The American Presidency

Before we start, I want to make a few things clear: First, no one in this class (or any other that I teach) will be penalized, rewarded, or otherwise evaluated based on ideology, partisanship, political views, vote preferences, or anything other than the requirements set out below and in course assignments. Second, a key component of an education is developing the ability to distinguish between statements of fact and evidence and interpretations about what those facts mean. Third, a statement, interpretation, or idea that goes against your priors, or even one that you find offensive, is not by definition a personal attack; the ability to listen, engage, respond, and counterargue in this situation is an essential element of becoming a critical thinker.¹

Remember why you’re here: “Whatever may be limitations which trammel inquiry elsewhere, we believe that the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.”

Thank you for coming to my TED talk.

Now, let’s get on with it.

I. Course Description
There is no such thing as a bad time to study the American presidency. But some eras are better than others. We are 4 years into the most unconventional presidency in American history, with a president who gleefully flouts the norms of governing and behavior that have structured the office since George Washington. On December 18, 2019, he became the third president in American history to be impeached, with a trial scheduled to being on January 21, 2020. Impeachment is one of the gravest constitutional processes that exist, and we will take a detailed look at the history, process, and consequences. Trump’s supporters see his impeachment as only the latest example of a corrupt and ossified D.C. establishment going after a president who threatens its lock on power. They see his behavior as a feature, not a bug. If elites are against it, Trump’s supporters are for it. The president’s opponents insist he is both corrupt and an existential threat to national institutions, and see impeachment as a necessary response.

But the costs to Trump’s pattern of norm-repudiation are apparent, and they are complicating the president’s efforts to reshape government. Some examples: historically high cabinet and White House turnover;² vacant national security slots at a tense time in U.S. foreign policy;³ multiple nominees who

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¹ If you are interested, Professor Emeritus Donald Downs and I set out some thoughts about this in 2006; [https://badgerherald.com/opinion/2006/02/20/the-freedom-to-offen/](https://badgerherald.com/opinion/2006/02/20/the-freedom-to-offen/).
have withdrawn after inadequate vetting;\textsuperscript{4} chaotic White House staff processes;\textsuperscript{5} policies that appear and disappear on presidential whim;\textsuperscript{6} and a popularity level that has been underwater since February 2017 and has rarely cracked 50\% in any poll (though it also has shown more stability than any other president’s approval ratings).\textsuperscript{7}

The once-record Democratic field of presidential candidates (25 in August 2019, depending on how you counted, and a signal that Democrats see the president as vulnerable) has dwindled to 12 as of January 14\textsuperscript{th}.\textsuperscript{8} The Iowa Caucuses – the official start date of the primary season – are just around the corner (February 3), and the Democratic nominee will almost certainly be known by the end of the semester (May).

Throughout the course, we will focus on three fundamental questions about the President's role as formal head of the executive branch of government and head of state, but also as the focal point of public attention:

(1) What are the sources of presidential power? In Harry Truman's formulation, presidential power is little more than convincing other people that what the president wants from them is in fact what they should want in order to further their own interests. Presidents sit atop a vast bureaucracy, filled with actors whose interests will not always coincide with theirs. Presidents must continually bargain with members of Congress, each of whom has his or her own independent base of political support. And, as every president learns, public evaluations can be fickle.

On the other hand, presidents retain substantial amounts of constitutional and statutory authority. They have can act almost at will with respect to war powers and foreign affairs. We will investigate the importance of these formal and informal sources of presidential power and devote considerable attention to the historical development of this power, examining key presidencies and eras in close detail.

Many constitutional grants are ambiguous, or have never been definitively interpreted. And some questions of presidential power are difficult to answer in the abstract, because

\textsuperscript{6} On August 15, 2019, the \textit{Wall Street Journal} reported that Trump was interested in purchasing Greenland. When the Danish government made it clear that Greenland was not for sale, Trump cancelled a planned state visit to Copenhagen. \url{https://twitter.com/realDonaldTrump/status/1163961882945970176}.  
\textsuperscript{8} Corey Booker, Steve Bullock, Julián Castro, Bill de Blasio, Kirsten Gillibrand, Kamala Harris, John Hickenlooper, Jay Inslee, Andrew Messam, Seth Moulton, Beto O’Rourke, Tim Ryan, Joe Sestak, Eric Swalwell, and Marianne Williamson have dropped out.
they involves powers that have never been definitively interpreted, or raise novel question that have not come up before. We will consider one: the question of the prerogative power, or the inherent authority to go outside the Constitution (or even violate it) in order to achieve a higher goal, such as saving the Republic. But there are others.

Are there practical limits to a president’s ability to use emergency powers delegated by Congress? Can the president order U.S. companies to leave China? End birthright citizenship via unilateral action? Order the killing of a foreign military leader without congressional authorization? Can presidents pardon themselves, or pardon subordinate officials for carrying out illegal orders? Can presidents ignore congressional subpoenas? Is the Emoluments Clause enforceable by federal courts? Are Checks and Balances merely “parchment barriers” in the face of a president who refuses to acknowledge them?

(2) How are presidents elected? The presidential election process is long, complex, and difficult to navigate (and it doesn’t always produce what most people think are particularly strong candidates). Some critics contend that the process is flawed, because presidential campaign skills have little to do with presidential governing skills. Others argue that the election process deters quality leaders from seeking the office; historian James Bryce made the same argument in 1888. We will investigate presidential primaries, the politics of getting to the convention, the general election campaign, and the relationship between the politics of campaigning and the politics of governance.

We will pay close attention to the 2016 election, because of how unusual it was. Among other things, there is no question that Russia was actively using social media and other strategies intended to influence the outcome, as well as conducting cyberattacks on election infrastructure. With few exceptions, presidents have emerged from existing political networks and have links to other political elites. There are some who did not (Andrew Jackson comes to mind), but Trump is the first president to have no previous government or military experience.

We will also consider what is occurring as we head into the 2020 cycle. While many of the record number of Democratic candidates have (or had) zero chance of winning the nomination absent a Bruce-Willis-and-Ben-Affleck-Armageddon-sized asteroid hitting the earth (sorry, Marianne Williamson, Bill de Blasio, Michael Bennet, Andrew Yang, Tulsi Gabbard, John Delaney, and Tim Ryan fans, but them’s the facts), the large number of candidates complicates the task of forecasting and may have downstream effects as the nominee attempts to unify the party going into the general election.

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There are also rumblings of nascent internal Republican challenges to Trump’s renomination; former Congressman Joe Walsh (R-IL) announced in August, joining former Governor William Weld (R-MA). Such efforts are rare and almost never succeed: Pat Buchanan in 1992 and Ted Kennedy in 1980 are the last two meaningful intraparty challenges, and Chester Arthur in 1884 was the last incumbent to be denied nomination. However, they can signal vulnerability; both Carter and George H.W. Bush went on to lose in November (as did Gerald Ford, who faced a challenge from Ronald Reagan in 1976).

(3) How do presidents govern? This may seem obvious, akin to asking how fish swim or birds fly (the easiest answer is, well, that’s just what they do), but it no longer is. It is perhaps the key question about presidential behavior.

Where does Trump fit into this picture? His presidency poses questions that we have never faced before and presents challenges to what we think we know. Trump is dismissive of traditional governing practices and famously uninterested in policy details. From what we can observe, there are no meaningful policy processes in the West Wing. The White House no longer has press briefings, and Trump’s leadership strategy consists largely of tweets and rallies in front of enthusiastic supporters.

Every modern president has tried to use campaign-type techniques to generate support for their policies. It rarely works, in part because the two tasks – campaigning and governing – are vastly different. Can you recall an instance where a president overcame congressional or public opposition by making a public appeal?

We will consider in some detail questions of presidential leadership, how presidents have tried to act as head of state (the national leader of an entire populace) rather than head of the base, and what it means that Trump does not seem to embrace that role.

II. Course Readings
You should purchase the following anywhere you can get a good deal:


I will also assign other readings which will be posted on Canvas. The reading load is moderate, and at times the assignments can be demanding. It is important that you stay current, because I guarantee that you will not be able reel everything in two days before the exams.

You are also required to read a national newspaper of record, either in paper or online. The New York Times, Wall Street Journal, and the Washington Post are the easiest to get here, and discounted student subscriptions are available. Television news and major media web sites are not an adequate substitute.

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Both Lyndon Johnson (1968) and Harry Truman (1952) dropped out after unexpectedly strong showings by challengers (Eugene McCarthy and Estes Kefauver, respectively). Their withdrawals were more a realization of a likely November loss.
III. Credit and Grade Components
This course is 4 credits, reflecting 150 minutes of lecture and 50 minutes of section each week over approximately 15 weeks. The expectation is that you will spend a minimum of 8 hours each week outside of class on reading, studying, section assignments, and other forms of preparation.

Your grade will be based on the following: a final (30%), a two midterms (20% for the 6 week, 25% for the 12 week), and section attendance and participation (25%).

The format of the exams is different than the standard model of separate papers submitted for each exam. For the course, each exam will build on the previous exercises, you will be expected to revise your earlier work to take our feedback into account, and the questions will become progressively more involved. We will explain this in more detail as the exercises approach, but the sequence will be something like this:

- 6 week – a 5-6 page paper addressing a question from the first part of the course. This will be due March 5.
- 12 week – a 10-12 page paper incorporating your 6 week exam into a more detailed question about the relationship between presidential elections and presidential powers and legitimacy. This will be due April 9.
- Final – a 15-18 page paper folding the 6 and 12 week exam into a discussion of presidential executive authority in a constitutional system. This will be due on May 5.

IV. Important Policies

1. The University of Wisconsin-Madison supports the right of all enrolled students to a full and equal educational opportunity. The Americans with Disabilities Act (ADA), Wisconsin state statutes (36.12), and UW-Madison policy require that students with disabilities be reasonably accommodated in instruction and campus life. Reasonable accommodations for students with disabilities is a shared faculty and student responsibility.

   If you have a McBurney VISA, please check in with me at the beginning of the semester so we can ensure that appropriate accommodations are in place.

2. Please use your wisc.edu email address when you communicate with me or Tim. We cannot respond to non-university email accounts.

3. Tim and I will always be willing to talk with you about your exam and assignment grades, explain how we evaluated your work, and suggest ways for you to improve your performance. We do our best to be fair and consistent in our grading. However, we do not haggle over grades or points, or provide extra credit assignments. Period. Barring clerical error, grades are final.

V. Discussion Sections
The TA for this course is Timothy Williams (tvwilliams3@wisc.edu), a Ph.D. candidate in the political science department, who is writing a doctoral dissertation about presidential use of executive agreements. His office hours are M 11:30AM-12:30PM and W 11AM-12PM, 122 North Hall.

DIS302: Mondays, 9:55-10:45AM, 6121 Social Science
DIS303: Mondays, 2:25-3:15PM, 6117 Social Science
DIS304, Tuesdays, 11:00-11:50AM, 4322 Social Science
Section attendance is required, and your participation (as well as some specific exercises assigned in section) will be 25% of your grade. The sections are a critical part of the course: they are a useful way to stay current with the class material, and are also a good place to seek help if you have questions. Tim will provide more information in section.

VI. Old Man Yells at Internet
You probably rely heavily on a laptop or tablet to take notes in class. What you probably don’t realize is that this is a suboptimal educational strategy. Students who take notes longhand understand more, retain more, and get higher grades than students who use laptops, mostly because when you use a laptop you put more effort into transcribing everything verbatim than trying to understand what the speaker is saying (and research shows the laptop is the problem). Taking notes longhand forces you to process and analyze as you go. The evidence has become indisputable, and the distraction element is impossible to ignore. Few people can resist the temptation to check email, shoot a text about how boring Federalist 67 is, or drop in on Instagram, Snapchat, Facebook, Twitter, ESPN, or whatever site is your favorite. You may think you can multitask, but you can’t. What’s even more compelling: when you use a laptop or go online during class, you distract and lower the performance of everyone sitting around you.

So, I am banning laptop and tablet use in this class. You must take notes longhand. I intend to post full lecture notes prior to every class so you can print them out and use them as a template.

HOWEVER, I understand that some of you may have a legitimate educational reason to use a laptop to take notes. There are a variety of circumstances that can justify this, but rather than specify what those are I will leave it to your judgment. You get the final say on whether or not you have a legitimate reason. The only condition is that if you decide that you will use a laptop in either lecture or section (or both), you must use it exclusively for note taking (and not multitasking or surfing) and you must notify me and Tim in an in-person meeting of your decision.

I will also ask you to put away your phones and other electronic devices at the beginning of lecture unless you are using them to take notes as outlined above. Going offline will seem impossible at first, and your friends may worry that you have been kidnapped by extraterrestrials when you don’t respond immediately to their text messages. But I assure you that you will not actually die from disconnecting, even though it might feel that way initially. You may even come to realize that you aren’t paying attention in class when you are online, and that you don’t really need to settle whether Fleabag is the best or worst television show in history. At least not right this second.

Remember what the Dalai Lama says (or probably would say) about this kind of thing: if you’re here, be here.

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VII. Some web sites that will be useful:
The American Presidency Project (website run out of UC Santa Barbara)
Lawfare blog
The Take Care blog
Mischiefs of Faction blog
The Miller Center for Public Affairs, University of Virginia
The White House Transition Project
Links to Presidential Libraries, National Archives
The National Security Archive, The George Washington University
List of Presidential Vetoes, U.S. Senate
Schedule
NOTE: I have not assigned specific dates here, in part because how much time we spend on each section will depend on what happens in the coming months and weeks. However, every Thursday I will set the schedule for the following week, and provide specific details about which readings we will cover in lecture and section.

Part I: Introduction. - Studying the presidency, and the nature of the office. Historical patterns
- Overview
Readings:  *EMW*, chapter 1


- The Impeachment and Trial of Donald Trump
Note: given the historic nature of this, we will spend considerable time on it. These readings may change, depending on what happens during the Senate trial (which begins in earnest on January 21)

*Federalist* 65, 66.

- Constitutional Origins and Historical Development; Formal Powers
Readings:  *EMW*, chapter 2
  Marc Landy and Sidney M. Milkis, “The Presidency in History,” *The Presidency and the Political System*, chapter 4

Primary Documents
*Federalist* 67, 70, 71, 72.
*George Washington Inaugural Address*, April 30, 1789.

- Legitimacy, Norms, and Institutional Robustness


- A Case: Foreign Policy and War Powers

Readings: *EMW*, ch. 14


**Part II: The Politics of Presidential Elections**

- Nominations and Presidential Primaries

Readings: *EMW*, ch. 3


Washington Post election simulator

- The General Election and the Electoral College

Readings: *EMW*, chapter 4


*Baca et al. v. Colorado Department of State* (5th Circuit Appeals Court decision on faithless electors), selections.

*Federalist* 68

- The 2016 Election


United States Department of Justice, Office of Special Counsel, *Report on the Investigation Into Russian Interference in the 2016 Presidential Election*, Volume I (pp. 1-11), Volume II (pp. 1-8)

-Gearing Up for 2020

Readings:
Perry Bacon, Jr., “Should We Take These Early General Election Polls Serious? $#!% No!” FiveThirtyEight, June 14, 2019.


Question: Is it possible to forecast with any confidence who will win the Democratic nomination?


Five Thirty Eight, The 2020 Democratic Primary
https://www.opensecrets.org/2020-presidential-race

Is this any Way to Pick a President?
Readings:  James Bryce, “Why Great Men are Not Chosen President,” chapter 8 in The American Commonwealth (originally published 1888).

Part III: Presidential Governing -- Managing the Affairs of State, and Getting What You Want

- Campaigning is not Governing, and other Cautionary Tales


The White House Transition Project

- The President and the Public and the Media; the rise of the “Public Presidency”
Readings:  EMW, ch. 5-7


Here are some interesting examples:
FDR’s March 12, 1933 Fireside Chat
The official White House Twitter feed
Donald Trump’s Twitter feed

- The Presidency as an institution: The White House Office; organizational problems, managing the Executive Branch

Readings:  EMW, ch 8


- Decision making in the White House
Readings:  
*EMW*, ch. 9  

**Part IV: Governing in a "Separated System." Relations with other governmental actors.**

- Energy in the Executive: The question of initiative, from unilateral action to the prerogative
Readings:  

- relations with Congress and the Separation of Powers
Readings:  
*EMW*, ch. 11  
Matthew Dickinson, “The President and Congress,” *The Presidency and the Political System*, chapter 15

- relations with the Judiciary
Readings:  
*EMW*, ch. 12  
David Yalof, “The President and the Judiciary,” *The Presidency and the Political System*, chapter 16

- The President as Head of the Executive Branch
Readings:  
*EMW*, ch. 10  
David Lewis and Terry Moe, “The President and the Bureaucracy,” *The Presidency and the Political System*, chapter 14

**Part V: Summing it All Up.**

- Assessing presidential leadership
Readings:  
Paul Quirk, “Presidential Competence,” *The Presidency and the Political System*, chapter 5