly and willfully deprives, defrauds or attempts to deprive or defraud the residents of a state of a fair and impartially conducted election process” breaks the law. See 52 U.S. Code 20511. In addition, Trump likely violated 18 U.S. Code 241, which makes it illegal to participate in a conspiracy against people exercising their civil rights.

been totally incompetent and weak on the massive Election Fraud” and demanded that Republican Senators “step up and fight for the Presidency” because “Courts are bad” for failing to overturn the election.⁶

Trump’s attempt to undermine and overturn the national election not only shattered norms and traditions, but also sowed seeds for insurrection, violence, and civil unrest by his supporters—saying it comes from a love of country. On the very day Congress planned to certify the 2020 Presidential election results, Trump told supporters, “If you don’t fight like hell, you’re not going to have a country anymore,” and then told the crowd to head to the Capitol to deliver that message.⁷ Immediately mobs descended on the Capitol—the world’s greatest symbol of self-government—in a violent crescendo to Trump’s coup attempt. Seditious broke into the Capitol and murdered police, smashed windows, smeared feces on walls, and destroyed property, even in the House and the Senate chambers and Congressional offices. Fortunately staffers rescued Electoral College ballots from the Senate floor before the mob could burn them.

Yet for all of the tyranny perpetrated by Trump and his supporters, the coup attempt revealed pathetic emptiness. As at many Trump rallies and online forums, the Capitol insurrection featured dazed men wandering around carrying Confederate flags, repeating outlandish conspiracies, and wearing furs, Viking horns, and face paint. Rather than lead a mighty revolt—like Julius Caesar or Napoleon—Trump led a vicious pack of performance artists unable to achieve any significant success. As a result, many viewed Trump’s coup attempt not as a constitutional crisis, but rather mere ego doomed by incompetence and institutional opposition. Trump, however, revealed some civic weaknesses he or someone else may exploit later.

Rather than condemn the Capitol attack, Trump embraced it. As his supporters stormed the Capitol, Trump initially rebuffed requests to mobilize the National Guard, requiring intervention from White House officials to summon them. When House Minority Leader Kevin

⁶ All quotations from tweets by Donald Trump (since deleted by Twitter).

⁷ At the same rally Trump attorney Rudolph Gulliani called for “trial by combat,” and Donald Trump Jr. told Congressmen who refused to vote to overturn the election, “We’re coming for you.”

McCarthy implored Trump to denounce the mob, he refused. Later, after lawyers warned Trump of prosecution for incitement, he asked his followers to go home. Even then Trump insisted that his enemies provoked supporters, enemies who “viciously stripped away” his “landslide election victory.” In a recorded message after the attacks, Trump condemned Vice President Mike Pence for certifying legitimate election results, encouraged the coup by once again calling the election fraudulent, and told his insurrectionists, “We love you. You're very special.” Thus, the alleged leader of the free world encouraged and condoned the first breach of the U.S. Capitol since the British stormed it in 1814 during the War of 1812.⁸

Well before the Capitol revolt, however, Trump signaled his embrace of tyranny and violent mobs. Repeatedly he instructed his followers to wage war, disregard legal constraints, and overturn Trump’s electoral loss by any means necessary. He welcomed violent supporters to silence protesters at rallies and signaled that any election defeat would be illegitimate. He refused to agree to a peaceful transition of power and told the Proud Boys—a far-right street militia—to “stand back and stand by.”⁹ Trump fumed and lied, day after day, that his legitimate election loss was fraudulent and unjust. At a rally in Georgia before the Capitol attack, Trump said of Democrats, “They’re not taking this White House. We’re going to fight like hell.”¹⁰ The storming of the Capitol, then, proved merely the crescendo of a long-running song of sedition—of treason—against the United States government.

Undermining Rule of Law

Frequently Trump set himself above the law. During an investigation into Russian interference during the 2016 elections and links between Trump associates and Russian officials, a special prosecutor’s team threatened to uncover unflattering information about Trump, his family, his associates, his campaign, and his business. Ultimately the inquiry did reveal criminal

⁸ Puerto Rican terrorists shot five Members of Congress inside the U.S. House Chamber in 1954.

⁹ Ed Pilkington, “‘Stand back and stand by’: how Trumpism led to the Capitol siege,” *The Guardian*, 6 January 2021, available at <https://www.theguardian.com/us-news/2021/jan/06/donald-trump-armed-protest-capitol>.

¹⁰ “Donald Trump Rally Speech Transcript Dalton, Georgia: Senate Runoff Election,” 4 January 2021, available at <https://www.rev.com/blog/transcripts/donald-trump-rally-speech-transcript-dalton-georgia-senate-runoff-election>.

activities during the 2016 campaign, some committed by Trump's closest associates, including his own lawyer, Michael Cohen, and his campaign chairman, Paul Manafort. Yet, as President, Trump denied that any Russian attack occurred, accepted Russian President Vladimir Putin's false denials of responsibility, and avoided determining the full nature of the attack. Again and again, Trump called the Russia investigation a "hoax" and a "witch hunt" even though Special Counsel Robert Mueller determined "that there were multiple, systematic efforts to interfere in our election" and that "the matters we investigated were of paramount importance."¹¹

Equally troubling, however, were the scope, scale, and brazenness of Trump's and his subordinates' lies and obstructions during that investigation. For example, the President asked the FBI director to stop investigating Michael Flynn, who had served as his campaign adviser and as national security adviser, and who had already committed a crime by lying to the FBI.¹² Eventually Flynn pleaded guilty to a felony, "willfully and knowingly making false statements to the FBI," but Trump nevertheless pardoned Flynn. Flynn returned that favor by calling on Trump to declare martial law and to hold a new election after Trump's loss. Trump never condemned Flynn's anti-democratic, seditious suggestions to overthrow the state.

In addition, Trump asked Corey Lewandowski, another former campaign manager, to tell Attorney General Sessions to limit the Special Counsel's investigation to future election interference, thus shielding from scrutiny Trump's prior wrongdoing. Furthermore, Trump threatened to fire Sessions if he failed to meet and discuss the matter.¹³ Other witnesses Trump tried to dissuade, too, to prevent their cooperating with the government; he signaled his

¹¹ "Mueller Statement: Read the Special Counsel's Full Remarks," *Los Angeles Times*, 29 May 2019, available at <https://www.latimes.com/politics/la-mueller-statement-full-remarks-20190529-story.html>.

¹² "The Trump-Russia Timeline," *Just Security*, accessed 29 September 2019, available at <https://www.justsecurity.org/trump-russia-timeline>. After Attorney General Jeff Sessions recused himself from the Russia investigation on the advice of Department of Justice ethics lawyers, Trump directly asked Sessions to reverse his recusal so he could control the investigation and help the President. Also, Trump ordered White House Counsel Don McGahn to have Special Counsel Mueller removed on the pretext of conflicts of interest that Trump's advisers had already told him were "ridiculous" and could not justify removing the Special Counsel. Once that incident came to light in media reports, Trump ordered McGahn to make a false public statement and create a false internal record stating that Trump had not asked him to fire the special counsel, even suggesting that McGahn must comply to keep his job.

¹³ Trump told Lewandowski to tell Sessions he (Sessions) would be fired if he failed to meet and discuss the matter.

willingness to pardon friends who protected him and complained about those who “flipped” and talked to investigators.¹⁴ As a result, these sudden silences made it virtually impossible to establish the exact nature of the relationship between the Trump campaign and Putin’s government.¹⁵ Near the end of his term, Trump did, in fact, pardon numerous advisors and henchmen.¹⁶

Unhappy with the investigation’s result, Trump fired Attorney General Jeff Sessions. When asked why, Trump explained, “As far as I’m concerned, this is an investigation that should have never been brought. It should have never been had . . . It’s an illegal investigation.”¹⁷ Trump repeated such demands and promises in other contexts. For instance, Trump told the head of Border Patrol to break the law by denying asylum seekers entry to the United States, then reportedly told that same official he would pardon Border Patrol agents if they ran into legal trouble following Trump’s orders.¹⁸

Undermining rule of law became typical during Trump’s tenure. He refused to respect judicial independence, criticizing judges who disagreed with him in spite of (or perhaps because of) such criticism’s undermining trust in a separate, independent branch. His attacks on the judiciary even elicited an unprecedented response from Chief Justice John Roberts, followed by a retort from Trump.¹⁹ And when the 9th Circuit Court of Appeals delayed Trump’s plan to cease reviewing asylum applications, he threatened to divide the 9th Circuit into two or three circuits.

¹⁴ These witnesses and advisors include Michael Flynn, Paul Manafort, Michael Cohen, Roger Stone, and other top advisors and staffers.

¹⁵ Ibid.

¹⁶ Because Michael Cohen flipped on Trump and repeatedly criticized him, unlike other Trump conspirators Cohen never received a pardon. But Trump successfully achieved the non-cooperation of Manafort and Stone; and Trump did, in fact, pardon Michael Flynn, Paul Manafort, Roger Stone, and numerous other advisors in the final weeks of his term.

¹⁷ Steve Benen, “Trump Says More than He Should’ve about his Acting Attorney General,” *MSNBC*, 15 November 2018, available at <http://www.msnbc.com/rachel-maddow-show/trump-says-more-he-shouldve-about-his-acting-attorney-general>.

¹⁸ Veronica Stracqualursi, “Trump told officials he would pardon them if they break the law building border wall,” *CNN*, 28 August 2019, available at <https://www.cnn.com/2019/08/28/politics/trump-border-wall-election-day/index.html>.

¹⁹ Mark Sherman, “Roberts, Trump Spar in Extraordinary Scrap over Judges,” *Associated Press*, 21 November 2018, available at <https://www.apnews.com/c4b34f9639e141069c08cf1e3deb6b84>.

Furthermore, Trump obstructed over 20 inquiries about his taxes, business records, the Russia investigation, and other matters. When Trump’s sexual relationships before the 2016 election with adult-film actress Stormy Daniels and Playboy playmate Karen McDougal came to light, Trump sought to use campaign funds as hush money—in violation of federal campaign finance laws.²⁰

Unfortunately, Trump’s disregard for the rule of law extended even to the military. Trump revealed his willingness to give unlawful orders to the military. Although he later retracted the comment in a scripted interview, he stated, “If I say, ‘Do it,’ they’re gonna do it,” he said at one 2016 campaign debate in Detroit. “That’s what leadership is all about.”²¹ In 2020 Trump considered deploying the military to swing states he lost to President-elect Joe Biden in order to “rerun” the Presidential election, prompting all living former Secretaries of Defense to rebuke Trump, to declare election challenges finished, and to stress there is no role for the military in changing election results.²²

Donald Trump eagerly sought to prosecute and punish political opponents and critics. In 2016, he led crowds to chant “lock her [Hillary Clinton] up,” called her “crooked Hillary,” and threatened to prosecute her if he were elected President. Once in office, Trump asked the Justice Department to initiate investigations of Hillary Clinton and other political opponents on several occasions.²³

On many occasions, Trump urged the Ukrainian president to investigate Joe Biden’s son for involvement as director of a gas company; Trump sought to use official government agencies to produce dirt on his Democratic opponent, Joe Biden, and to undercut Biden’s

²⁰ Trump worked with his personal attorney, Michael Cohen, to use campaign funds as hush money.

²¹ Jena McGregor, “The Very Different Ways Clinton and Trump Defined Leadership in the Commander-in-chief Town Hall,” *Washington Post*, 8 September 2016, available at <https://www.washingtonpost.com/news/on-leadership/wp/2016/09/08/the-very-different-ways-clinton-and-trump-defined-leadership-in-the-commander-in-chief-town-hall>.

²² Dan Lamothe, “The Time to Question Election Results Has Passed, All Living Former Defense Secretaries Say,” *Washington Post*, 3 January 2021, available at https://www.washingtonpost.com/national-security/former-defense-secretaries-rebuke-trump-election/2021/01/03/1c708f64-4de5-11eb-b2e8-3339e73d9da2_story.html.

²³ Michael S. Schmidt, “Mueller Report Reveals Trump’s Fixation on Targeting Hillary Clinton,” *New York Times*, 24 April 2019, available at <https://www.nytimes.com/2019/04/24/us/politics/jeff-sessions-hillary-clinton-donald-trump.html>.

chances in the 2020 elections.²⁴ Trump withheld congressionally approved military aid to pressure Ukraine's leaders and then sought to conceal details of that pressure. With assistance from another of his lawyers, Rudolph Giuliani, the President undermined American diplomacy for the sake of helping himself politically.²⁵ He colluded with a foreign power, Ukraine, to influence his 2020 election shortly after the Special Counsel finished investigating whether Trump colluded with a foreign power, Russia, to influence the 2016 one.

Moreover, Trump recommended congressional investigations into President Barack Obama's family agreements concerning a book deal and Netflix films, all consummated after Obama's Presidential term ended.²⁶ This illegal score-settling extended into the private sector as well. When the *Washington Post*, owned by Jeff Bezos, enhanced criticism of Trump's administration, Trump retaliated against Bezos's flagship company, Amazon, by threatening to raise Amazon's shipping costs through the U.S. Postal Service, canceling a pending Amazon contract with the Pentagon, and using antitrust and tax policies to punish Amazon.²⁷

For Donald Trump and his supporters, the corrupt include all who question their own view of facts, not those who violate the law. So long as Trump professed to uphold traditional political, gender, class, and cultural hierarchies, his base remained supportive through scandals and even seditious violence. Truth became whatever advanced Trump's tribe. His ends always justified means; rule of law meant merely rule of the tribal leader.

Separation of Powers and the Imperial Presidency

²⁴ Peter Baker, "Trump Acknowledges Discussing Biden in Call With Ukrainian Leader," *New York Times*, 22 September 2019, available at <https://www.nytimes.com/2019/09/22/us/politics/trump-ukraine-biden.html>.

²⁵ Greg Miller, Josh Dawsey, Paul Sonne, and Ellen Nakashima, "Giuliani Pursued Shadow Ukraine Agenda as Key Foreign Policy Officials Were Sidelined," *Washington Post*, 24 September 2019, available at https://www.washingtonpost.com/national-security/giuliani-pursued-shadow-ukraine-agenda-as-key-foreign-policy-officials-were-sidelined/2019/09/24/ee18aaec-deec-11e9-be96-6adb81821e90_story.html.

²⁶ John Gage, "Trump recommends congressional investigations into Obama family book and Netflix deals," *MSN News*, 16 September 2019, available at <https://www.msn.com/en-us/news/politics/trump-recommends-congressional-investigations-into-obama-family-book-and-netflix-deals/ar-AAHnKdI>.

²⁷ Jonathan Chait, "Trump's Attack on Amazon May Be His Most Egregious Abuse of Power Yet," *New York Magazine*, 23 December 2019.

The United States Constitution delineates authority and responsibility through *separation of powers*. Fundamental to American law, this constitutional feature dictates three separate, independent branches of national government, each with varied duties. Although each branch may hold power roughly equal with the other two, the Founders ultimately vested the most power in Congress—taxing, spending, declaring war, confirming Cabinet members and Supreme Court justices. According to the Founders, because the United States was a republic, the people would govern through elected representatives.

Over time this system broke down. Like a giant centrifuge, the presidency sucked power from the other two branches, often with Congress's acquiescence in legislation enabling greater Presidential regulatory power. Nowadays the United States of America is actually governed as follows: the executive directs, the bureaucracy enacts, the judiciary imposes, and the legislature may or may not do anything at all. Donald Trump did not create this state of affairs—it arose over generations through Presidential administrations of both parties. But Trump perpetuated and extended this power imbalance more than did most of his predecessors. Article 1, section 9 of the Constitution states, "No money shall be drawn from the treasury, but in consequence of appropriations made by law." Yet, in practice, closed-door negotiations with Congressional leadership produce last-minute, continuing resolutions that few Congressmen actually read or negotiate. For his part, Trump signed many continuing resolutions and omnibus bills to remove Obama-era spending caps, to suspend the debt-ceiling borrowing limit, and to balloon the size of government. During the 2016 campaign although Trump pledged to eliminate the gap between federal spending and revenue, in reality he expanded the gap more than any President in American history—even if we discount coronavirus-pandemic-relief measures.

When Congress denied Trump's request to fund his fabled wall along the Mexican border, Trump declared a national emergency and redirected \$8 billion in previously-allocated funds (mostly for military and defense) toward building the wall—a wall Trump had insisted Mexico would pay for. (Contrary to Trump's self-proclaimed skills as a negotiator, he secured less for the border wall after the shutdown than Congress had agreed to before the shutdown.) Trump's move established a precedent that the executive branch could, regardless of whether

an emergency exists, use the National Emergencies Act to spend money however the President chooses and thereby evade long-standing Constitutional checks and balances.

Once authoritarianism breaches the dam of constitutional norms, it only grows. Trump's administration consistently resisted congressional inquiries into wrongful conduct through executive privilege and other means, with regard to both alleged Russian meddling and other administration wrongdoing. Indeed, Trump pursued a near-universal denial of Congressional requests for information and testimony from his administration. And like some predecessors, Trump pushed the limits of executive authority, acting without Congressional approval or advice.

America's Founders understood the need for divisions of authority between and among branches of the federal government, no matter how frustrating to those in power. But today's separation of power no longer maintains balance among the three branches of government originally envisioned by the Founders. Instead, we have two branches, two tribes: (1) the President and his/her supporters in Congress and the judiciary, and (2) a party in opposition to the President, the President's opponents in Congress, and their allies on the bench. In every way imaginable, Trump exacerbated this growing problem.

Emoluments

In *Federalist No. 72*, Alexander Hamilton warned that some future President may treat the office as a get-rich-quick opportunity:

An avaricious man, who might happen to fill the office, looking forward to a time when he must at all events yield up the emoluments he enjoyed, would feel a propensity, not easy to be resisted by such a man, to make the best use of the opportunity he enjoyed while it lasted.²⁸

This threat was no trifle. Our Founders were keenly aware of a British monarchy financially influenced by subgroups of the country, a monarchy using offices to drink at the public trough while a corrupt Parliament and colonial governors looked away.

²⁸ John Spencer Bassett, ed., *Selections from The Federalist* (New York: Charles Scribner's Sons, 1921), 271.

To address these concerns, the Framers included a foreign “emoluments clause” in Article I, Section 9, Clause 8 of the Constitution. This clause prevents the President and other federal officials from accepting, without Congressional consent, “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” Moreover, those Framers included a companion domestic emoluments clause in Article II, Section 1, Clause 7, authorizing a fixed Presidential salary that Congress cannot increase or decrease during a President’s term, and which specifies that the President “shall not receive within that Period any other Emolument from the United States, or any of them.”²⁹ Donald Trump thoroughly violated these precepts. He and his immediate family retained ownership of a global business empire allowing them to profit from dealings with foreign and state governments. Trump’s benefits from foreign officials ranged from trademarks granted to the Trump family by the Chinese government to foreign officials staying in Trump hotels. He lobbied to host a G-7 Summit at his struggling Doral, Florida, resort. By one count, officials from over 20 foreign governments spent money at Trump properties once he assumed office in 2017.³⁰ While he held office, taxpayers and campaign donors provided at least \$8 million to Trump’s family business.

Meanwhile, Trump-supporting political action committees, the Republican National Committee, and the President’s personal re-election committee spent millions at Trump family golf courses, hotels, and restaurants. Trump created a campaign shell company that secretly paid his family and spent almost half of his campaign’s \$1.26 billion war chest.³¹ Even as private expenditures, these payments to Trump properties constituted unethical behavior. Furthermore, violations of the domestic emoluments clause occurred in tax dollars. The military spent millions for refueling stops at a private resort and airfield owned by the Trump family. Trump himself regularly visited his own resorts and hotels while President, particularly Mar-a-Lago in

²⁹ To underscore the importance of this fear, the domestic clause does not contain the foreign clause’s contingent exception for Congressional consent. It expressly forbids even Congress from adjusting the President’s salary during his tenure or permitting him to accept any additional sum from any source.

³⁰ Shelby Hanssen and Ken Dilanian, “Reps of 22 Foreign Governments Have Spent Money at Trump Properties,” *NBC News*, 12 June 2019, available at <https://www.nbcnews.com/politics/donald-trump/rep-22-foreign-governments-have-spent-money-trump-properties-n1015806>.

³¹ Paul Waldman, “The Trump family keeps grifting, to the end and beyond,” *Washington Post*, 18 December 2020, available at <https://www.washingtonpost.com/opinions/2020/12/18/trump-family-keeps-grifting-end-beyond>.

Palm Beach, Florida, with each trip costing millions of dollars to pay for government personnel supporting the President's travel.³² All of these trips resulted in direct payments to Trump-owned businesses and free advertising for his business ventures—a clear violation of the domestic emoluments clause.

Americans expect our government officials to serve us as democratically elected representatives, not serve the wishes and desires of foreign or domestic benefactors. Our elected officials, especially the President, should never use a position to profit from foreign tribute or taxpayer money. But Donald Trump and his family and administration made a repugnant practice into a norm.

Freedom, Civil Liberties, and Civil Rights

Freedom and fundamental civil rights and civil liberties play a central role in the American idea and ideal—among others, the right to speak, to assemble, to worship, to organize, to trade, and to receive due process. Rule of law demands that all citizens respect those ideals enshrined in the Constitution. Trump, though, proved eager to degrade such rights and liberties into a secondary, even tertiary, priorities behind his own goals.

Early in his campaign, Trump signaled his political goals by frequently stoking religious and racial divisions. In September 2015, for example, at a campaign rally, Trump nodded along as a supporter asserted, “We have a problem in this country; it’s called Muslims.” As he continued nodding, saying “right,” and “we need this question!” the supporter asked, “When can we get rid of them [Muslims]?” Trump replied, “We’re going to be looking at a lot of different things,” an open-ended threat to punish or expel Muslims.³³ In November 2015, on the cable talk show *Morning Joe*, Trump elaborated that America needs to “watch and study the

³² Brian Naylor, “Government Watchdog: Trump’s Trips to Florida Costing Taxpayers Millions,” *NPR*, 5 February 2019, available at <https://www.npr.org/2019/02/05/691684859/government-watchdog-trumps-trips-to-florida-costing-taxpayers-millions>.

³³ Brian Klass, “A Short History of President Trump’s Anti-Muslim Bigotry,” *Washington Post*, 15 March 2019, available at <https://www.washingtonpost.com/opinions/2019/03/15/short-history-president-trumps-anti-muslim-bigotry>.

mosques.”³⁴ Four days later, he indicated he would “certainly implement” a database to track Muslims in the United States.³⁵ Two days after that, he falsely asserted that “thousands and thousands” of Muslims cheered in New Jersey when the World Trade Center collapsed on 11 September 2001.³⁶ On 7 December 2015, Trump called for a “a total and complete shutdown of Muslims entering the United States.”³⁷ Three days later, Trump tweeted that the United Kingdom was “trying hard to disguise their massive Muslim problem.”³⁸ On 9 March 2016, Trump lied, “Islam hates us.”³⁹

All of this divisive, anti-Muslim rhetoric during the campaign ultimately resulted in policy. Within days of taking office Trump unveiled a major initiative to restrict immigration through his so-called Muslim travel ban. Despite repeated signals he would seek to ban all Muslims, political realities forced the President to focus on just five majority-Muslim countries: Iran, Libya, Somalia, Syria, and Yemen.⁴⁰ In addition, Trump signed an executive order directing the Secretary of State to suspend immediately all refugee admissions to the United States for 120 days. The executive order indefinitely prohibited entry of all Syrian refugees until the U.S. affected sufficient changes to the refugee-admissions process.⁴¹ Ominously, President Trump even targeted specific nonwhite, Muslim, female Congressional members for

³⁴ Jesse Byrnes, “Trump: You’re Going to Have to Watch and Study the Mosques,” *The Hill*, 16 November 2015, available at <https://thehill.com/policy/national-security/260241-trump-youre-going-to-have-to-watch-and-study-the-mosques>.

³⁵ Alana Abramson, “What Trump Has Said about a Muslim Registry,” *ABC News*, 18 November 2016, available at <https://abcnews.go.com/Politics/trump-muslim-registry/story?id=43639946>.

³⁶ Glenn Kessler, “Trump’s Fuzzy Vision on the Sept. 11 Attacks,” *Washington Post*, 12 September 2019, available at <https://www.washingtonpost.com/politics/2019/09/12/trumps-fuzzy-vision-sept-attacks>.

³⁷ Jenna Johnson, “Trump Calls for ‘Total and Complete Shutdown of Muslims Entering the United States,’” *Washington Post*, 7 December 2015, available at <https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/>

³⁸ Donald J. Trump on Twitter, 10 December 2015, available at <https://twitter.com/realdonaldtrump/status/674934005725331456?lang=en>.

³⁹ Theodore Schleifer, “Donald Trump: ‘I think Islam Hates Us,’” *CNN*, 10 March 2016, available at <https://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/index.html>.

⁴⁰ Using an executive order and not legislation, as arguably required under the Constitution, Trump included visa restrictions on two non-Muslim countries, North Korea and Venezuela, a move critics found mere window dressing to prevent its looking wholly religiously motivated.

⁴¹ During Donald Trump’s Presidency, the number of refugees admitted into the country annually — from 85,000 in 2017 to 12,000 in 2020.

deportation and then fomented support for these actions through encouraging mob chants at political rallies.

To address illegal immigration, particularly along our southern border with Mexico, Trump expanded and escalated a federal policy separating children from parents or guardians with whom they entered the United States illegally. Although adults were prosecuted and held in federal jails, Trump policy placed these children—under the supervision of the U.S. Department of Health and Human Services—often in controversial conditions without adequate food, bedding, soap, toothpaste, and clean clothing. In some cases, Trump’s policy even resulted in children’s permanent separation from their parents through adoption into American families.⁴² Concurrently, Trump moved to end the Deferred Action for Childhood Arrivals (DACA) program, which provided persons who entered the United States as children temporary protection from deportation. Through these actions Trump left no doubt about his racism; indeed, at a political rally he asked, “Who do you like more, the country or the Hispanics?”⁴³ In Trump’s worldview, these two groups are mutually exclusive: Hispanics can never become part of America, and non-Hispanics must choose country over humaneness.

To be clear, Trump is not the first American President to engage in such reprehensible activities. In addition to our long history with slavery and Jim Crow laws, we passed Chinese Exclusion Acts in the late 19th century, excluded Jewish refugees in the 20th century, and interned Japanese Americans during the 1940s. Predictably, Trump cited Franklin Roosevelt’s Japanese internments to support his own moves against Muslims. Roosevelt “is a President highly respected by all; he did the same thing,” Trump told *ABC News*.⁴⁴ Do Roosevelt’s misdeeds excuse Trump’s?

⁴² Garance Burke and Martha Mendoza, “AP Investigation: Deported Parents May Lose Kids to Adoption,” *Associated Press*, 9 October 2018, available at <https://apnews.com/97b06ced0c149c492bf25a48cb6c26f>. At the end of Trump’s Presidency, the whereabouts of the parents of 666 children seized at the border by U.S. officials remain unknown.

⁴³ Donald Trump, Fox News video, via Matt Rogers Twitter available at <https://twitter.com/politidope/status/1173946850652676097>.

⁴⁴ John Santucci, “Donald Trump Stands by Barring Muslims Despite Bipartisan Criticism,” *ABC News*, 8 December 2018, available at <http://abcnews.go.com/Politics/donald-trump-stands-barring-muslims-criticism/story?id=35640361>.

Other Trump actions, while legal, ran counter to modern American ideals and norms. Following the Saudi murder and dismemberment of *Washington Post* columnist Jamal Khashoggi, Trump refused to reprimand Saudi Crown Prince Mohammed bin Salman despite bin Salman's involvement in the murder. Furthermore, Trump repeatedly embraced North Korean dictator Kim Jong-un, implicitly overlooking and even praising the dictator's horrific human rights abuses. Trump's pattern of embracing and validating abusive dictators applied to China, Russia, Iran, and Venezuela as well.⁴⁵

In terms of economic freedoms, Trump repeatedly embraced sweeping protectionist policies that undercut economic freedom and prosperity. In 2018 he enacted (without Congressional legislation) a 25 percent tariff on imported steel and a 10 percent tariff on aluminum.⁴⁶ Rather than assist domestic producers, Trump's tariffs caused other countries to implement reciprocal tariffs, hurt American exporters, and encouraged crony-lobbying for exemptions.

Whether implementing domestic policies or representing American interests abroad, the Trump administration actively undercut traditional American values of human dignity and liberty.

A Future without Leadership, Decency, and Truth

When Donald Trump took the oath of office and offered an inaugural address, he chose not to inspire as predecessors had done. Instead, he spoke of "American carnage" and described a broken, shattered, dystopian country. If we can say anything positive of the address, we conclude that at least it featured complete sentences, a departure from the incoherent prose in most of Trump's interviews and extemporaneous speeches. If not bragging about himself, Trump used his substandard English to demean, bully, and belittle others.

⁴⁵ Jay Nordlinger, "Trump and Dictators," *National Review*, 20 October 2020, available at <https://www.nationalreview.com/2020/10/trump-and-dictators>.

⁴⁶ Trump based his authority on the Section 232 national security exemption to the 1962 Trade Expansion Act even though he later admitted the tariffs were in response to a Canadian tariff on dairy products, not to national security concerns.

When Trump did string together enough words to form a coherent argument or philosophy, he often professed this post-modern morality: Truth is whatever you wish it to be; you can set the law aside when you can manage; empirical economic evidence of supply and demand doesn't matter; the problem of national debt belongs to later generations, not to us. Trump's morality depends on the situation and on the preferences of powerful tribal allegiances of those involved. No absolute truths or absolute rights exist. Although counting the number of Trump lies seems impossible, some news organizations found dozens upon dozens each day, some trivial, but many significant assaults on reality itself.⁴⁷ By one count, during his term Trump made more than 26,000 false or misleading statements.⁴⁸

When the pandemic of coronavirus disease 2019 came to fruition, Trump's erratic temperament undermined his administration's ability to lead. Rather than seek interstate and global cooperation, Trump fostered division and finger-pointing. Rather than promote truth and solutions, Trump demanded loyalty and public flattery.

Over time, devaluing the integrity of public discourse, commitments, and leadership undermines democracy because democracy requires that citizens reason together and peaceably adjudicate differences. Too often, we underestimate the long-term damage this degradation causes society. Our sacred traditions, like subordinating government to law, are fragile. These modern norms work like spiderwebs: if we break one part, the entire system becomes exponentially weaker.

Donald Trump's Legacy

During Trump's presidency America became less free, less stable, more divided, deeper in debt, less lawful, unhealthier, and less content. The nation buckled under the weight of two deadly, infectious pandemics—the coronavirus disease which Trump failed to address

⁴⁷ Glenn Kessler, Salvador Rizzo, and Meg Kelly, "President Trump Has Made 12,019 False or Misleading Claims over 928 Days," *Washington Post*, 12 August 2019, available at <https://www.washingtonpost.com/politics/2019/08/12/president-trump-has-made-false-or-misleading-claims-over-days>.

⁴⁸ "Trump Claims Database," *Washington Post*, accessed 3 January 2021, available at <https://www.washingtonpost.com/graphics/politics/trump-claims-database>.

adequately, and the tens of thousands of Trump lies that will linger for years, rotting our democracy from within.

Ancient Romans considered their empire and their progress eternal; so did Europe before World War I. Yet, Romans who lived through the fall of their republic and empire, and Europeans before and during World War I and World War II, surely understood how quickly a governing system can fail. In addition to the Western examples of Rome and 20th-century Europe, we can cite other examples of startling, speedy societal collapse: Mayans, Hittites, Mauryan and Gupta empires in India, Han and Tang dynasties in China, and Mongols. Once these societies deteriorated, centuries of deprivation followed.

Mark Twain allegedly remarked that history does not repeat itself, but it often rhymes. Whereas America lacks an historical comparison to Trump, the Roman Republic offers some frightening warnings of what can happen to the American experiment. Ancient Roman Senator Catiline (108–62 B.C.) lost a consular election in 63 B.C. he considered his by right and refused to admit defeat. So he cobbled together a coalition of working-class Romans, some wealthy oligarchs, and foreign soldiers to stage an armed insurrection. The Catiline Conspiracy relied not upon ideological aims or policy differences. Instead, it was built upon Catiline's sheer vanity and lust for power. This poorly planned and badly executed plot Roman statesman Cicero easily exposed, ensuring its defeat. Although not entirely evident to those alive at the time, with hindsight we see just how rotten ancient Rome had become—with truth and honor subordinated to pleasure, corruption, and luxury. Catiline failed. But just three years later, Julius Caesar rose to power as an elected consul. Caesar, of course, learned from Catiline's mistakes and successfully declared himself emperor for life, destroying the Republic and ushering in the Roman Empire.⁴⁹

Fortunately, Donald Trump shared Catiline's incompetence. But the next would-be American tyrant may be wiser, shrewder, more ambitious. As a precursor to some future Caesar-like President who is more corrupt and more destructive, Trump may ultimately appear

⁴⁹ Spencer Ackerman, "The GOP's Replaying the Conspiracy That Predicted Rome's Fall," *Daily Beast*, 8 January 2021, available at <https://www.thedailybeast.com/the-gops-replaying-the-conspiracy-that-predicted-romes-fall>.

solely in an historical footnote, where we find the Catiline Conspiracy. Though our future dictator will gain attention, Donald Trump undoubtedly exposed and expanded America's civic vulnerabilities. He demonstrated how easily a society of Cicero can become a mob of Caesar.

Donald Trump mocked political norms and qualifications. Andrew Sullivan noted,

[Trump] had never been elected to office before; he was a businessman and a brand, not a public servant of any kind; he had no serious grip on the Constitution, liberal-democratic debate, the separation of powers, or limited government. His tangible proposals were slogans. He referred to his peers with crude nicknames, and his instincts were those of a mob boss. But he offered himself, rather like the *populares* in Rome, as a riposte and antidote to the political and cultural elite, the *optimates*. A brilliant if dangerous demagogue, he became the first presidential candidate to run not as the leader of a political party, or as a disciple of conservatism or liberalism, but as a fully fledged strongman who promised unilaterally to 'make America great again.' It is hard to equate any kind of republican government with a leader who insists, of any American problem, "I, alone, can fix it."⁵⁰

Donald Trump's style and philosophy—if we can call them such—lack comparison in United States history. When we blithely mock our own systems with tribal glee, when we destroy institutions, when we take political pleasure in zero-sum fights, when we desecrate rule of law, we must remember that brutality and wilderness may ensue.

Donald Trump's failings as both the head of state and head of government created an unprecedented assault on American liberty, equality, democracy, and respect for law. As he departed from office, Trump held one distinction only: America's worst President.

⁵⁰ Ibid.