

When Should "Norms" Become Law?
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We are hearing much about "norms" today, an issue we usually do not have to think about because these are automatically practiced values. But we currently have a president who has blithely violated almost all the norms of behavior or practice of all of his predecessors.

Some presidential norms are just a matter of courtesy: speaking politely in public, debating policies in political election campaigns rather than insulting the opponent; regarding the opponent as a colleague, not an enemy; and treating one's appointed cabinet secretaries and administrative staff with courtesy. These norms are matters of presidential character. Our founders emphasized that good character was essential in a participatory government.

Other norms have more significance in a democracy: submitting annual tax returns, so that the public can know that there are no obligations that might create conflict of interest. We need to know if the President has monies or debts that might taint his decisions. We already have one law, not just a norm, the Emolument Clause, that forbids a president from accepting gifts from foreign players with an agenda of influence.

Another norm currently being violated is the submission of a medical report with annual follow-ups, so that the public knows the health of their president. There is no norm yet for mental health testing. This important norm was first violated by President Woodrow Wilson, who had a stroke while in office. Neither the stroke nor his incapacity were revealed to the public. His unelected wife secretly served in his stead.

President FDR had serious heart disease during his fourth term that was not publicly revealed. We have no way of knowing how much his condition affected his performance. Since that time, annual medical reports have been issued, and presidents with medical emergencies (Johnson) or injuries from an assassination attempt (Reagan) were carefully monitored in the press and made available to the public.

One important norm, established by the example of George Washington, was to serve only two terms, a norm until FDR ran for, and won, four terms in office. To be sure, those were extraordinary times and there were good reasons for violating the norm. However, upon the election of President Eisenhower, the norm was fixed into law by act of Congress.

Another norm that is so automatic that it has rarely been challenged, is the separation of powers among the Administration (and Cabinet), Congress, and the Courts. Only one president in our history violated the norm of obeying the Supreme Court when it ruled against a law or practice. The Court ordered President Andrew Jackson to cease in his campaign of evicting the Cherokee from their ancestral lands. He ignored the order and proceeded in his genocidal campaign. Even President Richard Nixon, who violated many norms, was ultimately obedient to the Supreme Court order to hand over his presidential tapes.

It has been amazing to witness President Donald J. Trump violating so many norms. He has refused to release his income tax returns, refused to put his personal fortune into a blind trust (every other wealthy president has done so), and has overtly violated the Emoluments Clause, accepting money from his private businesses (hotels, etc.), and openly boasting about getting huge sums of money from the Russians, Chinese, and Saudis.

President Trump may have done us a favor in compelling us to pay attention to norms (thanks to the press for this). He is under investigation by a special prosecutor for his financial dealings, for colluding with a foreign power (Russia) to assist in his election, and rampant violations of the Emoluments Clause. These violations will be addressed under existing law. But a number of norms may have to be addressed by Congress and put into law. We will need law to guarantee truthful tax returns, wealth in blind trusts, and real medical examinations reported out. Who would have thought that these norms would have to be put into law?

The one norm that cannot be put into law is that only people of good character serve in our government. We ignore it at our own risk.

681 words

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