

A measured response to Trumpism



[Emoluments](#)

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One of the entertaining aspects of teaching the U.S. Constitution is the vocabulary building opportunities. The English in the Constitution is clearly modern, but it does use a few words that have fallen out of common usage.

If we can thank Donald Trump for anything, and it's hard to come up with anything, even around Thanksgiving, it would be that he has caused us all to refresh our knowledge of the word, "emolument." Dictionary.com [defines](#) "emolument" as: "profit, salary, or fees from office or employment; compensation for services."

The Donald has reminded us of this term by [suggesting](#) that it is impossible for the President of the United States to have a conflict of interest. Pardon my French, but this is bullshit of the deepest, smelliest sort.

A "conflict of interest" arises when an individual has multiple goals, as virtually all humans do, and achieving one goal or set of goals interferes with achieving another goal or set of goals. For the Donald to continue to have anything to do with running his business while he is President virtually assures that he will have significant conflicts of interest.

The Founders never anticipated having an incompetent buffoon as President, but they did anticipate the problem of the President having conflicts of interest. They did not use that language, but it is easy to infer the concern from what they did say.

The word, "emoluments," appears three times in the Constitution. The first time, in Article I, Section 6, is not relevant. It simply prohibits members of Congress from serving in any office Congress created or increased the salary ("emolument") for while they were in Congress. This is one of those provisions that addresses a bad habit the colonists found irksome in the English government they had just thrown off. Members of Parliament would work to create new offices,

then occupy them in the sense of being the titular office holder, who would then hire lackeys to do the actual work, often of collecting some tax. This sort of opportunity for double-dipping – create a new tax, then go collect it – created an irresistible temptation for English members of Parliament that the colonists resented, so they prohibited the practice in their new Constitution.

The second use of “emolument” is in Article I, section 9. Article I, section 8 is the longest section in the Constitution. It contains a list of all the powers Congress expressly has. Article I, section 9 lists powers Congress expressly may not exercise. It contains eight sentences. Six of them begin with “No,” including the last one, which reads: “No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

The third use appears in Article II, section 1. Article II, of course, defines the Executive branch of the federal government, which includes the President and Vice President, Dick Cheney to the [contrary](#) notwithstanding. That passage reads: “The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.”

Taken together, the second and third uses of “emolument” strongly suggest that the Founders realized that the job of President of the United States would be full time and, as is often the case in such situations, they wanted to ensure that the best people would be willing to take it, so they attached a salary, “a Compensation,” but, as is often the case in the Constitution, they wanted to achieve a balance. The Constitution is all about balance. The mere existence of the Constitution is an attempt to balance the competing goals of having a government that is stronger than its predecessor, but not too strong. The three branches, legislative, executive, and judicial, balance each other, as the phrase, “checks and balances,” which we routinely apply to the Constitution, indicates.

The Founders wanted the President to receive a salary, but they were also very worried about any federal official having competing loyalties. The language is pretty narrow and specific. Usage number two says, “present, Emolument, Office, or Title, of any kind whatever.” This would seem to tie the issue to compensation for professional services – no hiring yourself out as president to any other country while you’re President of the United States.

So issues such as the possibility that the Donald may have [used](#) a phone call with the President of Argentina to get a permit he needed for a building in Buenos Aires that had been stalled for a long time might seem not to fit. This is a modest example. Both the President

of Argentina and the Trump campaign have denied that the two discussed the matter at all. Still, for a project that had stalled for a long time suddenly to get approval days after the two Presidents talked is fishy at best, especially when the President of Argentina is also a real estate developer whose family has done business with Trump in the past.

Also, this doesn't seem to fit well with the problem as we have articulated it from the Constitution. As always, however, there is a larger point involved. This differs in degree, not in kind, from the Donald's reputed business [dealings](#) with the Russians. With the United States and Russia on opposite sides of important foreign policy problems around the world, the obvious concern is that the Donald may choose to accommodate the Russians in foreign policy more than he should in order to protect or advance his business interests.

He could largely avoid this concern as most Presidents have done in the past by putting his personal assets into a blind trust – a real blind trust, not one that his children run for him. One defining feature of a blind trust is that the owner pays professionals to administer it so that there is no substantive contact between the owner and the manager in any way that might prompt the owner to change her/his choices in order to increase the value of the assets in the trust. For the Donald to claim, then, that his allowing his children to run his business while he is President equates to a blind trust is rank nonsense.

More importantly, that I can find, he did not actually say so, but others have [inferred](#), not entirely unreasonably, from what he did say that he sees himself as being entirely exempt from the law. He seemed to think he was that even before he won. His [whining](#) about decisions Judge Curiel made in the Trump University case suggest a mildly terrifying combination of profound [ignorance](#) of how the law works with the belief that it should not apply to him.

But, of course, all citizens are subject to the law in the United States, including the President. Indeed, the office of President exists only because of the Constitution, which defines it. And the Constitution, to state the obvious, is law. Ask Richard Nixon.