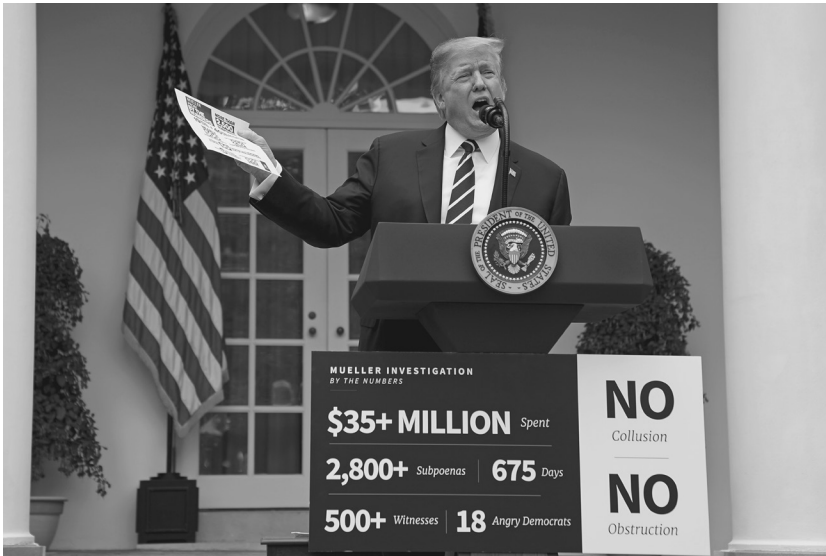


## An Embattled, Defiant President



**Photo 11.1** President Trump frequently denounced Robert Mueller's investigation into Russian interference in the 2016 presidential election, in this instance from the Rose Garden at the White House May 22, 2019. His oft-repeated message was “no collusion and no obstruction,” but Mueller's report identified extensive interactions between the campaign and Russians as well as multiple examples of possible obstruction.

**D**onald Trump seemed to thrive on interminable battles at home and abroad. His most immediate opponents were a mile-and-a-half down Pennsylvania Avenue on Capitol Hill. Senate Republicans were largely passive, occasionally objecting to presidential policies (for instance, withdrawing U.S. troops from border areas between Turkey and Syria) and more frequently expressing regret over Trump's abrasive style and personal attacks. House Democrats were Trump's real foes, most obvious when House Speaker Nancy Pelosi solemnly announced opening a formal impeachment inquiry into the president on September 24, 2019, after months of resisting pressure from the party base to do so. Despite her caution, Pelosi had never been conciliatory toward the president. “I don't want to see him impeached,” she told her colleagues in June 2019. “I want to see him in prison.”<sup>1</sup> Her view of impeachment changed after an intelligence

community whistleblower reported that President Trump had sought to strike a bargain with Ukraine's president: During a phone conversation, according to the whistleblower, Trump suggested that Ukraine would only receive congressionally approved military assistance if that nation helped Trump's 2020 campaign by investigating former Vice President Joe Biden and his son Hunter.

In fact, the House impeachment inquiry was just the latest among multiple congressional and law enforcement investigations into many aspects of the president's pre-presidential life, election-year strategies, and presidential career, the most expansive of which, by special counsel Robert Mueller, resulted in the *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*—universally known as the “Mueller report.”<sup>2</sup> Released in March 2019, the 448-page report found insufficient evidence to prove the Trump campaign had criminally conspired with Russia during the election, but it detailed nearly a dozen instances in which the president might have sought to obstruct the investigation. Mueller, who had previously served as FBI director under George W. Bush and Barack Obama, noted that Justice Department policy prohibited federal authorities from indicting a sitting president. But at a press conference on May 29, 2019, he said, “If we had had confidence that the president clearly did not commit a crime, we would have said so.”<sup>3</sup> Trump, who had originally described the Mueller report as a “total exoneration,” decided it was instead a “total ‘hit job.’”<sup>4</sup>

Long before the Mueller report became public, Democrats had opened hearings investigating the president's behavior on multiple fronts. The administration refused to comply with congressional subpoenas demanding additional information about the report, as well as the president's tax returns and financial records, which Democrats believed might shed light on his ties to Moscow. The White House contended that legislators had no power to carry out a “pseudo law enforcement investigation” and claimed executive privilege to prevent current and former Trump staffers from testifying before Congress.<sup>5</sup> Unlike previous presidents who had confronted an assertive Congress, Trump said he would stymie lawmaking as long as congressional inquiries (which he termed “PRESIDENTIAL HARASSMENT”) continued. He walked out of a meeting on infrastructure with Democratic leaders and tweeted: “You can't investigate and legislate simultaneously—it just doesn't work that way.”<sup>6</sup> This threatened to derail critical negotiations not just over infrastructure investment but also over the fiscal year 2020 budget, gun control, a needed increase in the federal debt limit, and approval of the “new NAFTA” trade deal (formally, the USMCA, the United States-Mexico-Canada free trade agreement).

Meanwhile, more than two dozen investigations and lawsuits continued at the federal and state level that involved many aspects of the president's political, business, personal, and ethical conduct.<sup>7</sup> These included

investigations into whether the Trump inauguration committee raised and spent funds improperly; whether payments of hush money to women who allegedly had affairs with Trump violated campaign finance laws; what the New York attorney general's office called "a shocking pattern of illegality" by the Trump Foundation; charges that Trump's golf clubs employed undocumented immigrants; a defamation lawsuit brought by a woman (one of nearly two dozen) who had accused Trump of sexual assault; and other suits complaining that the president's frequent use of his own commercial properties for official business and acceptance of payments from foreign and state officials who stayed at the Trump International Hotel in Washington, D.C., violated the emoluments clause of the Constitution.<sup>8</sup>

Things were hardly more settled on the international stage. Trade talks with China were on again and off again, punctuated by increased tariffs and threats to impose far heavier ones. At one point Trump unexpectedly threatened tariffs against all Mexican imports unless that nation stemmed the tide of immigrants crossing into the United States, although in June 2019, he at least temporarily backed away from imposing them. The president complained about NATO members' failure to bear their fair share of the alliance's defense costs, pondered tariffs on cars imported from the European Union, feuded with London's mayor during a state visit to Great Britain, and abandoned international efforts to combat climate change. When Venezuelans sought to depose their socialist leader, Nicolás Maduro, the United States supported the effort and encouraged other nations to recognize the alternative president, Juan Guaidó. When Maduro (supported by China, Russia, and Cuba) refused to leave office, Trump seemed poised at various times to intervene in his favor. Across the globe, North Korea resumed missile tests despite two highly publicized summit meetings between Trump and North Korean leader Kim Jong-un, followed by a brief made-for-television moment with Trump stepping across the DMZ to North Korea itself. And tensions ramped up in the Persian Gulf after the U.S. withdrew from the multination agreement aimed at preventing Iran's development of a nuclear weapon. In response to maximum U.S. economic sanctions and additional American military assets deployed to the region, Iran attacked oil tankers traveling through the Strait of Hormuz, shot down a surveillance drone operated by the U.S. Navy, and assisted Yemeni forces in a devastating attack on Saudi Arabian oil processing plants.<sup>9</sup> U.S. forces were poised to respond, and in one case, President Trump halted a U.S. military response (described as "cocked and loaded") just minutes before its launch.<sup>10</sup>

Domestic politics collided with foreign policy in September 2019 when Rep. Adam Schiff (D-CA), chair of the House Select Committee on Intelligence, revealed that a whistleblower in the intelligence community had come forward alleging presidential wrongdoing during a series of interactions with the government of Ukraine, notably a July 2019 phone conversation with its newly elected president. The complaint charged that Trump

“used the ... call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.”<sup>11</sup> Witnesses suggested that President Trump had personally ordered the suspension of military aid intended to help Ukraine fight Russian forces in its eastern provinces shortly before a scheduled call with Ukraine’s Volodymyr Zelensky. When Zelensky expressed an interest in acquiring vital anti-tank missiles, Trump responded, “I would like you to do us a favor though.” That turned out to be two favors, one examining whether intervention in the 2016 election was in fact linked to Ukraine, not Russia, and the other urging an investigation into the business activities of former Vice President Biden’s son Hunter in Ukraine and the vice president’s supposed intervention on his son’s behalf. (Biden was at the time of the phone call leading both Democratic primary polls and hypothetical 2020 matchups with President Trump.)

Trump told Zelensky that Rudy Giuliani, the president’s personal lawyer and political ally, and Attorney General Barr would be in touch. Details of the conversation, which Secretary of State Mike Pompeo had listened in on, were captured in a White House memo released to the public, and the original complaint was eventually forwarded to Congress (as required by statute), although it had initially been withheld at the behest of the White House and Justice Department. Those documents and the testimony of career diplomats pointed to the president’s personal involvement, adding fuel to the impeachment inquiry and making a House vote to impeach President Trump virtually certain.

Through all of this, Trump remained combative and defiant. He filled his Twitter stream with attacks on the huge field of contenders for the 2020 Democratic presidential nomination, on members of Congress of both parties, and on any commentary or coverage he thought uncomplimentary. He urged that Adam Schiff who, as chair of the House Intelligence Committee was leading the impeachment inquiry, be prosecuted for “fraud and treason.”<sup>12</sup> He frequently described the news media as “totally corrupt,” as the “enemy of the people,” and “treasonous” as well—a charge he applied indiscriminately, from Democrats who failed to applaud him at his State of the Union address to government officials of his own and past administrations (including former FBI Director James Comey).<sup>13</sup> Treason is specifically defined in Article III, Section 3, of the Constitution as openly making war upon the United States, and can be—according to law—punished by death, but that did not prevent Trump from applying the term casually to those who disagreed with him.<sup>14</sup> It was simply part of his combative style. Indeed, Trump seemed to relish battles with anyone, even critical cogs within his own government (such as the intelligence community). Seldom in American history had any president been so embattled but, strangely, so *willingly* embattled. Nearly all of Trump’s fights were of his own choosing. Some even suggested that he wanted Congress to impeach him as a way

to rally his supporters.<sup>15</sup> As one senior member of Trump's campaign staff was quoted in May 2019, "the president's appeal is about 'the fight,' not 'the resolution.'"<sup>16</sup>

In short, intentionally polarizing disruption proved to be central to Donald Trump's presidency. Trump seemed determined to leave no stone unturned or established policy unchallenged in his crusade to redesign the president's role in America and America's role in the world. What futures he had in mind for those institutions and relationships remained unclear as the 2020 election approached.

## Setting the Stage for 2020

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In some ways, the election began on January 20, 2017, when on his very first day in office President Trump established his reelection organization. He held his first campaign-style rally in Florida less than a month later. When a reporter asked whether it was too early in his presidency to hold such an event, Trump replied, "Life is a campaign."<sup>17</sup> His 2020 reelection effort raised close to \$70 million in 2017 and 2018, and related "Super-PACs" raised millions more; by contrast, Obama raised just \$4.1 million and Bush \$2.2 million in their first two years in office.<sup>18</sup> The Orlando, Florida, rally that officially kicked off Trump's bid for reelection on June 18, 2019, was the 59th such event of his administration to date, and the seventh in Florida, a key state in Trump's strategy to win a majority in the electoral college.<sup>19</sup>

That kickoff serves as a useful window into the case Trump intended to make for himself and his presidency. After all, according to his own assessment, he had accomplished "more than any other president has in the first two and a half years of a presidency...things that nobody has been able to accomplish, not even close."<sup>20</sup> What were those things?

*Economic Policy.* Exhibit A for the reelection campaign was the state of the economy, which had continued and in some ways accelerated its decade-long recovery during the Trump years. Trump's overall economic strategy had three parts: 1) Stimulate growth through major tax cuts on business and more modest cuts in individual taxes; 2) launch what the president called a "record breaking regulatory reduction campaign"<sup>21</sup> to reduce regulations' drag on business profits; and 3) make trade relationships more profitable to the U.S. by withdrawing from damaging trade agreements, renegotiating existing ones, and reversing unfavorable bilateral trade flows.

More than 200,000 jobs per month were created in 2018, and the unemployment rate stood at 3.6 percent by the fall of 2019—the lowest rate since the 1960s, and down from 4.7 percent when Trump took office.

The increased growth rate of the overall economy, the GDP, was perhaps Trump's signature objective success. According to the Bureau of Economic Analysis, GDP grew at the rate of 2.2 percent in 2017 and 2.9 percent in 2018; the growth rate exceeded 4 percent (in line with his campaign promises) during one three-month period of 2018.<sup>22</sup> The good news continued into early 2019 with unexpectedly strong economic growth during the first three months before tailing off to below 2 percent by midyear. Stock markets, after slipping in 2018, continued to grow overall.

Even so some ambivalent economic signs had emerged by the time the president spoke in Orlando. Job growth was weaker some months than others and the Peter E. Peterson Foundation, a conservative-leaning but non-partisan think tank, expected the effects of the tax cut stimulus to ebb later in 2019 and to soon disappear entirely. Rather than being the “rocket fuel” that Trump had promised, his tax cuts—according to a study by the non-partisan Congressional Research Service (CRS) released in May 2019—had not come close to generating the 6.7 percent growth that Trump had effectively promised when he said that the tax cuts would pay for themselves. The study also noted that ordinary workers—Trump's base—enjoyed very little growth in wages in 2018.<sup>23</sup> Meanwhile, economists argued that two other policies touted by Trump in his speech—tariffs and the clamp-down on immigration—were in fact dragging down economic growth overall. One study found that tariffs cost each U.S. household \$419 in 2018, a figure projected to double if the trade war with China continued to escalate.<sup>24</sup> American manufacturers blamed trade turmoil for their worst performance in a decade, precipitating Wall Street jitters.<sup>25</sup> Immigration had traditionally served as a source both of new workers (especially important given the aging population in the United States) and economic innovation. As 2019 wore on, the Federal Reserve Bank cut interest rates three times in response to signs of a slowing economy projected to end the year with only 2.1 percent growth.

During his 2019 State of the Union address, Trump praised an “unprecedented economic boom” and “an economic miracle,” and at the Orlando rally, he called it “perhaps the greatest economy we've had in the history of our country.” But historical comparisons suggest that Trump's economic record to that point was solid rather than exceptional.<sup>26</sup> During his first year in office, Trump's record on GDP growth was better than four recent presidents who entered office in the midst of an economic recession (Obama, G.W. Bush, Reagan, Nixon) and worse than four presidents whose first year coincided with economic expansion (Clinton, Carter, Johnson, Kennedy).<sup>27</sup> After two years in office, the stock market's performance under Trump was tenth best among twenty-three presidents going back to Hoover.<sup>28</sup> Job market gains after twelve months were not as strong as stocks; during his first year, Trump's record stood in the middle of the pack—behind Carter, Johnson, Nixon, Clinton, Kennedy, and G.H.W. Bush.<sup>29</sup> Job creation and

unemployment numbers largely tracked their previous trajectory since the start of the decade-long economic recovery beginning in 2009 following the Great Recession.

History shows us that the *perception* of how the economy has performed under Trump will be more politically important than the *reality*. For example, by early 1992, the economy was coming out of a shallow recession, but George H.W. Bush suffered at the polls when Democrats and independents perceived it differently, with both Bill Clinton and Ross Perot happy to enflame the misperceptions.<sup>30</sup> Similarly, Bill Clinton's vice president, Al Gore, got little-to-no credit in the election of 2000 for the sustained growth accompanied by a balanced budget that the Clinton-Gore administration had delivered.<sup>31</sup> One should expect that competing arguments about economic success will be one of the major story lines of 2020.

*Immigration.* From the moment he announced his candidacy in 2015 by attacking lawless immigrants, Trump's attempts to strengthen border security have stood at the center of his agenda. In Orlando, Trump touted his efforts to build his promised wall on the southern border, although at that point most of the construction consisted of replacing extant fencing, and said that, "[T]he Democrat agenda of open borders is morally reprehensible. It's the greatest betrayal of the American middle class and, frankly, American life." This echoed Trump's attacks on Democrats during the 2018 midterm elections as an "angry mob" who had organized and funded "caravans" of Central American migrants and who "want[ed] to open America's borders and turn our country into a friendly sanctuary for murderous thugs from other countries who will kill us all."<sup>32</sup> Given that harsh rhetoric, few Democratic legislators agreed with the president's June 2019 assertion that "the Democrats should come in and [within] 15 minutes to an hour we can have it all solved. It's so simple."<sup>33</sup>

Trump's initiatives to address immigration ranged from the 2017 "travel ban" to a more sweeping plan to reform and limit both illegal and legal immigration announced in his 2018 State of the Union address to the deployment of active duty military personnel to the border that autumn.<sup>34</sup> Most controversial perhaps was the summer 2018 detention of as many as 2,700 children separated from their families resulting from a new "zero tolerance" policy that reversed a prior practice of paroling migrant families until a hearing could be held on their status. Accusations (and widely distributed photos) of "kids in cages" triggered considerable backlash; under intense pressure, the president issued a directive requiring that families be kept together.<sup>35</sup> Even then migrants were frequently detained in overcrowded facilities that critics charged were squalid and inhumane.<sup>36</sup>

Continued deterioration of conditions in Central America meant that efforts to migrate north continued; by March 2019, when more than

100,000 people tried to cross the border in a single month, few could question that a genuine crisis existed at the border. But whether it was primarily a national security or a humanitarian crisis sparked strong disagreement. So did other actions of the administration: to cut back on the admission of refugees, make it harder to seek asylum, ramp up enforcement of extant immigration law (in the face of refusals by so-called “sanctuary cities” to cooperate with federal agencies in doing so),<sup>37</sup> and to withdraw protections for “Dreamers,” children brought to the U.S. by their parents without required documentation. Trump reversed the Obama administration’s DACA (Deferred Action for Childhood Arrivals) initiative that protected such immigrants from deportation, although this was delayed by court order; a Congressional agreement to grant DACA participants permanent legal status in exchange for border wall funding fell apart when the president threatened a veto.<sup>38</sup> The wall itself remained hugely contested and prompted a long government shutdown in late 2018 and early 2019 (see chapter 5). Although the president redirected additional funds from the Defense, Treasury and Homeland Security departments to finance this project by declaring a national emergency in winter 2019, the lengthy construction time meant significant delays and the success of the effort remains in question.<sup>39</sup> Immigration continues to be an emotion-charged issue in American politics for 2020 and beyond.

*Trade Wars.* Trump argued in Orlando that the nation’s steady economic growth stemmed in part from his actions on international trade, reversing course after other nations “took us for suckers.”

The 2019 annual report to Congress from the Office of the U.S. Trade Representative (USTR) lays out the case more systematically. Trump’s strategy was to rebuild “a significantly flawed trading system” that rewarded countries using unfair practices (notably China) and resulted in the export of American jobs (especially manufacturing jobs) to countries with lower paid workers and weaker environmental protections. The new administration quickly withdrew from the Trans-Pacific Partnership (TPP) and sought to renegotiate existing trading agreements. “By using its leverage as the world’s largest market,” USTR said, “the United States can create better conditions for U.S. workers, and encourage more efficient global markets.”<sup>40</sup> The trade agenda in 2019 promised to be especially significant for the president’s reelection; the administration sought congressional approval for the USMCA that would replace NAFTA, continued negotiations with China, and hoped to conduct negotiations with Japan, the European Union, and the United Kingdom. At the same time Trump aggressively used tariffs—imposed on friend and foe alike—in an effort to wring concessions from other nations and ensure that trade would benefit Americans above all others. The key assumptions, as the president summarized via tweet in 2018, were that “trade wars are good, and easy to win” and that “tariffs are the greatest!”<sup>41</sup>



These were sentiments nearly no economist endorsed. Critics charged that the administration's strategy was a return to protectionism, policies designed to protect domestic jobs and industries from competition abroad.<sup>42</sup> That doctrine earned a bad name in American politics when the Smoot-Hawley tariffs adopted in 1930 coincided with the onset of the Great Depression. After World War II, a bipartisan coalition embraced free trade as good for the nation and a world that was rebuilding in the face of a Communist threat. A study published by the National Bureau of Economic Research directly contradicted the president: U.S. consumers and businesses relying on imported materials bore the cost of the U.S. tariffs and foreign nations' retaliation, not the exporters of the products, as Trump claimed.<sup>43</sup> With or without American participation and leadership, world trade would continue to grow past its 2019 level of 55 percent of global GDP. The twelve remaining parties in the TPP moved ahead without the United States. Japan and the European Union concluded a major trade treaty, and an African Continental Free Trade Area was also on the horizon.<sup>44</sup>

Even though some U.S. groups (most prominently organized labor) opposed trade agreements, far larger constituencies supported cheap consumer goods and the services that could be sold in open markets. As one skeptic noted, Trump policies like rejecting the TPP and antagonizing allies were the political equivalent of scoring an "own goal" in soccer, or shooting yourself in the foot, forms of self-inflicted pain.<sup>45</sup> This was tacitly acknowledged by the administration when it invoked an agricultural support law passed during the Great Depression to prop up the income of what Trump called "our Great Patriot Farmers"—to the tune of \$28 billion in 2018 and 2019 (more than twice what was spent to bail out U.S. automakers during the 2008–2009 recession).<sup>46</sup> A good case can be made that trade was not the root problem afflicting the U.S. job market—rather, it was the rise of technology, stagnant educational attainment, declining opportunities to enter the middle class, and growing economic inequality.<sup>47</sup>

In short, Trump's trade policies were politically attractive to households in Pennsylvania, Ohio, Michigan, and Wisconsin who believed they had been harmed by globalization—far less so to manufacturers using imported materials, and to agricultural exporters in those and other states. Trump insisted that their short-term pain would lead to long-term gain.<sup>48</sup> Would that be a convincing argument in 2020?

*Health Care.* In Orlando, Trump touted the 2017 repeal of the individual mandate provision of the Affordable Care Act (the ACA or "Obamacare"), which required all Americans to purchase health insurance, and which Trump described as "one of the worst things anybody's ever had to live through." Asked by ABC News's George Stephanopoulos in June 2019 what "big unfinished piece of business" he would bring back to the voters

in 2020, Trump turned to health care again. “If we win back the House, we’re going to produce phenomenal health care,” he said. “And we already have the concept of the plan, but it’ll be less expensive than Obamacare by a lot. And it’ll be much better health care.”<sup>49</sup>

Trump provided no additional details. But the claims were familiar. During the 2016 campaign, candidate Trump promised to repeal Obamacare, and to replace it with “a beautiful picture” in which health care would be less expensive, there would be no cuts to Medicaid, and no one would lose insurance.<sup>50</sup> A unified government, with Republicans controlling both ends of Pennsylvania Avenue during Trump’s first two years in office, seemed sure to deliver on this pledge but did not (see chapters 5 and 8).

Despite abolishing the individual mandate, full repeal of the ACA evaded the Republicans, although the Trump administration did continue to whittle away at it through nonlegislative means. The Government Accountability Office documented the ways in which the administration reduced government efforts to enroll individuals in health insurance exchanges:<sup>51</sup> Officials approved competing coverage guidelines for insurance that did not require the same level of benefits found in the ACA; transferred to the states considerable responsibility for overseeing the operation of insurance marketplaces; and joined multiple state attorneys general in their common lawsuit claiming that without the individual mandate, the remaining ACA was unconstitutional.<sup>52</sup> Meanwhile, the administration discontinued some premium subsidies to insurance companies and scaled back outreach efforts to promote ACA enrollment.

Such efforts created uncertainty on the part of both insurers and the insured. Despite significant economic growth (and more people employed), the number of uninsured Americans increased, although by how much remains in dispute. Gallup reported an increase of seven million uninsured during Trump’s initial two years in office, with the number accelerating at the end of 2018. Other surveys put that number at much lower levels, even though the U.S. Census reported that the number of uninsured rose by nearly two million persons in 2018.<sup>53</sup> Gallup found that women, young adults, and low-income Americans are most likely to be uninsured and that the rates of uninsured residents are highest in southern states.<sup>54</sup>

This record meant that health care would be a crucial issue for the 2020 electorate. Would the president be able to argue he had done enough to reverse and replace Obamacare? For their part, Democratic presidential hopefuls put forth a cacophony of health care plans, including competing “Medicare for all” plans that would effectively nationalize the system.

*Reshaping the Federal Judiciary.* As noted in chapter 7, the Republican-controlled Senate aggressively obstructed judicial nominations during President Obama’s last two years in office. But Trump, at his Orlando

rally, portrayed the backlog of judicial vacancies he inherited as Obama's own doing. "President Obama was very nice to us," he told the cheering crowd. "He didn't fill the positions." That backlog, which included a vacant Supreme Court seat left open by Senate inaction, coupled with new vacancies that would continue to arise throughout his presidency, gave Trump an opportunity to transform the federal judiciary.

That opportunity will influence policy long after he leaves office. It is already being felt at the Supreme Court, where Trump appointed two justices in his first two years, resulting in a solid 5–4 conservative majority that could chip away at or alter precedents in key areas. Although much of the public attention was on hot button cases involving issues such as abortion, religion, and LGBT rights, the new majority could bring about less discussed but equally consequential changes by reinterpreting such things as Congress's Commerce Clause power, thereby limiting—perhaps sharply—the regulatory power of the federal government. That could have implications on everything from environmental protection to health care reform.

Trump's promise to appoint conservative justices from a list compiled by the Federalist Society did much to solidify Trump's support among Republican loyalists and especially the evangelical community during the 2016 election, and his record of appointments at all levels of the federal judiciary are a key to maintaining that support in 2020. Thus, Trump pushed to fill vacancies as quickly as possible. Aides believed those appointments could be crucial to winning states such as Colorado, Florida, and North Carolina in 2020.<sup>55</sup> In Orlando, the president warned his base that Democrats "want to take away your judges. They want to pack the Court with far left ideologues and they want to radicalize our judiciary."

Democrats perceived the situation differently. They viewed Trump to be the radicalizing force. State legislatures, emboldened by the new majority on the Supreme Court, began to pass restrictive abortion measures in 2019 explicitly designed to provoke cases that could be used to overturn or sharply curtail *Roe v. Wade*. Democratic candidates condemned the laws and used them to whip up their own base. The control of judicial appointments will no doubt be a central rallying cry for both sides in the 2020 campaign. Already, Trump's judicial appointments were perhaps his most enduring legacy.

*Foreign Policy.* Outside of trade and immigration, "intermestic" issues with implications for both international and domestic affairs, foreign policy received a brief and unusually scripted portion of the Orlando speech. There, the president said he had secured vastly more funding from Congress for the military (touting the new "Space Force") and from NATO partners for the alliance. He highlighted his tight connection with Israel, marked by the move of the U.S. embassy to Jerusalem and American recognition of Israel's claim to the Golan Heights. He claimed that the ISIS caliphate had been "totally obliterated 100%," bragged that he had withdrawn from the "disastrous" nuclear

deal with Iran, and proclaimed that “we’re charting a path to stability and peace in the Middle East, because great nations do not want to fight endless wars.” He made no mention of Afghanistan, Syria, or North Korea.

Partisan critics and nonpartisan professionals were less enthusiastic about the wisdom of the items on Trump’s list. (See chapter 10 and the start of this chapter). The Pentagon lacked a Senate-confirmed leader for six months after James Mattis resigned as defense secretary in December 2018. NATO members doubted Trump’s commitment to the alliance and bridled at his personal attacks on its individual leaders. Israel’s delight at the Trump administration’s policy shifts was met with corresponding anger on the part of Palestinian politicians, making Trump son-in-law Jared Kushner’s long-awaited peace plan for the region a likely nonstarter. In response to the White House’s close ties to Saudi Arabia—made clear in Trump’s unwillingness to hold the Saudi government to account for the murder of journalist and U.S. resident Jamal Khashoggi—a bipartisan coalition in the U.S. Senate voted both to end American support for the Saudi war in Yemen (invoking the War Powers Resolution in this manner for the first time ever) and to block arms sales to the Saudi regime. Even though ISIS had lost its physical territory, few thought, as Trump proclaimed, that it had been “obliterated” as a dangerous force globally. In June 2019, Trump resisted pressure from his senior foreign policy advisers to start a new war with Iran, urging new talks instead, but it was unclear what deal he could strike that would be significantly different from the Obama-era multilateral pact he had so fiercely denounced.<sup>56</sup> Uncertainty in the region heightened with Trump’s snap decision in October 2019 to withdraw U.S. troops from most of Syria. American military leaders organized a hasty retreat and the Syrian Kurds, allies in the battle against ISIS, relocated hundreds of thousands of people suddenly without protection. Facing widespread criticism, the president was happy to change the subject when U.S. forces found and killed ISIS leader, Abu Bakr al-Baghdadi.

More generally, Trump had at least temporarily realigned the United States with a group of states headed by autocrats, not the traditional democratic allies of the past. Relations with Russia, North Korea, Saudi Arabia, Philippines, Turkey, and Poland were decidedly more cordial, while those with the United Kingdom, Germany, France, Australia, Mexico, and Canada were clearly strained. Long-term allies wondered whether the United States would continue to serve as the keystone of the international order. Trump’s foreign policy record provided ample grist for debate.

*Governing Tone.* A large part of Trump’s 2020 campaign kickoff in Orlando was devoted not to policy specifics but to replaying key events of the 2016 campaign, attacking his then-opponent Hillary Rodham Clinton in familiar tropes. (The crowd responded to the cues by chanting “lock her up!”) The harsh tone carried over to what Trump called “our radical Democrat opponents,” telling his audience, “they want to destroy you and they want

to destroy our country, as we know it.” Indeed, he said, “a vote for any Democrat in 2020 is a vote for the rise of radical socialism and the destruction of the American dream.”

Those sorts of exaggerated warnings were central to Trump’s conflictual approach to leadership, as noted at the outset of this chapter. In his 2017 inaugural address, he spoke of “American carnage”; his reelection kickoff suggested a similarly bleak landscape, ravaged by a culture war and populated with enemies that his audience needed to fear. One analysis of the Orlando event used a Simon & Garfunkel lyric to summarize Trump’s approach: “Hello darkness, my old friend.”<sup>57</sup> In Trump’s account, enemies—the press, the FBI, the Mueller investigation, and the opposition party—conspired to lay him low. “If I didn’t have the Phony Witch Hunt going on for 3 years, and if the Fake News Media and their partner in Crime, the Democrats, would have played it straight,” he tweeted, “I would be way up in the Polls right now—with our Economy, winning by 20 points. But I’m winning anyway!”<sup>58</sup>

That was possible but not obvious. Although a combative, hyperbolic approach delighted Trump’s most devoted supporters, it did nothing to expand his coalition past the 46 percent of the public who had originally voted for him. On Election Night in 2016, the president-elect promised he would stress national unity after the hugely divisive campaign: “[T]o all Republicans and Democrats and independents across this nation I say it is time for us to come together as one united people. It’s time. I pledge to every citizen of our land that I will be president for all of Americans, and this is so important to me.”<sup>59</sup> But Trump’s opening appeal for unity—so familiar and consistent with presidential tradition—nearly disappeared. He approached a variety of controversial issues, from race relations to abortion, not to build bridges but to double down on what “my people love.”<sup>60</sup> The president’s tepid condemnation of violence by white supremacists and Nazi sympathizers in Charlottesville, Virginia, in mid-August 2017, and his subsequent reiteration that “there is blame on both sides” and “some very fine people” among the neo-Nazi marchers exacerbated that conclusion.<sup>61</sup> As political scientist Gary Jacobson has noted about Trump’s first two years,

Virtually everything he has said or done as president has catered exclusively to the coalition that elected him, its white nationalist segment in particular, but also small-government and religious conservatives. Most of his supporters share his opinions and sensibilities, enjoy his in-your-face responses to critics and disdain for “political correctness,” concur with his hostility to the mainstream news media, and cheer his anti-Muslim and anti-immigrant projects and “America First” rhetoric and policy initiatives. Conservative Christians appreciate his Supreme Court nominations

and defense of “religious freedom” as well as the transfer of the American embassy in Israel to Jerusalem.<sup>62</sup>

Trump’s initial Gallup approval rating as president stood at only 45 percent—a historic low for an incoming president—and quickly slid, hitting an early low of 35 percent in March 2017 when his initial efforts to repeal and replace the Affordable Care Act stalled.<sup>63</sup> It remained in that narrow range for Trump’s first 32 months in office, averaging 40 percent. His *disapproval* rating was also remarkably stable and historically high. It stood at 45 percent on Inauguration Day, the highest by far of any incoming president since Gallup began regular polling in the 1950s (George W. Bush held the previous record: 25 percent disapproval in 2001).<sup>64</sup> It never dropped below 50 percent thereafter, and peaked at 60 percent, over the first two and a half years of Trump’s presidency.<sup>65</sup>

Trump was unapologetic about his focus and aggressive stance: Asked by *Time* whether he needed to reach out to swing voters, he replied, “I think my base is so strong I’m not sure that I have to do that.”<sup>66</sup> During the 2018 midterm elections, when some fourteen pipe bombs were mailed by a hard-core Trump supporter to media outlets and prominent Democrats (including the Obamas and Clintons), the president rejected calls that he tone down his rhetoric; indeed, he replied, “I could really tone it up.”<sup>67</sup>

But the same midterms showed the potential limits of such a strategy. Trump campaigned actively—“I’m not on the ticket, but I am on the ticket, because this is also a referendum about me. I want you to vote. Pretend I’m on the ballot,” he told a rally in October 2018.<sup>68</sup> That worked: As one Florida woman told an interviewer the same month, “I’m here because of President Trump. I trust the candidates that the president supports.” But personalizing the vote cut both ways: Another Florida respondent agreed that “my vote is driven by Trump 1,000 percent” but added, “I just find him despicable.”<sup>69</sup> Turnout surged past the fifty percent mark—the highest in a midterm election since 1914, compared with just 37 percent turnout in 2014 and 11 points higher than the average over the past forty years.<sup>70</sup> In the end, the president’s unpopularity overpowered strong economic conditions to deliver a House majority to the Democrats, who gained forty seats, including every seat in Orange County, California—the heart of Richard Nixon and Ronald Reagan’s political base. They also took seven governorships from Republicans, including in Kansas, Michigan, and Wisconsin (where longtime incumbent Scott Walker was defeated), all states Trump won in 2016.

The Senate provided better results for the president; Republicans netted two additional seats, defeating Democratic incumbents in Florida, Indiana, Missouri, and North Dakota. However, a highly unfavorable electoral map had produced predictions of far greater Democratic losses. Of

the thirty-three regular seats up for reelection, twenty-five were held by Democrats, and ten of those were in states Trump had won in 2016. Republicans lost two of the eight seats they were defending, and numerous Democratic incumbents targeted by the president returned to office. A notable surprise was the narrow victory of Sen. Jon Tester in Montana, a state that voted for Trump by a twenty-percentage point margin in 2016. Trump went to Montana three times in four months to campaign against the “super liberal” and “vicious” Tester (in Trump’s words) but failed to dislodge him.

These results and promising early polls gave hope to Trump’s 2020 challengers.<sup>71</sup> Sen. Elizabeth Warren (D-MA) became the first prominent Democrat to announce her candidacy on December 31, 2018. More than twenty other Democratic hopefuls soon followed, ranging from party veterans like former Vice President Joe Biden to fresh faces like Sen. Kamala Harris (D-CA) and 37-year-old South Bend, Indiana, Mayor Pete Buttigieg. Party debates seeking to winnow the field began in the summer of 2019, close to eighteen months before election day. Trump, who confronted minor challenges from former Massachusetts Governor William Weld, former South Carolina Representative and Governor Mark Sanford, and Joe Walsh, an Illinois talk show host who had served one term in the U.S. House, fully expected to confront the Democrats’ nominee.

## Assessing Trump as President: Harbinger or Aberration?

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It is worth stepping back to assess the Trump presidency in another way. Trump stands out as one of the most unorthodox presidents in our history. His response to charges that his behavior was unpresidential was that he was in fact “Modern Day Presidential.”<sup>72</sup> Will he be seen, like Franklin Roosevelt or Ronald Reagan, as someone who introduced a new model of the office—one appropriate for a newly hyper-partisan, hyper-mobilized, hyper-mediated era? Or do his tactics reflect his unique personality and therefore unlikely to produce lasting change? Various aspects of the office, tracked in previous chapters, suggest a framework for considering that question.

*The Institutional Presidency.* Presidents must manage millions of federal employees. To do so, they need help—from advisors in the White House and the wider Executive Office of the President, as well as appointees in the Cabinet agencies. Selecting personnel is the first step in creating the foundation for an executive branch whose senior appointees can work jointly to craft effective policies. As noted in chapters 1 and 6, Trump’s transition was rebooted after his unexpected victory in 2016, leading to a slow start

in making appointments across the government, with vacancies lingering well into 2019.

Trump did not follow the “standard model” of White House staffing that lays out a hierarchical chain of command under a strong White House chief of staff and a systematic process for reviewing information as it moves toward the Oval Office.<sup>73</sup> Instead, Trump brought to the White House the style he had used in business—casting competing centers of power with conflicting points of view as rival contestants to argue their positions for an executive decision. Initially, Reince Priebus (nominally chief of staff) shared power with Steve Bannon, but neither controlled Trump family members holding White House jobs, Ivanka Trump and her husband Jared Kushner.<sup>74</sup> Priebus’s successor, retired Marine general John Kelly, sought to impose a more formal advising process but was resisted and then replaced by Mick Mulvaney as acting chief of staff with a mandate to “let Trump be Trump.”<sup>75</sup> As the president described his decision-making process at one press conference, “I like conflict. I like having two people with different points of view.... And then I make a decision. But I like watching it, I like seeing it, and I think it’s the best way to go. I like different points of view.”<sup>76</sup>

Rather than a systematic evaluation of pros and cons, though, such a process hinged more on who happened to be in proximity to the president when a decision was reached and how the president “felt.” Further exacerbating these problems were the president’s unfamiliarity with many federal policies, his unwillingness to read long briefing memos, and his short attention span and tendency to act impulsively (see the discussion in chapter 4).<sup>77</sup> After closely examining three foreign policy decisions made during Trump’s first year in office, political scientist Luis da Vinha concluded that the president’s decision-making system did not reflect a conscious effort to design an effective system but was “the byproduct of Trump’s policy detachment and proclivity for making improvised decisions based on his gut feeling.”<sup>78</sup>

Turnover was rife in the White House and executive branch generally. A study of his most senior White House aides—those holding the title “Assistant to the President”—found that 73 percent of Trump’s senior aides left the White House within two years, a rate of turnover far higher than in other administrations: The comparable figure for Obama was 55 percent; for George W. Bush, 45 percent; Clinton, 58 percent; George H. W. Bush, 24 percent; and Reagan, 37 percent.<sup>79</sup> Likewise, by mid-2019, more than half of Trump’s original cabinet members had departed, and acting officials were in charge of important agencies like the Pentagon and Department of Homeland Security.<sup>80</sup> While outside observers described the administration as chaotic—*Politico* reporters suggested “Trump has a Cabinet by default”—the president insisted it was “a ‘smooth running machine’ with changing



parts.”<sup>81</sup> The key common element across those parts was the personal loyalty the president demanded. But that did not ensure appointees would possess knowledge of policy or ability to manage the policy process.

In practice, then, Trump did not consistently follow either of the principal strategies presidents adopt to manage the executive branch—centralization in the White House or politicization of the bureaucracy (relying on knowledgeable loyalists to control career civil servants).<sup>82</sup> It seems likely that future presidents will return to a more systematic approach to advising, staffing the executive branch, and making decisions.

*The Public Presidency.* As detailed in chapter 3, all modern presidents are “rhetorical presidents” in constant contact with the public.<sup>83</sup> All have sought to communicate directly with the public, avoiding the gatekeepers of the media. For Trump, that meant using social media, especially Twitter. The president’s early-morning forays on that platform, seemingly dictated by topics covered on cable news outlets (especially Fox), often drove the administration’s daily agenda.<sup>84</sup> Here, though, Trump diverged from his predecessors. As noted above, his rhetoric was often extreme and aimed at activating his partisan base rather than at assembling support from a majority of Americans. But critics charged his statements provided succor to hate groups (most notably in connection with the demonstrations in Charlottesville, VA), coarsened public discourse, and transformed the bully pulpit into the pulpit for a bully.<sup>85</sup>

More generally, Trump’s political history made clear he played by different rules when it came to communication: winning primaries in 2016 while spending less than any other major candidate on television advertising;<sup>86</sup> making outrageous comments that won him extensive free coverage; insulting the media at every turn; and surviving the *Access Hollywood* scandal that would have scuttled any other campaign. Covering a norm- and precedent-busting candidate and later president, the media struggled to find the right tone and appropriate language. For example, the president repeatedly issued a litany of “false or misleading” statements—some 492 in the first hundred days of the administration, according to the *Washington Post*, but totaling more than 12,000 by August 2019 in public comments, during interviews, at political rallies, and in Tweets.<sup>87</sup> When does a “false or misleading” claim become a “lie”? By mid-2019, PolitiFact, a nonpartisan online fact-checking website linked to the Poynter Institute, rated only 16 percent of Trump’s public statements as true or mostly true (for Obama it was 47 percent); another 14 percent were half true (Obama, 26 percent); 55 percent were false or mostly false (Obama, 23 percent), and a remarkable 15 percent warranted their most outrageously false rating, “Pants on Fire” (Obama’s eight-year total was 1 percent).<sup>88</sup>

In the face of the negative publicity this generated, the White House upped the ante in denouncing “fake news” and provided fewer and fewer briefings. In fact, a study of press interactions with previous administrations revealed that the “time between briefings [by former Press Secretary Sarah Sanders] is longer than any of the preceding 13 press secretaries.”<sup>89</sup> Instead, the media were given abbreviated presidential interactions; Trump responded to shouted questions while leaving the White House to board his Marine One helicopter, beginning or concluding cabinet meetings, or conducting joint press sessions with visiting dignitaries. But “access is not the same thing as transparency.”<sup>90</sup> Other traditional outlets for press briefings—the Pentagon and State Department—took their lead from the White House and curtailed their availability, too.

There were arguably (at least) two consequences. The president’s divisive rhetoric made it far harder for Trump to carry out what a George W. Bush speechwriter called “one of the difficult but primary duties of the modern presidency . . . to speak for the nation in times of tragedy.”<sup>91</sup> Furthermore, highlighting appearance over substance left Trump vulnerable to opponents who could play that card with equal or greater skill. In the midst of a thirty-five-day government shutdown over funding for the border wall, a tiny fraction of the overall federal budget, Nancy Pelosi found her most powerful bargaining tool: Deny Trump the ability to address the nation in the annual State of the Union speech. Pelosi insisted on delaying the speech until Capitol security personnel were no longer furloughed. Once the president agreed to a short-term reopening, the speech was rescheduled.

*The Legislative Presidency.* Asked in June 2019 by ABC News about the “hardest part” of his job, Trump replied: “The hardest is usually the Congress.”<sup>92</sup> An institution so tradition-laden and rules-bound was inevitably going to prove frustrating to Trump. In turn, neither the Senate nor the House, whether Republican or Democrat controlled, has found ways either to work effectively with President Trump or check his behavior. One result has been an unproductive legislative record. The 2017 tax cuts and the 2018 criminal justice reform bill were two key exceptions. Efforts to address health care reform, infrastructure spending, and immigration reform either failed or languished without action; what passed were things that the GOP majority wanted to pass anyway. Despite not doing much legislating, the Senate did aid Trump tremendously by rapidly confirming his federal judges, trimming some long-standing checks on the process along the way (see chapter 7).

Trump’s bargaining style did not make the relationship easier. Negotiating with someone unfamiliar with substance and so likely to act impulsively—apt to go back on his word, including on policy commitments,

and likely to launch personal attacks—did not encourage Congressional confidence. But legislative production may have had little to do with Trump as an individual. As George C. Edwards III has explained, the president's weak strategic position in relation to Congress explains why most of his legislative initiatives proved unsuccessful in 2017–2019.<sup>93</sup> Trump had few strategic assets in dealing with Congress. Despite his best efforts to argue otherwise, 2016 had provided no electoral mandate; he lost the popular vote (running well behind most of his co-partisans in their districts), his party lost seats in both the House and Senate, and his public approval was historically low. In that sense, losing control of the House after the midterm had some mitigating benefits. The administration now had an explanation for legislation that failed to pass; and the president now had a convenient foil against which to rail. Indeed, the onslaught of investigations launched by multiple House committees provided the president with grist to make the case that he was the victim, not the perpetrator, in this ongoing drama. Could Democrats convince the public that they were engaged in oversight, rather than overreach, as the president claimed, designed to reverse the outcome of 2016?<sup>94</sup>

*The Unilateral Presidency.* Lacking a working relationship with Congress, Trump turned to other means to achieve his goals: Wielding unilateral powers became a staple of the Trump White House. Trump delighted in issuing pardons and bestowing individual awards, such as the Presidential Medal of Freedom. Indeed, for all the opprobrium the president heaped on the “deep state,” administrative action provided the vehicle for most of the policy change in Trump's first thirty months. Proclamations (such as the “travel ban”) took advantage of powers long ago delegated to the executive branch; the Supreme Court, examining the Immigration and Nationality Act with respect to the ban, held that “by its terms, [this part of the law] exudes deference to the President in every clause.”<sup>95</sup> Administration lawyers parsed other old statutes, with an eye toward finding new meanings allowing for additional presidential discretion. (One of their opinions held that a law requiring the IRS to turn over tax returns to a congressional committee did not apply to the president's returns.) In other areas, the administration declared “emergencies” to activate other authorities—in trade, spending, arms sales—that Congress had resisted.

Regulation is another key administrative task and tool, vested in the departments and agencies. Trump used multiple executive orders and memoranda to signal his desire for various approaches to regulatory matters, rolling back Obama-era rules and seeking to shrink the size of the Code of Federal Regulations. He expanded the regulatory review process in place since the Reagan administration to require there be no new net

costs of federal regulation and to institute a “2 for 1” policy, whereby each new regulation issued by a federal agency had to be offset by the elimination of two existing ones.<sup>96</sup> This is not quite how the order was implemented, but the number of new rules issued in 2017 and 2018 did decline sharply.

These tactics were notable, in that Trump had attacked Obama’s use of executive action and in that (unlike Obama) his initial burst of unilateralism came despite the luxury of congressional majorities of his own party. But while there were certainly twists on past practice—for instance, executive orders received elaborate signing ceremonies—the growth of American government and the rise of partisan polarization means that all presidents have both enhanced opportunity and motive to use their administrative toolbox in this manner. In that sense Trump was different in degree but not in kind.<sup>97</sup>

## A Stress Test for Madisonian Institutions

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Trump’s full impact on American government remains uncertain. Some of Trump’s divergences from past practice seem unlikely to become institutionalized for his successors if only because they proved unsuccessful. But commentators also worried that his broader approach to the presidency subjected the collective institutions of American government to a severe stress test. As George W. Bush speechwriter-turned-columnist Michael Gerson asked, was Trump an “institutional arsonist?”<sup>98</sup> In some ways his administration represents what social scientists call a “natural experiment” testing how well the two hundred thirty-year-old Madisonian system of checks and balances will respond when one of its three branches suddenly unleashes widespread disequilibrium. Trump viewed the outcome of the 2016 election as a directive to disrupt a system founded on striking balances—between contending constituencies, between branches, between self-interest and the national interest. He certainly delivered on this commitment, for better or worse.

Viewed in this light, we might consider what Americans expect of a president more broadly and ask how Trump measured up to those expectations. This is a different yardstick than assessing how Trump meets his own policy promises. Some expectations arise from formal sources (the Constitution and statute), others from historical experience (for example, the Watergate scandal of the 1970s), and still others from norms that have arisen out of the practice of leadership in a system of “separated institutions sharing powers.” For example, presidents have been expected to take care that the laws are “faithfully executed” without regard to partisanship or self-interest; to demonstrate competence in discharging their constitutional

responsibilities; to accept the basic system of checks and balances even when that interferes with their ability to achieve their policy preferences; and to build and maintain national unity and mutual acceptance, balancing the intertwined roles of “chief of state” and “head of government” in a way that fosters the motto *e pluribus unum*—“out of the many, one.” These have not been Trump’s core strengths.

Instead of embracing the Madisonian imperative that he persuade others to follow his lead, the president too often seemed to confuse constitutional checks and balances with the “swamp” water he promised to drain. As was the case with Nixon nearly fifty years ago during Watergate, the House of Representatives today is focused on President Trump’s alleged obstruction of justice, public corruption, abuse of power, disrespect for the rule of law, and disdain for Congress exercising its constitutional checks and balances.<sup>99</sup> In politicizing Department of Justice interactions with the White House, for instance, Trump shattered norms built up over the forty years after Watergate that sought to ensure the nonpartisan administration of justice. One might argue that instead of draining the swamp, Trump restocked it with a different form of marine life.

To be sure, Trump’s election was only the most recent effort by voters fed up with Washington to disrupt the status quo and secure change. Over a period of four decades, beginning with the election of 1976, American voters have repeatedly asked “outsiders” to change Washington. Governors Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush traveled from state capitals to the national capital based on promises to tell the truth, tame big government, restore hope, and bring back personal integrity to the office of president. Barack Obama barely had time to learn the ways of Washington as a senator—just two years—before he launched his presidential campaign promising “change you can believe in.” With the exception of George H.W. Bush, the electorate has, since 1976, chosen a series of presidents with little-or-no previous experience in the national government.

But large segments of the electorate remained disillusioned with government, as demonstrated by the rise of the Tea Party in 2009–2010 and the broader Populist tide that fueled the candidacies of Trump on the right and Bernie Sanders on the left in 2016. Those seeking change finally elected the ultimate outsider—a person with no government experience at any level to undertake the extensive repairs they demanded for a broken system. Trump tapped lingering economic despair and public distrust by denouncing everyone in Washington as the clumsy catalysts of all the nation’s problems and then by claiming that only he knew how to fix them. For Trump’s strongest supporters—some 35 to 40 percent of the electorate—the president was a plain-spoken bulwark against establishment politics, Republican and Democratic alike, someone unafraid to

stand up to the likes of America's enemies as well as friends taking advantage of American generosity. In the words of one newspaper publisher in Ohio, they continued to "like that Trump is a game-changer, a disrupter, a practitioner of what I see as 'crafted chaos.' Our stale system and its corrupted processes are in need of disruption."<sup>100</sup> Trump supporters saw his opponents as guilty of violating the rulebook in their disdain for his presidency. As Attorney General William Barr put it, "the idea of resisting a democratically-elected president and basically throwing everything at him and, you know, really changing the norms on the grounds that we have to stop this president, that is where the shredding of our norms and institutions is occurring."<sup>101</sup>

Trump's critics, of course, disagreed. With the release of the Mueller report, especially, commentators filled the news with warnings about a constitutional crisis as the Trump administration challenged the right of the Democratic House to launch investigations into various aspects of the Mueller investigation unless they had a clearly legislative purpose.<sup>102</sup> Although the Mueller report did *not* find that the Trump campaign engaged in a criminal conspiracy with Russian operatives to influence the 2016 election, it documented more than one hundred forty examples of contacts and communications that at the least triggered concerns for many (as did President Trump's later comment that campaigns could accept information on their opponents from foreign governments and that his FBI director was "wrong" in saying otherwise.)<sup>103</sup> Even more critically, Mueller's investigation documented at least ten instances when the president might have obstructed justice by trying to derail the inquiry and influence witnesses. Attorney General Barr concluded that there was no legal basis to charge the president with obstruction, but Mueller explicitly refused to exonerate the president from wrongdoing, effectively leaving it to Congress to determine the president's fate. Mueller's adherence to the forty-year-old guidance from the Office of Legal Counsel that a sitting president cannot be indicted for violating federal law meant that this precedent-busting president benefited from long-standing precedent.

Throughout the long investigation, congressional Republicans generally rallied to the president's defense, not to the defense of Congress's institutional powers. Madison's constitutional design assumes that officials in each branch will defend their own constitutional roles and powers. That would require members of Congress, in House and Senate and of both parties, to see it as their duty and in their best self-interest to defend their own branch's prerogatives. But the process of impeachment (colorfully described in 1898 as a "rusted blunderbuss" because of its explosive punch but infrequent use<sup>104</sup>) is inherently political. Congress must decide what constitutes "high crimes and misdemeanors" and whether presidential transgressions meet that standard. In the polarized world of contemporary Washington, it should come as no

surprise that Republicans generally backed the president as the inquiry into Trump's requests of Ukraine got underway in the fall of 2019.

More generally, Trump's arrival in Washington coincided with developments that made Congress especially dysfunctional and its "institutional capacity" to govern seriously eroded.<sup>105</sup> Reductions in committee and subcommittee staffs from the early 1990s onward depleted the knowledge base that allowed past Congresses to develop solutions to national problems. Power is heavily concentrated in party leaders preoccupied with managing ideological divisions in the caucus, crafting tactically helpful messages, and raising funds for the next round of election campaigns. Consumed by partisan gridlock, each Congress has passed fewer and fewer laws over the past decade, usually failing to even adopt appropriations bills on time.<sup>106</sup> Compromise, so critical to the effective operation of Congress in the past, is now nearly impossible to accomplish, viewed by party activists as reason enough to remove members from office.

As a result, it is not surprising that other institutions of Madisonian governance rose in importance: the judiciary and the states. Liberals had chafed against legal challenges to Obama's administrative actions and long opposed "states' rights," a phrase tainted by historical implications of racial injustice. But under Trump, they found the benefits of an independent judiciary and of federalism far clearer.

Could the stress on American institutions become even greater? Trump's former attorney Michael Cohen suggested during his public testimony before Congress that Trump is capable of refusing to give up power after losing an election—an even greater test for the system.<sup>107</sup> Peaceful transfer of power from one party to another has been an American norm since 1800 and has become a litmus test for democracy worldwide. Any challenge to that tradition would be a radical departure. Even without that scenario unfolding, some observers suggest that the nation's most likely future is an all-out conflict between political camps who share mutual distrust, lack self-restraint in the exercise of power, and feel no commitment to fair rules of the game.<sup>108</sup>

We have argued that democratic institutions matter. Ultimately, they provide protections against all manner of dangers, including the excesses of persons serving as president. Reflecting on the problems that Andrew Johnson (the first president to be impeached) posed for American politics in 1867, Frederick Douglass, the former slave turned orator and 19th century celebrity, argued that, "[O]ur government may at some time be in the hands of a bad man. When in the hands of a good man it is all well enough, and we ought to have our government so shaped that even when in the hands of a bad man we shall be safe."<sup>109</sup> Opinions vary on whether Trump is good or bad, but if President Trump secures reelection, it will be despite the sustained disruption of constitutional norms that dominated his years in the White House.

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