The Office of the Presidency: A Perennial Conundrum

The contemporary Presidency seems beset by controversy. President Obama is hampered by lawsuits challenging his executive order on immigration, his signature legislation on health care, and his environmental initiatives. The House of Representatives has already censured him once, and he faces calls for more such measures. Obama is not alone. President George W. Bush was the target of 35 articles of impeachment, which were introduced in the House and referred to the Judiciary Committee. President Clinton, of course, endured a formal impeachment by the House, a trial in the Senate, and a civil lawsuit that went all the way to the U.S. Supreme Court.

What Arthur M. Schlesinger, Jr., famously called the “Imperial Presidency” seems to have become a punching bag — a focal point for withering public criticism, partisan attacks, and judicial challenges. But history shows us this is really nothing new. From tumultuous campaigns to partisan gridlock and fundamental debate over the role of the office, the Presidency has always occupied a peculiar position in American politics. Arguably the preeminent (and certainly the most powerful) of the three branches of government, it is simultaneously a lightning rod for controversy and even derision. More than two centuries after the Constitution’s ratification, the United States is still struggling to define the proper role of the Presidency.

Tudor Place had yet to be built when the election of 1800 between Jefferson and Adams erupted into some of the most basic disagreements in American history over the office of the Presidency. After collaborating on the Declaration of Independence, Jefferson and Adams parted ways and severed their friendship over Adams’s authoritarian style as President. The Alien and Sedition Acts comprised three different statutes enacted in 1798 by Adams’s Federalist Party over the vigorous opposition of the Jeffersonian Democratic-Republicans. The Acts declared that in light of impending hostilities with France, national security demanded that the President be authorized to punish criticism of the government — in other words, to suppress the rights of speech, press, and assembly in a way that was completely inconsistent with the First Amendment. As Supreme Court Justice Hugo Black later described it, “Publishers were sent to jail for writing their own views and for publishing the views of others. The slightest criticism of Government or policies of government officials was enough to cause biased federal prosecutors to put the machinery of Government to work to crush and imprison the critic.” In one example, Matthew Lyon, a Member of Congress from the Jeffersonian Party, was prosecuted, convicted and imprisoned on the basis of a statement that would strike any modern reader as utterly unremarkable, if not entirely patriotic:

“Whenever I shall, on the part of our Executive, see every consideration of public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice—when I shall behold men of real merit daily turned out of office for no other cause than independency of sentiment—when I shall see men of firmness, merit, years, abilities, and experience, discarded in their applications for power — whenever I shall see the American Constitution perverted to a pernicious purpose, and the liberty of the people invaded and violated with all the artifice of craft and fraud and treachery, and whenever I shall see every principle of liberty, of union, of peace, of order, of virtue, or of happiness invaded, or in imminent danger from any means or influence, it shall be my paramount duty and most heartfelt wish to preserve that liberty.”

John Adams by John Trumbull, ca. 1792-1793, Courtesy of the White House
for office, for fear they possess that independence… I shall not be their humble advocate.2

The election of 1800 was in significant part a referendum on the Alien and Sedition Acts and thus on the Federalist vision of the Presidency. The principal plank of Jefferson’s platform was a pledge to repeal the Acts and abandon the policy of repression they represented.3 The country was closely divided on the question, and the election saw the birth of “negative campaigning” — in fact, the bitterest political discourse in the then-young country’s limited experience. Jefferson’s supporters accused incumbent President Adams of having a “hideous hermaphroditical character, which has neither the force and firmness of a man, nor the gentleness and sensibility of a woman.”4 In response, a Federalist leaflet reportedly described Jefferson as “a mean-spirited, low-lived fellow, the son of a half-breed Indian squaw, sired by a Virginia mulatto father.”5

In the end, the voters repudiated Adams, and he finished third — behind both Jefferson and Aaron Burr, who tied in electoral votes. Jefferson emerged victorious when the election was thrown into the House of Representatives, and he took his election as a vindication of his understanding of the American system of government. Thus, the central theme of Jefferson’s First Inaugural Address re-affirmed the right of political dissent: “If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.”6

The Alien and Sedition Acts were hardly the only moments at which the country wrestled with the proper boundaries of Presidential power. The theme recurs endlessly in our political history. Jefferson himself apparently wondered whether he had the power to enter into the Louisiana Purchase without explicit congressional authorization, and certainly his many Federalist opponents in Congress accused him of hypocrisy, since he had previously espoused a limited construction of the Chief Executive’s role.7 When the Supreme Court held that the Cherokee tribe was not subject to the jurisdiction of the State of Georgia, President Andrew Jackson asserted his right to disregard it. The Court’s ruling sought to protect the tribe from Georgia’s efforts to pressure the tribe to surrender their land, but Jackson dismissed it with the (probably apocryphal) statement, “[Chief Justice] John Marshall has made his decision, now let him enforce it.”8 Abraham Lincoln claimed the unilateral authority to suspend the writ of habeas corpus, sparking a constitutional crisis after Chief Justice Roger Taney of the Supreme Court ordered the release of John Merryman, a first lieutenant in the Baltimore County Horse Guards who had been arrested for allegedly insurrectionary activities. Taney ruled that only Congress could suspend habeas corpus and that Merryman’s detention was unconstitutional. Pursuant to Lincoln’s directive, however, the commanding officer at Fort McHenry, where Merryman was held, ignored Taney’s order. Merryman languished in prison until he and friends were ultimately permitted to post bail for his release pending trial on charges of treason. Merryman was never tried, much less convicted. Even after Congress ultimately ratified Lincoln’s suspension of the writ after the fact, Lincoln continued to insist that no such legislation was needed.

The debates continued into the 20th century. Even a President as popular as Franklin Roose-
velt was denied the ability to expand the number of Justices on the Supreme Court — ostensibly to make it more “efficient” but, according to critics, actually to “pack” the Court and neutralize the votes of sitting Justices who had proven themselves hostile to his New Deal. Public concerns over Presidential power forced FDR to abandon his plan, even though the Constitution does not prescribe the number of Justices on the Court; in fact, over time, the size of the bench has fluctuated from six members (1789), to five (1801), to seven (1807), to nine (1837), to ten (1863), back to seven (1866), and finally to nine again (since 1869). Roosevelt’s successor, Harry Truman, maintained that he possessed inherent executive authority to seize domestic steel mills and operate them under federal direction, in order to avoid a labor strike during the (undeclared) Korean conflict. But the Supreme Court disagreed, ruling that in the absence of congressional authority, such Presidential freelancing was unconstitutional.9

In short, every era has presented its own version of debates and disagreements over the office of the Chief Executive. Even today, there is no consensus on the President’s ability to deploy military force without complying with the requirements of the 1973 War Powers Resolution, which requires the President to notify Congress within 48 hours of commencing military action and forbids U.S. armed forces from remaining in combat for more than 90 days without congressional approval. Nor is there any consensus on the limits of the President’s ability to enter into binding international commitments via unilateral executive agreements rather than congressionally ratified treaties, or the President’s capacity to use “signing statements” to interpret legislation. The common assumption that well established or longstanding historical practices by the President are ipso facto lawful is not always borne out. For example, in 2014, the Supreme Court struck down the common Presidential practice of intra-session recess appointments (those made during vacations and other interruptions of the congressional schedule), despite the Court’s acknowledgement that “Presidents have made thousands of intra-session recess appointments.”10

Perhaps the continuing controversy over the role of the President is attributable to the fact that the Constitution itself seems to be of many minds on the question. As with many constitutional principles, executive power reflects a series of compromises and contradictions that are built into the document itself — and thus into the fiber of the U.S. government. For example, Article I of the Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States,” while Article II provides that “[t]he executive Power shall be vested in a President of the United States of America.” Alexander Hamilton successfully argued, in a view that has been adopted by the Supreme Court, that the difference in language between the two provisions was significant — that the President may draw on a reservoir of implied authority, while Congress is limited to the specific powers enumerated in Article I (such as the power to tax or to regulate interstate or foreign commerce).11 But even Hamilton conceded that the President could not exercise such implied power in a way that was inconsistent with other parts of the Constitution, and many (including James Madison) rejected Hamilton’s premise that there are “implied” executive powers altogether. And even in areas like foreign affairs — where the President’s inherent authority would presumably be at its zenith — the Constitution contains a number of explicit grants of power to Congress, including the authority to “declare War,” to “raise and support Armies,” to “provide and maintain a Navy,” to “make Rules for the Government and Regulation of the land and naval Forces,” to ratify treaties, and to “regulate Commerce with Foreign Nations.”

Cutting across all of these is the power of the purse. Because the Constitution provides that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law,” Congress can always rely on its appropriations power to make itself heard, including with respect to foreign policy. For example, the Iran-Contra scandal of the 1980s saw an independent counsel appointed to investigate members of the executive branch in connection with violations of congressional appropriations restrictions regarding paramilitary groups seeking to overthrow the Nicaraguan government. The resulting eleven criminal convictions bear testament to the fact that the executive branch’s
ability to conduct foreign policy is not unlimited under the Constitution.

In every era, the ambiguities in the Constitution, the tensions among the branches, and the politics of the day have provided a recipe for continuing disagreement and discussion regarding the role of the Presidency. Each generation has re-made the office for itself, and that process will continue.

—JOHN S. MASSEY

Attorney at Massey & Gail LLP, Lecturer at Harvard Law School, and former law clerk to Justice William J. Brennan, Jr.

Notes
2. Id. at 156 n.42.
3. Id. at 156.
5. Id.
11. 7 Works of Alexander Hamilton 76, 80-81.

From the Executive Director

Dear Member:

As 2014 closed, we celebrated awards of four major grants: one to improve our communication capacity with our members, donors, and friends; another to conserve portraits of Peter family members and radio control equipment to be displayed following the restoration of the house; the third to assess the historic lighting fixtures; and, finally, a grant that funds the conservation of engravings by Anders Zorn coupled with a lecture on this significant 19th c. Swedish artist. Our efforts to conserve the important works at Tudor Place and to share the historic and cultural resources of this site with more people are greatly enhanced with these generous grants.

A large, unoccupied wasps’ nest in a tree at the north end of the property was discovered and donated to the Audubon Naturalist Society’s educational facility, Woodend, in Chevy Chase, MD. They are thrilled to be able to share this marvel of the natural world with children and adults.

As I write, we are busy with the January deep cleaning of the house and preparing for our new installation, running throughout February and March. We are taking a look at presidential politics from George Washington to Barack Obama, as seen through the artifacts, archive, and stories of an American family. Rarely seen objects and papers are on view so do come by for a visit by yourself or with friends. These tremendously important treasures are not to be missed.

We are very grateful to Jonathan Massey for his excellent article on the “perennial conundrum” of the Presidency. Many thanks to Jonathan, a distinguished constitutional lawyer, for stepping forward to be the first “outside” author for the Tudor Place Times!

With 2014 behind us, I want to thank you for your involvement, encouragement, ideas, and support this past year. Without it, we could not exist. My best wishes for a Happy New Year!

Sincerely,

LESLIE L. BURKE
Executive Director
Martha Parke Custis Peter Gets a Make-Over

An extensive photograph collection is housed under the auspices of the Tudor Place Archive, and within this collection are twenty-five daguerreotypes, nineteen tintypes, seven ambrotypes, and two ivorytypes. In January 2014, Adrienne Lundgren, Senior Photograph Conservator at the Library of Congress, conducted a survey of this unique and important collection of Cased Objects. Ms. Lundgren identified the photographic process of each object, established a date and the studio of its production, and most importantly, described its current condition. Archivist Wendy Kail and Ms. Lundgren examined those objects noted as “High Priority” for immediate conservation. Selected for conservation was the daguerreotype most important in the collection and to Tudor Place, a portrait of Martha Parke Custis Peter (1777-1854) and her granddaughter Martha Custis Kennon (1843-1886).

The significance of this daguerreotype cannot be overstated, because it is the only image of Martha Parke Custis Peter in advanced age known to exist. Martha Custis Parke Peter, the second child of Martha Washington’s son John [Jacky] Parke Custis (1754-1781) and his wife Eleanor [Nelly] Calvert Custis (ca. 1757-1811), was born on December 31, 1777, in the Blue Room at Mount Vernon. Martha Washington was present at the birth of her namesake.

This daguerreotype is the only known image of Martha Parke Custis aside from a portrait by Robert Edge Pine and particularly unique because it was captured by the photographic process. Only one other photograph of a grandchild of Martha Washington is known, a ca. 1844-1849 daguerreotype of George Washington Parke Custis by photographer Mathew Brady, held in the Library of Congress.

Forever proud of her heritage and an unyielding Federalist, Martha Custis Peter appears in the daguerreotype holding a miniature of her beloved step-grandfather, George Washington, given to her on the eve of her marriage to Thomas Peter. Her granddaughter, Martha Custis Kennon, rests her hand on her grandmother’s shoulder and leans lightly on her, physically illustrating the support her grandmother gave so willingly to her family. Martha Custis Peter’s gaze is stern and straightforward; the child shows a hint of a smile.

Tudor Place is deeply grateful to Ms. Elinor Farquhar and Mr. and Mrs. David Kenney for funding the conservation of this extraordinarily important daguerreotype. Still awaiting conservation funding is a second important daguerreotype of Britannia Peter Kennon (1815-1911) and her daughter Martha Custis Kennon.

—WENDY KAIL, ARCHIVIST
From the Collection

Two Rare Prints by James McNeill Whistler to be Unveiled

In February, two prints by the American artist James McNeill Whistler (1834 – 1903), the etching *Street at Saverne* (1858) and the lithotint *Nocturne (River at Battersea)* (1878), will be displayed at Tudor Place for the first time in over half a century. The discovery of two prints by Whistler after decades of anonymity in the Tudor Place collection is nothing short of miraculous. These important works reiterate the Peter family’s commitment to the creative genius of American artists and artisans for over 200 years. The etching and lithotint showcase the diversity of Whistler’s artistic abilities and demonstrate the evolution of his style. Both prints were identified among approximately 30 uncatalogued works of art in storage.

*Street at Saverne* represents the beginning of Whistler’s career as an artist and talented etcher; the scene was part of *Douze eaux-fortes d’après Nature*, or the highly-regarded ‘French Set’ published in November 1858. Less than 100 are known to exist in public collections around the world. Whistler traveled to Saverne, in Alsace, France, in late summer and early fall of 1858. In the etching, the moonlight and gas-lit street lamp cast dramatic shadows on the steep-roofed buildings along the left. A single figure is nearly consumed by the shadows of a doorway and Whistler’s name appears inconspicuously amidst the street lines.

Created two decades later, *Nocturne* captures twilight along the industrial Battersea riverfront of London. A solitary waterman hunches over his shallow barge before sloping slag heaps and chimney stacks, his silhouette barely visible among the faint glimmer of gaslights reflected on the river Thames. The artist’s iconic signature, a butterfly monogram, appears in the lower right corner.

The artworks will be exhibited in the first floor Office, a masculine space furnished with a large reference library, Colonial Revival-style furniture, and American art pottery and glass. Whistler’s prints join contemporary prints that Armistead Peter, Jr., collected in the early 20th century, such as Timothy Cole’s popular print of Woodrow Wilson (1918) and five etchings by the Swedish artist Anders Zorn (1860 – 1920).

New Grant Throws Light on Historic Collections

With funding from the National Endowment for the Humanities, over 20 important examples of 18th- and 19th-century lighting devices, from chamber sticks to 1914-era electric light fixtures, will be researched and assessed for conservation. The lighting collection illustrates changing technologies in domestic interiors, showcasing the shift from a pre-industrial world illuminated by candles, firelight, and reflective looking glasses to the dawn of the electric age in the early 20th century. The lighting collection highlights the responsibilities of enslaved and free servants at Tudor Place and how these laborers adapted to modern technology.

Six principle lighting devices are prominently displayed from the ceilings throughout the National Historic Landmark house, including a pulley-operated glass lantern and an elegant early 19th-century lead glass chandelier, each purportedly among the earliest lighting devices installed by its builders, Thomas and Martha Peter. The chandelier is the only fixture to have been spared from retro-fitted electrical wiring. Careful study of this rare piece will allow the museum to more fully realize and install its original design. The tiered fixture is an important and rare example of the elegant fixtures used at entertainments in Georgetown and Washington in the early 1800s.

—ERIN KUYKENDALL, CURATOR
Special Member And Landmark Society Programs

Presidential Portraits: The Man and His Time

Wednesday, February 18
6:30 p.m. – 8:30 p.m.

Dr. Brandon Fortune, Chief Curator of Painting and Sculpture, National Portrait Gallery, examines the evolution of Presidential portraits from that of George Washington through the present day. Since presidents first commissioned their portraits, the iconography of the images has changed. What does this tell us about the role of the president and its influence?

A Personal Look at the First President

Thursday, March 12
6:00 p.m. – 8:00 p.m.

We know what the history books say, but what was everyday life like for our first president? Come sip a specialty cocktail—something the Peters might have served to grandparents George and Martha Washington when they visited Tudor Place—and take a peek at some of the most personal belongings of our first President.

Members And Landmark Society

Members: Free
Non-Members: $20.00 Per Person

Events in Style at Tudor Place

Tudor Place offers an incomparable setting for special parties, teas, luncheons, dinners, meetings and corporate events. Seamless service gives you confidence that your event will be stress-free. Add interest to your gathering with tours of the mansion or garden. During February and March, your guests will enjoy a display of rare presidential items from the collection and archive.

Tudor Place’s experienced events staff will help you arrange the perfect get-together. Reserve your space now or obtain more information by contacting Elizabeth Killian, at 202-965-0400 ext.115, events@tudorplace.org. For more information visit: http://www.tudorplace.org/plan-your-visit/rentals/

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Education Programs in 2015

A full list of winter 2015 programs for adults and children is available online at www.tudorplace.org

Keep Calm…Ring Carson!

Settling in for the latest episode of your favorite parlor drama without a proper mug of tea? Never again, now that you can cozy up with your very own Downton Abbey-inspired mug! “Keep Calm, and Ring Carson for Tea” is the message below an image of the authentic Tudor Place call bells installed and used in the house’s service area nearly two centuries ago. “Ring for” your own piece of Tudor Place now! “Keep Calm” Downton Mug, $12

Visit the shop Tuesday – Saturday 10-4 or Sunday 12-4, order online at tudorplace.org, or call the shop at 202.965.0400.

Downton Abbey Tea

Saturday, February 21, 2015, 1-3 p.m.
Members: $25 | Non-Members: $30

Join fellow fans of the popular PBS series in an elegant setting replete with historical drama and “upstairs/downstairs” social distinctions. Counterparts to Downton’s elite Edwardians and their staff abound at Tudor Place, one of America’s first National Historic Landmarks. Compare and contrast, in a special tour highlighting the lives of servants and masters in the nation’s young capital. Fortify yourself beforehand with traditional English scones, sandwiches, petite desserts, and select tea brews, in a repast worthy of Lady Mary and the Dowager Duchess. (It will be served in the Dower House, after all!)

Join the Legacy Society and Become a Lasting Guardian of Tudor Place!
The Legacy Society recognizes individuals who make a commitment to the preservation of America’s history by including Tudor Place in their estate plans. Members of The Legacy Society ensure this National Historic Landmark will educate visitors for generations to come!

- Individuals can make a meaningful gift to Tudor Place through a wide range of planned giving options. Your gift can be customized to fit your philanthropic needs.
  Please contact Mary-Michael Wachur at 202.965.0400, x. 104 or mwachur@tudorplace.org if you…
  - Already included Tudor Place as a beneficiary in your will,
  - Are interested in learning how to name Tudor Place as a beneficiary in your will, or
  - Would like more information on a Charitable Remainder Trust, gift of insurance, or an IRA.
- No matter where you are in your estate and financial planning, Tudor Place can help you create a special historic legacy.