

Trumping Conflicts of Interest

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ABSTRACT: As President, Donald Trumps faces two sorts of conflict of interest. The first are conflicts of interest other Presidents also faced, though Trump's are "writ large." These seem—as a practical matter—unavoidable now, hard to escape, not to be much changed by disclosure, and not even much subject to management. The other sort of conflict of interest seems to be without resolution even in principle while Trump remains both President and the person he is. These conflicts of interest are the product of the same life that made him President. He cannot be both chief executive of a republic (as his oath of office requires him to be) and the royal autocratic central to his business brand.

KEYWORDS: Trump, conflict of interest, bias, disclosure, risk

"You can't teach an old dog new tricks," they say, but old dogs learn them on their own—and the tricks they learn are usually bad.

— Anonymous

The United States has had several rich presidents, including Herbert Hoover, the two Roosevelts, John F. Kennedy, and the two Bushes, but most of these could let others manage their wealth while they served as President. Until now, only one president, George Washington, was both very rich and deeply involved in managing his own wealth while President. Washington was also the first U.S. President to have (what would now be considered) serious conflicts of interest. For example, the site of the capital he chose (the future District of Columbia) included land he owned.¹

Doubtless, there are many respects in which the forty-fifth President of the United States, Donald Trump, differs from the first. Among these are his speculation in urban rather than rural land, his lack of public service before becoming President and, of course, his reputation for straying from the truth. Yet, in one respect at least, the two seem similar. Like Washington, Trump's wealth gives him serious conflicts of interest. Even here, though, there is a difference. Unlike Washington, Trump is a brand as well as a person. Trump therefore has some conflicts of interest fundamentally different from Washington's. Trump's assets (after deducting for liabilities) are estimated to be \$2.9 billion. Of these assets, between

\$32 million and \$55 million seem to come directly from agreements licensing his name.² Much more may come from having his name on his own properties, such as the ninety-eight-story Trump Tower in Chicago or the fifty-eight-story Trump Tower in New York City.

To be a brand is not just to be a person with a reputation. It is to be a commercial property the market value of which depends primarily on “image” (an organized set of marketable associations). The conflicts of interest being a brand produces in a public official are not as easy to avoid, escape, or manage as ordinary conflicts of interest are, nor does full disclosure seem an adequate response to them. Any decision Trump makes as President may help or harm the Trump brand just because Trump made the decision. As a businessperson, he would, of course, know that his political decisions may have that effect. The problem is not only how to separate the public official from the private businessperson but also how to separate the person from the brand.

CONFLICT OF INTEREST

A conflict of interest is a situation in which some person, whether an individual or corporate body, is in a relationship with another person requiring him, her, or it to exercise judgment in the other’s behalf when he, she, or it has an interest tending to interfere with the proper exercise of judgment in that relationship.³ The crucial terms here are *relationship*, *judgment*, *interest*, and *proper exercise*.

“Relationship” is any connection between persons justifying one in relying on the other for a certain purpose. A relationship may be formal, such as that between a Senator and the people she serves, or informal, such as occurs when the Secretary of Defense responds to a dinner guest who asks whether the Army is likely to close a certain base. A relationship can last years (as the relationship between a President and his advisers often does) or only a minute (as when the Defense Secretary answers that dinner guest). But not just any connection between persons is enough for a conflict of interest. The connection must be fiduciary, that is, involve one person justifiably trusting (or, at least, being entitled to trust) another to exercise *judgment* in the other’s service.

“Judgment” refers to the ability to make certain decisions correctly more often than would a simple clerk with a book of rules and all, and only, the same information. Insofar as decisions do not require judgment, they are “ministerial,” “mechanical,” “deductive,” or otherwise “routine”; they have (something like) an algorithm. The decision-maker contributes nothing special. Any difference between the decision-maker’s decision and that of someone equally well trained would mean that at least one of them had made a mistake (something easily shown by examining what they had done). Solving an ordinary math problem is routine in this way; so too is reading a statute aloud.

Where judgment is required, the decision in question is no longer routine. Judgment brings knowledge, skill, and insight to bear in unpredictable ways. Where judgment is necessary, different decision-makers, however skilled, may disagree without any of them being obviously wrong. Over time, observers should be able to tell that some decision-makers are better than others (indeed, that some

are incompetent). Those with good judgment tend to do better in the long run; for example, the better a general's military judgment, the more battles he wins, all else equal. We also identify those with good judgment in other (less reliable) ways. For example, those with good judgment tend to see more considerations relevant to a decision than those whose judgment is not as good.

But, except in extraordinary circumstances, an observer will not be able finally to decide *decision by decision* who has better judgment; nor will an observer be able to explain differences in outcome in individual decisions merely by error—or even be able to establish decisively that one decision-maker's judgment is better than another's in this or that case. Even if one decision-maker is successful this time when another is not, the difference might as easily be the result of luck as insight.

Not every relationship, not even every relationship of trust or responsibility, requires judgment, of course. For example, I may ask you to keep a substantial sum of cash until I return for it. You are then a trustee upon whom I am relying. But you need not exercise judgment to carry out the task. The task is entirely routine, however much your ability to do it is strained, for example, by a desire to spend the money yourself. You need only place the money in a locked drawer or safe and let it be until I return for it. You lack the permissible options that make conflict of interest possible. Not all incitements to misbehave constitute conflicts of interest.

"Interest" refers to any influence, loyalty, concern, emotion, or other feature of a situation tending to make a person's judgment less reliable than it would normally be, without rendering that person incompetent or malevolent. Financial interests and family connections are the most common sources of conflicts of interest, but love, prior statements, gratitude, membership in a certain club, jealousy, and other subjective tugs on judgment can also be interests. The law typically regulates the most common conflicts of interest, especially financial interests and close family connections of public officials. The law typically ignores many conflicts of interest, such as love and distant family relations. As of now, the law does not, it seems, regulate the President's conflicts of interest at all.⁴

What constitutes "proper exercise" of judgment is a *social fact*, that is, something decided by what people ordinarily expect of a fiduciary, what the person exercising judgment invites others to expect, what a group to which that person belongs invites others to expect, what that person has expressly contracted to do, what various laws, professional codes, or other regulations require, and so on. Because what is proper exercise of judgment is so constituted, it changes over time and, at any time, may be in part contested. For example, appointing one's brother Attorney General does not seem to have counted as creating a conflict of interest for President Kennedy a half century ago, but probably would today, even if it is still legal. While the law helps shape the social facts that constitute "proper exercise," it does not define the concept. The ethics of conflict of interest is, in part, independent of law, especially when the conflicts of interest involve the President of the United States. He can have a conflict of interest even if the law does not recognize it.

Conflict of interest is not mere bias. *Bias* (in a person) is a deflection of judgment in a definite direction. Bias, whether conscious or unconscious, is relatively easy to correct. For example: we can discount for a bias by shifting the burden of proof.

We cannot so easily correct for a conflict of interest. “Bending over backward to be fair” is a way to negate bias, but it is not a way to negate a conflict of interest because a conflict of interest is a tendency or risk of bias, not the certainty of it. The bias may or may not actually manifest in a particular decision. Correcting for a conflict of interest is therefore much harder than correcting for a bias. Bending over backward to be fair may simply create a bias in the opposite direction, if the conflict has not actually affected the judgment or not affected it as much as supposed. How are we to *know* when the conflict is actually affecting someone’s judgment (even our own) to a significant degree and when it is just a “risk factor”?

Many conflicts of interests are, out of politeness or timidity, misdescribed as “apparent conflicts of interest” or “merely apparent conflicts of interest.” The term “apparent conflict of interest” should not be wasted in this way. A conflict of interest is merely *apparent* if, and only if, the person being relied on does not have the conflict of interest but someone else, not knowing what the person relied on knows, would be justified in concluding (however tentatively) that the person relied on does have the conflict. Insofar as what counts as justification depends on the burden of proof, the facts available to the observer in question, and similar epistemological factors, apparent conflicts of interest are (more or less) “in the eye of the beholder.” So, for example, people may disagree about whether Trump appears to have a certain conflict of interest because they disagree about an epistemological factor, such as whether mere rumors that Trump owns certain land that the federal government is about to buy constitute an appearance of conflict of interest.

Apparent conflicts of interest are, as such, no more conflicts of interest than humans in a portrait are humans. Any conflict of interest that is not merely apparent is a true conflict of interest. Though not a true conflict of interest, an apparent conflict of interest is nonetheless a situation that should, all else equal, be avoided or escaped for the same reason that any merely apparent wrongdoing should be. It misleads people about their security, inviting unnecessary anxiety and precaution. Trying to manage an apparent conflict of interest is both difficult and wasteful, since managing an apparent conflict of interest consists in instituting (or at least giving the appearance of instituting) procedures to protect against a conflict of interest that is not there. Generally, it is better to avoid or escape the appearance of conflict of interest altogether.

How does one avoid or escape an apparent conflict of interest? An apparent conflict of interest is avoided by making available to the appropriate persons enough information to show that there is no conflict *before* the appearance arises. An apparent conflict is escaped by making available to the appropriate persons enough information to show that there is no conflict *after* the appearance has arisen. One might, for example, answer a public charge of financial interest by making public authoritative documents showing that one has sold the property in question. Where one cannot make such a showing, even in principle, the conflict is a conflict of interest strictly speaking, *not* a (merely) apparent one.

There may, of course, be good reasons for not making such a showing when one can, for example, because the showing would violate national security or a

business partner's privacy. But having good reason not to make such a showing is different from not being able to make it.

TRUMP'S CONFLICTS OF INTEREST

There is no doubt that President Trump has many conflicts of interest. Here are three well-known ones:⁵

First, Trump has a financial interest in a hotel in the American capital, "Trump International DC." It is one of several Washington hotels at which visiting dignitaries might stay without seeming to spend too much or too little on accommodations. If visiting dignitaries stay at that hotel, Trump will, if informed, have a reason to feel more favorable toward those dignitaries than if they stayed elsewhere in Washington. Trump would have a conflict of interest insofar as his judgment should be exercised in the public interest, not in the interest of a hotel owner, and his interests as a hotel owner have a tendency to bias his judgment in favor of dignitaries staying at his hotel.

Second, Trump owns large buildings (hotels, office towers, or residential towers) in a score of foreign countries, including Azerbaijan, India, and Turkey. The profitability of those buildings depends in part on Trump maintaining good relations with the countries in which they are located. But maintaining the profitability of those buildings may not always be in the interests of the United States. Trump has, in effect, given hostages for his "good behavior" to a number of foreign countries. Trump has reason to worry that a government unhappy with some policy of his might seize this or that building within its jurisdiction, or take other action substantially reducing its value. Ownership of those buildings, or even just a substantial connection with them, creates conflicts of interest for Trump.

Third, Trump's chief source of business loans today, amounting to over a billion dollars, is Deutsche Bank, apparently because Trump's many bankruptcies have made it hard for him to borrow elsewhere. The Justice Department is now negotiating with Deutsche Bank regarding a fine of \$14 billion to resolve probes into the Bank's contribution to the 2008 financial crisis. A fine that large could force Deutsche Bank into bankruptcy. A bankrupt Deutsche Bank would be unlikely to make what most banks regard as high-risk loans. Given Trump's history of bankruptcies, future loans to him may well be regarded as high risk. Trump therefore has a reason to treat Deutsche Bank better than he would if he did not have the probability of a continuing business relation with it. The Justice Department is a part of the government for which Trump serves as chief executive. Since the President's private interests should not affect Justice Department decisions, Trump's interest as a borrower may conflict with his duties as President.

WHAT'S WRONG WITH CONFLICT OF INTEREST AND WHAT CAN BE DONE ABOUT IT

The existence of a conflict of interest does not mean anyone did anything wrong. A conflict of interest can just happen. For example, a President might awake one morning to learn that her favorite uncle died during the night leaving her a large

inheritance, including several lawsuits against the federal government, lawsuits in which her duties as President clash with her interests as plaintiff. She has done nothing wrong; indeed, she has done nothing at all to create the conflict. Nor did her uncle do anything wrong when he wrote his will—months or even years ago. However, what the President does after learning of the inherence may be wrong—for at least one of four reasons.

First, she may be negligent in her response. Americans expect those who undertake to exercise judgment in their behalf to know the limits of their judgment when the limits are obvious. Conflict of interest *is* an obvious limit on judgment (a factor reducing reliability). One cannot have an interest without knowing it—though one can easily fail to take notice of it or misjudge how much it might affect one’s judgment.⁶ Insofar as the person exercising judgment is unaware of the conflict of interest, she has failed to exercise reasonable care in acting in the other’s behalf. Failing to exercise reasonable care in such a case is negligent and therefore morally objectionable.

Second, if those justifiably relying on a person for a certain judgment do not know of the conflict of interest but the person knows (or should know) that they do not, then the person with the conflict of interest is allowing those justifiably relying on her to believe that the judgment in question is more reliable than it is—in effect, deceiving them. That deception is a betrayal of their (properly-placed) trust and therefore morally objectionable.

Third, even if the person exercising judgment informs those justifiably relying on that judgment that a conflict of interest exists, the judgment will still be less reliable (less deserving of trust) than it ordinarily is. The person will still be less competent than usual—and perhaps appear less competent than she should be. Conflict of interest can remain a technical problem, affecting both one’s competence and one’s reputation for competence, even after it has ceased to be a moral problem.

Fourth, insofar as the person exercising judgment appears less competent than she would appear if she did not have that conflict of interest, anyone relying on her judgment in that situation must feel less secure than he otherwise would. He must take precautions he would not otherwise consider. He must gamble in a way he would not otherwise. The conflict of interest raises the cost of trust even where there is no betrayal of trust. All else equal, conflict of interest tends to cause a waste of resources (just as the appearance of conflict of interest does).

What can be done about a conflict of interest? One common answer, one still enshrined in many codes of ethics, is: Avoid all conflicts of interest. That answer seems to rest on at least one of two mistakes. One mistake is assuming that all conflicts of interest can, as a practical matter, be avoided. Some certainly can be. For example, President-elect Trump could have sold his financial interest in the Washington hotel before taking office. The hotel would then not have been able to create the conflict of interest we described once he took office and dignitaries began mentioning that they were staying there. He would have avoided that conflict of interest.

Of course, Trump cannot avoid all conflicts of interest in that way. For example, even if he had sold his interest in the hotel and required the new owner to remove “Trump” from the hotel’s name, Trump may still think of it as his hotel, since he

oversaw its design, financing, and construction. He may still like the idea that a certain dignitary is staying there and may therefore be more partial to the dignitary than he otherwise would be.

The other mistake is to assume that avoidance is the only proper response to a conflict of interest. In fact, there are at least three others: escape, disclosure, and management.

Escape ends the conflict. So, for example, Trump can, while President, sell all of his significant properties or, failing that, give them away. He would then have freed himself of the conflicts of interest their ownership created (though not the conflicts that his continuing emotional attachment to them creates). The sale would, of course, not make business sense. Knowing that Trump must quickly rid himself of those properties, especially the large ones, potential buyers would be in position to drive hard bargains. Much of Trump's wealth might disappear. What is true of selling off the properties would be even truer should he simply give them away. The scale of Trump's wealth probably makes it unreasonable to expect him to sell or give away enough of it to escape even the most serious of his conflicts of interest. Taking over a Trump property, such as a certain hotel without the Trump name, might well appear risky at any price. Much of its value would be the Trump name. Without the Trump name, it might be a "white elephant." A white elephant, even a free one, can be quite expensive. Trump might, therefore, have trouble finding takers, even for his gifts. And such fast divestment might, in fact, merely be trading one conflict of interest for another. Trump may well feel obligated to those who do not drive a hard bargain or who accept the gift of one of Trump's white elephants.

There is also the question of how much sacrifice it is reasonable to demand of an officeholder, indeed, of how much it is reasonable of the officeholder to demand of himself. Any given conflict of interest merely creates a risk of bad judgment in a given situation; it does not guarantee it. Any discussion of whether to escape a certain conflict of interest probably should be understood as concerned with balancing risks against benefits. Some conflicts of interest should be tolerated (in part at least) because the alternative is worse, for example, giving up the office to which one has just been elected.

Disclosure, even if sufficiently complete (and understood), merely gives those relying on a person's judgment the opportunity to give informed consent to the conflict of interest in question, to replace that person with another, or to manage the conflict. Unlike escape, disclosure as such does not end the conflict of interest; it merely avoids the betrayal of (justified) trust. (Disclosure is primarily a way to dispose of an apparent conflict.)

Trump has so far refused to disclose his financial affairs even to the degree now customary in American politics. He has not made any of his federal tax returns public. He has not told the public who his partners are in any of his major enterprises. He has not even told the public how much of what carries the Trump name actually belongs to him. Of course, the voters elected him seeming to know that he was refusing to disclose all that—and, as President, that he probably would continue to refuse to disclose. Perhaps they even understood why: the information disclosed would be valuable to his business competitors, making it

harder for him to make a profit. Disclosure would also invade the privacy of his partners who had not bargained for disclosure of *their* business affairs when they entered the partnerships. For now, at least, those who voted for Trump seem to have accepted that someone as involved in business as he was (and continues to be) will have many serious conflicts of interest that he will not disclose. His public non-disclosure is a kind of disclosure, though of an unusual kind.

Managing conflicts of interest, though often the resolution reached after disclosure, can also be an alternative to disclosure, for example, when disclosure is improper (because it would violate someone's privacy) or impossible (because the person to whom disclosure should be made lacks the time, training, or intelligence to understand the relevant details). Managing a conflict of interest sets up a procedure to reduce the risk of bad judgment that the conflict creates. For example, if Trump is aware that his judgment concerning a certain country might be affected by having a large hotel there, he might inform his Cabinet and ask them to advise on any decision respecting that country. Alerted to the conflict, the Cabinet would be in position to reduce the risk of decisions concerning that country that are against the public interest by, say, recommending against a decision when the reasons the President gives for it seem especially weak. Managing is a way to reduce the risks of a conflict of interest without actually doing away with the conflict or all of its risks.

Managing, however, has its own risks. Over time, managed conflicts can come to seem normal. As they come to seem normal, they can become precedents for others that, though similar, are a bit more risky—until one is tolerating conflicts of interest that should never be tolerated (and would not have been tolerated had they been considered earlier). Managing should, therefore, generally be treated as a strategy for emergencies. Any conflict of interest likely to reoccur should be dealt with in some other way, that is, by avoidance or escape.

Generally, conflicts of interest are easier to manage when “potential” rather than “actual.” A conflict of interest is potential if, and only if, a person has a conflict of interest with respect to a certain judgment but is not yet required to make that judgment. Potential conflicts of interest, like landmines, may or may not go off. A conflict of interest is actual if, and only if, a person has a conflict of interest with respect to a certain judgment and is in a situation where she is making that judgment. As President-elect, Trump had many potential conflicts of interest that became actual almost as soon as he took office, such as those created by his first negotiations with a foreign dignitary he knew to be staying at Trump International DC. He could, of course, have avoided having those actual conflicts a) by announcing that he would have no dealings with any dignitary staying at his hotel, b) by recusing himself from all judgments concerning those dignitaries, or c) by declining to take office. The first of these seems the most attractive solution to this conflict of interest—at least for those who elected Trump President. While his hotel might lose a little business, he would have avoided one set of conflicts without much interference with public business. Most visiting dignitaries, probably all, would simply stay at another hotel.

TRUMP'S SPECIAL CONFLICTS OF INTEREST

Many U.S. Presidents have had conflicts of interest similar to those discussed so far. These nonetheless differ from theirs in at least three ways, ways that combine to make the resulting conflicts of interest at least seem different in kind from those of other Presidents. First, because Trump moved directly from business to the Presidency, without any intervening public service, his connection with his private interests seems far stronger than those of Presidents who have had little to do with business for many years. Trump's private interests have been his life until now—and he has already lived beyond the Biblical three score and ten. How can he not care about those private interests, indeed, have them vividly in mind as he transacts the public's business? Second, much of Trump's wealth, perhaps most, is in real estate. Real estate, especially large properties such as the ones Trump is famous for, are much less liquid than most other assets are. There is nothing like a stock exchange on which he could find a buyer in seconds. Even if Trump wanted to, it might take him years to separate himself from his properties in a way that escapes the sort of conflicts of interest described so far. Third, Trump is not just rich in the way previous Presidents have been, that is, merely rich enough to live comfortably without a job. *Forbes* ranks Trump as the 156th richest individual in the world.⁷ What happens to his wealth is newsworthy whether or not he is President.

One way the rich entering upon a public office have of escaping a conflict of interest is to put all their wealth, or at least the offending part, in a "blind trust," that is, they hire an agent, such as a bank, to manage the wealth prudently and privately while they oversee their public duties. What makes a trust "blind" is that the owner cannot see into its operations. She cannot know how the wealth is being invested or exercise any control over its investment. She simply receives an income from it. There is a "fire wall" between the trust and its owner.

Trump is not a good candidate for a blind trust because, being daily involved with his business before taking office, he would know what he owned when he handed his business over to the trust. Given the size of many of Trump's properties, the trust's acts would be newsworthy enough for Trump to have a good idea what is in the trust on any given day. Maintaining a fire wall would, in practice, be difficult, if not impossible. The conflicts of interest would probably remain.

Though the conflicts of interest I have so far discussed seem, as a practical matter, more or less beyond avoidance, escape, or management, they are, I think, not the most serious Trump has. There is another that I now want to describe: Much of Trump's wealth is ephemeral, the product of a brand the value of which depends on people thinking of Trump as synonymous with success in business ("the master of the deal") and with luxury (expensive hotels, residential towers, exclusive golf courses, premium vodka, fine chocolates, and so on).⁸ In an earlier time, his brand might have been described as "royal."

We actually know little of how his business works, but what we do know seems consistent with royalty. Trump stands at the center of a privately-held organization (not a publicly traded corporation). Around him are his wife, children, and son-in-law, a sort of "royal family." Beyond them is his kingdom:

more than five-hundred subsidiaries and other entities, with about half bearing Trump's name and another fifty-four bearing his initials. The kingdom is called "The Trump Organization."⁹

Because so much of Trump's wealth seems to have come from his own dealings in real estate, we can at least tentatively conclude that he must have the ability to work amicably, rather than imperiously, with those whose money or cooperation he needs to carry out his large projects. We can tentatively conclude that he recognizes in business a domain resembling a political space, that is, a domain in which he is one among equals seeking to work together for mutual advantage ("the marketplace"). What we can only guess is how he will translate that recognition into politics. Will he merely translate it into an approach to foreign affairs, treating other countries, at least the most powerful, as equals? Or will he, instead or addition, translate it into an approach to Congress or, at least, to the Republican majority? Or will he, instead or addition, translate that recognition into an approach to the interest groups, at least the large ones, that seem to have such undue power in American government today? What seems better than a guess is that Trump will be inclined to treat the Executive Branch, namely those he has the power to fire, much as he has treated members of The Trump Organization.

Politics is at least as much about image as reality. What the public has seen of Trump at work, especially on the television show *The Apprentice*, is a man with royal power over his employees. He is someone who could say, and frequently did say, "You're fired!" His decision was final. He campaigned as a man alone, indifferent to what experts, party, and even his allies advised, someone used to having his own way. Insofar as the public, or at least the part that voted for him, is expecting Trump to rule like that, Trump, a mere President, has a conflict of interest he cannot avoid, escape, or even easily manage, while he remains in office. His oath made him chief executive of a republic, but his image invites him to rule as the public imagines England's Henry VIII or France's Louis XIV to have ruled—like a king.

I don't think Trump can escape that image quickly, if at all. He has taken a lifetime to build it. It must take years to destroy. Destroying it would mean not only acting like the mere chief executive of a republic he has sworn to be but also pointing out to the public that he is so acting—over and over again until they revise their view of him, seeing him as lacking royal power.

Destroying that royal image will not only be hard for Trump but also expensive for him or those who take over The Trump Organization. As he destroys his royal image, he will be destroying the Trump brand as well. He will, then, have a conflict of interest concerning even his judgments about how to destroy his royal image. As chief executive of a republic, he should want to be seen as such, "first among equals" modestly doing the public's business in concert with other citizens. He will, however, also have a long attachment to the Trump brand and the organization he built pulling his judgment in another direction. How is he to know what he would have done if he had not had that long attachment, that is, if he had lived a different life and therefore been a different person? There is no way for him to do that that I can see, certainly not in four years. There are some tricks that an old dog cannot learn.

CONCLUSION

I have, then, identified two sorts of conflict of interest Trump faces as President. The first are conflicts of interest other Presidents also faced, though Trump's are "writ large." These seem—as a practical matter—unavoidable now, hard to escape, not to be much changed by disclosure, and not even much subject to management. The other sort of conflict of interest seems to be without resolution even in principle while Trump remains both President and the person he is. These conflicts of interest are the product of the same life that made him President. Turning over The Trump Organization to his sons, for example, is no solution at all.¹⁰ While that transfer of ownership might reduce somewhat conflicts of interest of the first sort, it would actually reinforce the second. Transfer of The Trump Organization from father to sons is itself a royal act. Who but a king gets to choose his successor?

ENDNOTES

Thanks to Elliot Cohen for helpful comments on an earlier draft.

1. Fergus M. Bordewich, *The First Congress: How James Madison, George Washington, and a Group of Extraordinary Men Invented the Government* (Simon & Schuster, 2016), 295.
2. Alexia Fernández Campbell, "How the Presidency Could Hurt the Trump Brand," *The Atlantic*, Nov 17, 2016, <http://www.theatlantic.com/business/archive/2016/11/the-presidency-will-hurt-trumps-lucrative-brand/508058/>. (accessed December 30, 2016).
3. Michael Davis, "Conflict of Interest," *Encyclopedia of Applied Ethics, Second Edition*, Vol. 1 (Elsevier Science, 2012), 571–7.
4. 18 U.S. Code § 202—Definitions, <https://www.law.cornell.edu/uscode/text/18/202> (accessed January 10, 2017), but there may be a few exceptions to this general rule. See Rachel Stockman, "Trump is Right, Conflict-of-Interest Rules Don't Apply to Him," *Law Newz*, November 23rd, 2016, <http://lawnewz.com/high-profile/trump-is-right-conflict-of-interest-rules-dont-apply-to-him/> (accessed January 10, 2017).
5. For the longest list of these conflicts so far available, see Jeremy Venook, "Donald Trump's Conflicts of Interest: A Crib Sheet," *The Atlantic*, Dec 27, 2016, <http://www.theatlantic.com/business/archive/2016/12/donald-trump-conflicts-of-interests/508382/> (accessed December 29, 2016).
6. Empirical studies suggest that the effect of a conflict of interest is generally much larger than those having the conflict would expect. See, for example, the research cited in Michael Davis, "Empirical Research on Conflict of Interest: A Critical Look," *Conflict of Interest in Global, Public, and Corporate Governance*, ed. Anne Peters and Lukas Handschin (Cambridge University Press, 2012), 55–60.
7. Robert Channick, "Trump Falls in Forbes 400 Wealth Ranking, Illinois' Ken Griffin Rises," *Chicago Tribune*, <http://www.chicagotribune.com/business/ct-forbes-400-wealthiest-1005-biz-20161004-story.html> (accessed January 6, 2017). Trump was ranked 35th the year before. NewsMaxFinance, "Trump Slips in Billionaire Ranking in Turbulent Year," <http://www.newsmax.com/Finance/StreetTalk/donald-trump-forbes-billionaires-list/2016/03/01/id/716884/> (accessed January 6, 2017). Trump's drop in ranking (from 35th to 156th) seems to be a result of his focus on campaigning during 2016, giving us some idea of how important Trump's day-to-day judgments are to maintaining his wealth. He will probably pay a high price in wealth to escape even the more serious conflicts of interest he has.

8. Campbell, "How the Presidency Could Hurt the Trump Brand."

9. https://en.wikipedia.org/wiki/The_Trump_Organization (accessed January 3, 2017).

10. As I write this, Trump has declined to undertake even such a limited divestiture, preferring instead to make his sons *trustees* of The Trump Organization while he is President, essentially viceroys. Susanne Craig and Eric Lipton, "Trump's Plans on Businesses May Fall Short," *New York Times*, Jan. 11, 2017, https://www.nytimes.com/2017/01/11/us/politics/trump-organization-business-conflicts.html?_r=0 (accessed January 12, 2017).