

ON THE EMOLUMENTS CLAUSE

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Guarding Against Corruption: The Emoluments Clause of the United States Constitution – Origins, Rationale, and Interpretation

Abstract

The Emoluments Clause of the United States Constitution is a rarely litigated but constitutionally significant provision intended to protect the republic from foreign influence and domestic corruption. This article is a brief summary of the Emoluments Clause and prominent authorities related to the historical origins, legal rationale, and interpretative development of the Emoluments Clause. It summarizes the clause's treatment in the Federalist Papers, its foundational grounding in English and colonial legal traditions, and significant scholarly and judicial interpretations, especially in the context of modern governance and presidential conduct.

Introduction

The Emoluments Clause—more precisely, the Foreign Emoluments Clause—is located in Article I, Section 9, Clause 8 of the [United States Constitution](#). It provides:

"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."

This provision, one of several in the Constitution designed to insulate the federal government from corruption, especially undue foreign influence, reflects the Founders' deep concern for maintaining the integrity of public service and reflects their appreciation of the risks of government officeholders and employees being seduced by foreign states to violate their oaths to the US Constitution.

Historical Origins

The Emoluments Clause draws heavily from English common law and European political philosophy, which often viewed gifts and titles from foreign sovereigns as compromising to a subject's loyalty. A particular precedent was the 18th-century British ban on government officials receiving pensions or bribes from foreign powers. American colonists, especially those who had experienced royal corruption under colonial governors, were deeply skeptical of entanglements with foreign monarchs.

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During the [Constitutional Convention of 1787](#), the clause was introduced by [Charles Pinckney](#) and received little debate, indicating widespread agreement on its necessity. The Founders feared that public officers might be bribed by foreign states through gifts, honors, or emoluments, and thus shaped a prohibition around that concern.

Rationale

The clause serves two principal purposes:

1. **Preservation of Republican Integrity:** By prohibiting foreign influence through gifts or titles, the clause ensures that officials remain loyal to the United States and not to foreign powers. The Founders were wary of aristocratic systems and foreign corruption that plagued European governments.
2. **Legislative Oversight:** The clause does not outright ban acceptance of foreign emoluments but requires congressional consent, thereby creating a check and balance mechanism.

Federalist Papers and the Emoluments Clause

Although the Emoluments Clause is not frequently discussed in the *Federalist Papers*, its underlying concerns are echoed in [Federalist No. 22](#) and [Federalist No. 68](#), both authored by Alexander Hamilton.

- In *Federalist No. 22*, Hamilton discusses the need for a strong national government capable of regulating foreign affairs and preventing corruption from abroad.
- In *Federalist No. 68*, he addresses the risk of foreign influence in presidential elections, highlighting the importance of safeguarding the executive branch from undue foreign entanglements—a concern that aligns with the purpose of the Emoluments Clause.

Interpretation and Application

Legal and scholarly interpretation of the Emoluments Clause has varied over time, with renewed attention during the Trump administration, which raised questions about foreign payments to businesses owned by a sitting president.

Key authorities and interpretations include:

- [Office of Legal Counsel \(OLC\) Opinions](#): The OLC has historically interpreted the clause as applying broadly to all federal officers, including the President. In a 2009 memorandum, the OLC concluded that any payment or gift from a foreign state to a government official—no matter how indirect—requires congressional approval.
- [Judge Emmet G. Sullivan \(Blumenthal v. Trump\)](#): In a high-profile 2018 case brought by members of Congress, Judge Sullivan emphasized that the clause was designed as a

safeguard against foreign manipulation. Although the case was later dismissed on standing grounds, it reignited scholarly debate about enforcement and interpretation.

- **Scholars such as Zephyr Teachout:** In her seminal work "*The Anti-Corruption Principle*" (Cornell Law Review, 2009), Teachout argues that the Founders intended the clause as part of a broader constitutional ethos against corruption, not merely a technical provision.

Contemporary Relevance

The Emoluments Clause has gained renewed relevance in the context of globalization and the intersection of public office with private enterprise. While traditionally dormant, it now invites modern reinterpretation regarding presidential ethics, foreign diplomacy, and congressional oversight responsibilities.

Conclusion

The Emoluments Clause, rooted not just in the Founders' fear of foreign corruption but based in their lived experience, remains a cornerstone of constitutional ethics and accountability. Though rarely litigated, it offers a critical lens through which to evaluate the propriety and independence of American public officials. As the U.S. confronts new challenges in global governance, understanding and applying this clause is more vital than ever.

Bibliography

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4. Office of Legal Counsel Opinions (U.S. Department of Justice), various.
5. Blumenthal v. Trump, 373 F. Supp. 3d 191 (D.D.C. 2019).