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Magazine

How Do We Contend With Trump's Defiance of 'Norms'?

First Words

By EMILY BAZELON JULY 11, 2017

If there was anything a teenager in America could count on, just a few years ago, it was that she could stand up and ask a question at a political event without fear that a future president would try to grind her into chum. It didn't take long for our last campaign to change that. At a New Hampshire forum in October 2015, an 18-year-old college student named Lauren Batchelder questioned whether Donald Trump was a "friend to women" while asking about equal pay and female autonomy. The next morning on Twitter, Trump called Batchelder "arrogant" and her manner "nasty," pointing a torrent of supporters' violent threats her way.

Until that moment, it went without saying that a presidential candidate would not use his platform to vilify an ordinary young woman — a wildly disproportionate unleashing of power against a person with little of her own. But assumptions like these are more traditions than formal rules — boundaries made of sand. They're norms, imprecise and ambient. They lay out what ought to be, according to unwritten social expectations, and not what must be, according to law. Norms are entirely up to us — they exist only as long as there's a consensus, even unspoken, to preserve them. Such consensus is probably as important as law to the functioning of a democracy. But it's also fragile. We say that laws are "broken" — a definitive act of rupture. Norms merely erode, slowly, amid argument and equivocation about the significance of a breach, until they've been destroyed.

Over the past few decades, political scientists have concentrated their study of norms on developing democracies, where they came to see such informal structures as tricky things — the lack of clear-cut consequences for violating them made them permeable. But in a 2012 paper, the political scientists Julia Azari and Jennifer Smith argued for a return to studying norms in American politics, an idea that turns out to have been prescient: In 2017, our attention has been snapped back to norms by a president who seems completely unconstrained by them.

When Trump defies norms, his most ardent supporters exult in the transgression. Republicans stand on the sidelines, occasionally flapping their hands. Rarely do many of them — including the legislators with the most power to pressure a sitting president — seem inclined to take the risk of trying to rein him in. "The norms Trump is testing are proving vulnerable because the price of defending them seems very high to the people who are being called on to pay it," Scott Shapiro, a professor at Yale Law School, told me. Some of the most intense, bipartisan pushback has come from people like lawyers and diplomats, professional guardians of subtle rules. In June, Hui Chen stepped down from a post in the fraud section of the Justice Department, citing conduct from the president she "would not tolerate seeing" in the companies she investigated; this month, Walter Shaub Jr., director of the Office of Government Ethics, resigned to take a new job after months of chiding the White House, telling NPR "the ethics program needs to be stronger than it is."

Trump's flouting of norms was the siren song of his candidacy, and it has become a defining feature of his presidency. Along the way, he has exposed flaws in the structure of American governance that haven't surfaced in modern times, mainly because no other president has probed them. Norms seemed like enough to keep a president from using his office for self-enrichment, until Trump declared "the president can't have a conflict of interest" and delighted that being elected had made his brand "hotter." It seemed to go without saying that a president would not rail against the independent judiciary, call the press the "enemy of the people," attack an investigation ordered by his own Justice Department, blurt Israeli intelligence secrets to

Russia or ask his cabinet to fawn over him on TV.

But arguments that begin "it goes without saying" are easy to skewer. Though some of our core democratic values are wrapped up in norms, it's still easy to ask: If no laws have been broken, what's the problem? And if Trump ran as "the middle finger of the American electorate," as Matthew Continetti wrote in National Review, then it's natural enough for his supporters to dismiss talk of "norms" as the useless hand-wringing of a worse-than-useless establishment. The language the mainstream media uses to signal dismay over a norm-burning fire — words like "unusual," "remarkable," "startling" and "unprecedented" — suggests change, not destruction. Even when a consensus exists that a vital norm is being violated, it's hard for people to see the immediate impact on their lives. Right now, for instance, polls register deep disapproval not for Trump's norm-defying calls to shut down the Russia investigation but for his party's fairly conventional effort to strip huge amounts of funding from government health programs. So far, even in this presidency, it's bad policy — not bad behavior — that unifies opposition across party lines.

Why should we be bound by cotton-candy norms, anyway? Isn't it good to break with custom? It's true that dependence on norms is not an unqualified good. In older political-science literature, unwritten rules were viewed as "ill defined to meet the necessities of self-government," as a classic 1949 study of Southern politics put it. Formal rules are transparent and can be inclusive; norms, at their worst, can be stultifying and oppressive, taking over in smoke-filled back rooms and benefiting the already powerful. And if a norm proves really necessary, sometimes the better practice is to enact it as an actual law. "After Watergate," the Dartmouth government professor Brendan Nyhan points out, "Congress passed laws to prevent behaviors which were previously governed by the norms that Nixon violated." The country needed sturdier guardrails, so the Legislature hammered them into place.

Trump could prompt a similar rethinking. A movement is afoot among the states, for example, to require presidential candidates to release their tax returns before they're permitted to appear on the ballot, turning a formerly unbroken 40-year tradition into a legal necessity. Trump's refusal to separate from his business interests could prompt Congress, in the future, to impose tougher ethics rules on the White House. Of course, this kind of pushback — lawmakers or judges going out of their way to combat the president's behavior — runs a risk, too: It can lead to a place where *nobody* is abiding by norms. Some saw that danger in the progress of Trump's beleaguered travel ban through the lower courts, where Democratic appointees blocked the order in its entirety, in contrast to the Supreme Court's eventual partial approval. "I detest much of the president's norm-defying behavior," Jack Goldsmith, a Harvard law professor who served in George W. Bush's Justice Department, wrote on the blog Lawfare. "But I worry at least as much about norms related to our governance that have been breached and diminished *as a result of, or in response to, Trumpism*." He warns of a "downward spiral of tit-for-tat norm violations" that undermines institutional legitimacy in general.

Outside the government, Trump can call on a force with greater social influence: the "sycophantic media," as Bob Inglis, a South Carolina Republican who, as a congressman, helped draft the impeachment articles against Bill Clinton, writes. In a recent op-ed in The Washington Post, Inglis argued that outlets like Fox and Breitbart have made it far harder for Republicans to take on Trump than it was for them to confront Nixon, by "defying the journalistic calling to test and to probe the government's claims." In other words, the conservative and far-right media are eroding the norms of the fourth estate to aid Trump in eroding the norms of the presidency.

Perhaps it makes sense to give the institutions surrounding Trump extra leeway to assert themselves. The "checks and balances" of our system of government are themselves a kind of norm, with boundaries not fully enumerated in the Constitution — that's why presidents and Congress tangle to this day over the power to declare war. If the goal is to prevent both short-term crises and long-term corrosion, what matters is that other parts of the government act, not that they do so perfectly. Trump's Justice Department has, crucially, defended the norm that frees federal investigations from the president's interference. And nearly every state — red, purple and blue — has fortified norms of privacy and federalism by refusing to turn over sensitive voter data to a White House commission led by Kris Kobach, an architect of voter suppression.

The question is what happens after each of these norms has been attacked. Imagine that Trump leaves office with the norms of the presidency damaged but not irreparably so. The next occupant of the office doesn't berate 18-year-olds or female

TV hosts. He or she respects the separation of powers, sticks to the facts, owns no hotels where foreign dignitaries go to curry favor. Will we quietly move on to a giant erosion-repair project, or do we have to reckon with how this damage was allowed to happen in the first place? At the moment, even the question itself seems like an act of collective faith that our norms of government — including the most precious ones — will hold at all.

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