Presidential Libraries: Is There a Case for a National Presidential Library?

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Editor's Note. H. G. Jones, a past president of the Society of American Archivists, has been one of the leading critics of the concept of private ownership of presidential papers. At the 1971 annual meeting of the American Historical Association, Jones was a commentator at a session titled "Presidential Libraries: Is There a Case for a National Presidential Library?" and the following article is a very slightly edited version of his remarks in reference to the two principal papers of the session: "Presidential Records: Where, What, When?" by James MacGregor Burns of Williams College, and "Will Success Spoil the Presidential Libraries?" by James E. O'Neill of the National Archives and Records Service. O'Neill's paper was published in the *American Archivist* in July, 1973.

I DO NOT BELIEVE that I will abuse the privilege of a commentator if I discuss not the papers of the two gentlemen who have preceded me but instead point out their failure to recognize the trap set by the program committee.

I would prefer to think that the program committee, in selecting a topic of "Presidential Papers: Is There a Case for a National Presidential Library?" consciously set this trap, but I fear that it was done without the realization that the topic itself gives a negative answer to the question that it poses. Yet, if we were debating the *real* issue today, those who support the centralization of presidential records would not face a predetermined response.

Burns and O'Neill have told us the success story of the present system. Let not my comments reflect any denigration of the bold departure taken by Franklin Roosevelt in 1938. For, even though the underlying philosophy of this system is composed of quicksand, remarkably useful institutions have been built thereon. These institutions, unfortunately, will continue their tenuous existence until they are given a solid legal underpinning.

If we take it seriously, the title of this session makes futile any discussion of centralization versus decentralization. Every archivist should—and hopefully many historians do—know that the term "Pres-

idential Papers" is either a deliberate evasion of the real issue or an absence of understanding of the nature of the question that should be raised. But, try as Lester Cappon, Julian Boyd, and many more of us may, we seem unable to spread beyond the confines of a tiny fraternity of ineffective archivists the difference between "papers"—i.e., the personal emissions and accumulations of an individual or family—and "records," i.e., the organic body of materials made and received in connection with one's official duties. When we add the subtitle, "Is There a Case for a National Presidential Library?," we observe the magnitude of the task and its probable outcome. But on this latter point, let me come clean: It was my North Carolina predecessor, R. D. W. Connor, who allowed FDR to stamp in indelible ink the misnomer "Library" on the Hudson River structure which came to house the property of the people of the United States. His successors have allowed the misnomer to be applied to other repositories, including that pharoah's monument in Austin.

The issue that we should be discussing today is "Whose Records Are We Talking About?"

O'Neill answers this question by casually stating as "a very fundamental fact" the following: "The papers of a President are his own private property. . . . The logic of this may not be immediately apparent, though a strong political and constitutional case can be, and indeed has been, made for it." Quicksand! A "strong political and constitutional case" does not constitute "a very fundamental fact," and it is this precarious jump between opinion and fact that shows up in the few articles that have been written on the subject and in the statements of politicians at congressional hearings.

The fact is that George Washington toted off public property—the records of our nation's chief executive paid for by and belonging to the citizens of the United States—because we had no governmental program to care for them and no professional group to call his hand. Subsequent Presidents followed his example, thus establishing a tradition so strong that a twentieth-century archival program and a new profession dared not challenge it. Even R. D. W. Connor, in his zeal to carry out the FDR proposal, dug up Grover Cleveland's silly argument that, because he could refuse to allow Congress to see certain presidential documents, they were his private property. Others, mostly associated with the present system, have continued to equate tradition with fact. The General Services Administrator in 1955 referred to "the tradition and the fact that the papers are the personal property of the retiring Presidents," but what was thus stated to be fact was only an assumption supported by a long tradition of acquiescence in the practices flowing from it.

Those who espouse this attempted legalization of tradition usually argue that the President is a constitutional officer and is, therefore, independent of the legislative branch. This, of course, is true; as David Lloyd has pointed out, Congress cannot subpoena presidential records while the President is in office, but Lloyd fell into quicksand when he

tried to leap from the constitutional fact that the President is empowered to withhold his records while he is in office to the opinion that those records are his private property and can be carried off when the man gives up his office to a successor. To recognize the constitutional independence of the presidency is not to establish a sound premise for the conclusion that presidential records are the private property of the incumbent, whether in or out of office. Even John Adams declared that the right of withholding information pertains to the office and not to the man. Like all other presidential powers, it may only be used by the individual who for the time being occupies of the office of President.

The theory that this power of the President to disclose or not to disclose information in the presidential records should follow the individual "into his retirement as a personal right to be exercised by him for his natural life and then to be descendable to his executors and heirs" has no justification under any constitutional principle, no matter how much it may have been practiced in the past. The theory leads those who support it into the illogical and quite unconstitutional proposition that a private citizen—perhaps one who has never exercised the office of President and is even ineligible to do so—can decide what records of the presidency a subsequent holder to its powers might or might not see. The right of a private citizen to make such a determination is clearly unauthorized by reason or by law.

Franklin Roosevelt, I believe, recognized the incongruity of the tradition when he referred to the records of his office as "the people's record." I further believe that the new system that he proposed was based partially on his desire to reverse a habit potentially inimical to the nation. That is not to say that his motivation was not colored by the assurance of documentary immortality and a lightened financial burden by having the records of his office cared for at public expense. Perhaps subsequent Presidents also recognized the incongruity, though I fear that they were attracted by the tax advantages of "donating" presidential records to the people who paid for them and for whom they were created or accumulated. It would be interesting to know how much of a tax break was earned by President Lyndon B. Johnson. Undoubtedly even he would have found it a financial strain to foot the half-million-dollar-per-year cost of administering his monument in Austin, a cost now borne largely by our federal tax dollars, as it should be.

How can we rectify this baseless assumption that the records of a President are his private property?

One way, of course, would be for Congress to exercise its undoubted authority to lay public claim to the records of the presidency by prohibiting their removal by an outgoing President. This approach, however, without the initiative of the man occupying the office, would reflect a conflict between two branches of government. There is, I believe, a more satisfactory alternative—an alternative that uses the same illogical reasoning that has brought us to where we are to-

day: that is, by substituting a *new* "tradition" for the old and allowing future generations to equate the new tradition with fact. We have seen today how easily this can be accomplished.

This new "tradition" can be accomplished by a statesman-President who, seeing that Franklin Roosevelt stopped short of the logical goal, issues an executive order renouncing any private title to the records of his office. Such a declaration would be an act of statesmanship taken in the public interest, and, while no executive order is binding on successors in office, the precedent deliberately created and yielding claims of private right in favor of a paramount public interest, would be unlikely to be violated by any successor in office.

What is the prospect of such an occurrence?

Very slight until American historians peel away the legal fiction in which bureaucrats have wrapped the larcenous habits of Presidents from George Washington on.

And very little until we elect a statesman to the presidency.

This association could, if it chose to debate the subject, accomplish the former.

And who knows—the American people are unpredictable—we may some day elect another statesman as President.

Until that time, it is futile to argue whether it is better to concentrate the records of the presidency in one large complex or to continue to place them in decentralized facilities leased or given to the government of the United States. For, as long as we engage in the legal fiction that the records of the President are his, not ours, he will make that decision.