
The Executive & the Environment: An Examination of the Antiquities Act from 1929-2000 in the United States

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Abstract: *For the last two decades, scholars have explored the importance of executive orders as a powerful presidential unilateral power (Mayer 2001, Moe and Howell 1999, Deering and Maltzman 1999, Krause and Cohen 1997, Ragsdale and Theis 1997, Shull and Gomez 1997). These studies fall into two camps. The proponents of the strategic model include scholars like Richard Nathan and Phillip Cooper. In his pivotal study the Administrative Presidency, Nathan argues that presidents strategically use unilateral powers when they are weak. When presidents have limited resources and face a hostile political environment they can compensate their weakness by using an administrative strategy. The enhancement camp argues that presidents use executive orders to enhance policy in conjunction with Congress in times of strong congressional support (Shull and Gomez 1997, Krause and Cohen 1997). Presidents can enhance their stature with the use of unilateral powers when they have strong resources and a cooperative political environment. The same debate can be applied to other unilateral powers. This paper will examine these competing theories by extending the study of unilateral powers to presidential proclamations.*

1. Introduction

George Washington used his first proclamation to declare November 26th Thanksgiving Day, which created a precedent for the ceremonial use of proclamations thereafter. Todd Gaziano writes, “Heads of state had issued proclamations commemorating victorious battles and national holidays for centuries, and there was no reason for Congress or the President to conclude that the Constitution removed this

ceremonial function from our head of state.” (Gaziano 2001). Scholars have largely ignored the proclamation because they are seen only as hortative.

However, scholars have neglected to recognize the potential political division some proclamations have historically created. For instance, in 1793, George Washington issued a neutrality proclamation with France and Britain. Washington deliberately chose not to confer with Congress before issuing the proclamation. He argued that the Constitution gave him authority to unilaterally issue the proclamation. Although Congress ultimately passed the Neutrality Act of 1794, critics like James Madison, argued that Washington had overstepped his power and encroached on Congress’ authority.

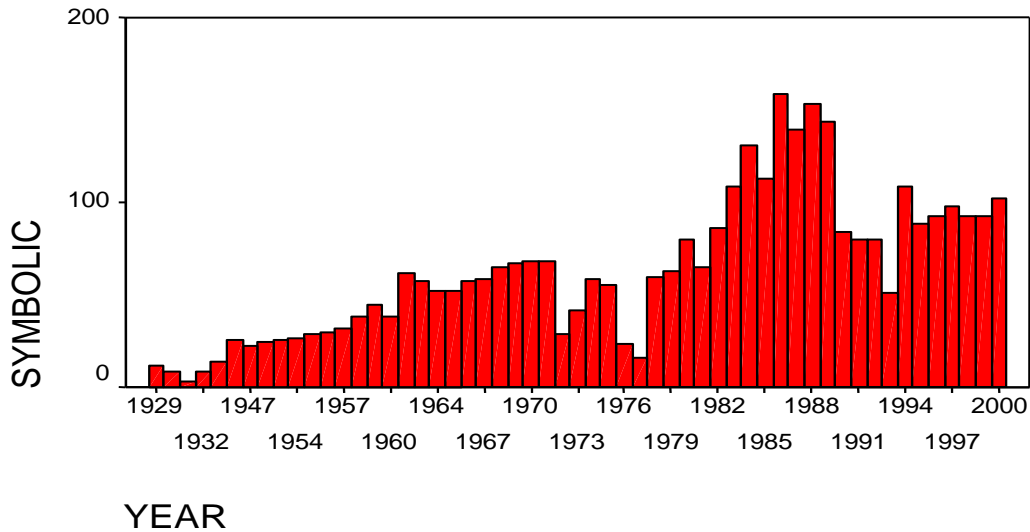
A year later, Washington took another unilateral step in dealing with conflict. In 1794, President Washington used the proclamation to call forth the military to deal with rebellious citizens from Pennsylvania and Virginia protesting certain federal taxes. The conflict between Congress and the president arose from Washington’s predilection to act unilaterally and Congress’ overlapping power regarding issues of war and peace.

Key proclamations have marked the history of the United States. Lincoln’s Emancipation Proclamation (January 1, 1863) influenced the creation of the 13th Amendment. Also, historians recognize President McKinley’s Blockade Proclamation of April 22, 1898 marking the outbreak of the Spanish-American War despite Congress’ official declaration of war on April 25, 1898 (Aufircht 1947).

Since the beginning of the 20th century presidents have used proclamations in other ways, especially to honor or pay tribute to individuals and groups.

FIGURE 1.1

SYMBOLIC PROCLAMATIONS (1929-2000)



Data compiled by author from *Presidential Papers* and *Weekly Compilation*

As the number of special interest groups has grown so have the number of presidential proclamations (see Figure 1.1). A president has complete discretion when choosing groups or individuals to recognize. In some cases that decision has resulted in a political uproar. For instance, gay rights activists criticized George W. Bush's refusal to recognize gay and lesbian constituents through a proclamation when he first entered office.

Aside from politically symbolic proclamations, presidents can also use proclamations to influence foreign commerce. Although the Constitution gives Congress the authority to regulate commerce, Congress has delegated some of that authority to the president. The Agreement Act of 1934 and the Lend Lease Act of 1941 for example, gave the president power to make trade decisions.

Using the power delegated by Congress, presidents can end trade or place embargoes on exportation of certain

items. Theodore Roosevelt's end of arms exports with the Dominican Republic and Eisenhower's termination of trade agreement with Iran are two examples of unilateral presidential actions. More recently, Clinton used proclamations to limit immigration of individuals from Nigeria and Liberia. George W. Bush exercised his discretion to resume normal trade relations with Afghanistan

A more controversial and public dimension of presidential directives entails proclamations used to create, adjust, or enlarge national monuments under the authority of the Antiquities Act of 1906. Created during Theodore Roosevelt's presidency, the Antiquities Act empowers presidents to protect federal lands. In total, presidents have declared over 100 monuments spanning about 70 million acres. Under the Antiquities Act, presidents are called to reserve the smallest area compatible to the goal of preservation. The debate over the definition of the "smallest area" has prompted protests and lawsuits by opponents.

In a sweeping historical move, President Carter created over a dozen monument proclamations protecting over 50 million acres of Alaska. Although Congress has criticized presidents for their abuse of the Antiquities Act, they collectively have only reversed 5,000 acres of 70 million acres (National Parks Conservation Association 2003). The lack of political consequence in the final year gives additional incentive for presidents to extend their policy impact and political legacy.

For instance, Clinton in his last year declared 400,000 acres of the red-hued cliffs of Northern Arizona protected from mining and logging (Judson 2000). Environmentalists declared the proclamation a victory over special interest groups yet state officials in Arizona were furious and threatened to take court action. In defending the president's actions, Interior Secretary Bruce Babbitt noted that with limited time in office the president had no choice but to use an executive decree because he could not get a legislative proposal through Congress.

Presidents looking to prolong their influence in government after leaving office can make a lasting impression through proclamations under the authority of the Antiquities Act. Presidents do not need to consult the public or Congress before making a monument proclamation. The courts have upheld presidents' right to create, amend, and adjust monuments. Congress has the power to rescind presidential proclamations, but members have demonstrated reluctance to undo the provisions for environmental preservation.

2. The History of the Antiquities Act of 1906

Concerns about protecting Indian ruins in the West spurred the creation of the Antiquities Act of 1906. The Act gave presidents authority to “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government” (Antiquities Act of 1906). Moreover, the Act qualified the president’s power to “smallest area compatible with the proper care and management of the objects to be protected.” (ibid).

The authors of the Act anticipated presidents to preserve small areas as national monuments. By not specifying actual limits on the preserved area, Congress left the doors open for liberal interpretation². For instance, inclusion of the phrase “objects of historic or scientific interest” gave President Theodore Roosevelt broad enough discretion to name Devils Tower located in Wyoming, a geological phenomena, the first national monument. Roosevelt also named the Petrified Forest in Arizona a national monument because it symbolized an “object of scientific interest.” The size of monuments grew as Roosevelt’s administration progressed. In 1908 he declared 800,000 acres of the Grand Canyon as a national monument. Not to be outdone, ten years later, President Woodrow Wilson declared over a million acres in Alaska known as the Katmai National Monument.

Congress did not object to the unilateral proclamations made by Roosevelt and Wilson. However, in 1943, President Franklin D. Roosevelt's proclamation to make Jackson Hole, Wyoming a national monument created congressional opposition. Roosevelt clearly used the proclamation as a means to bypass Congress. Congress rejected Roosevelt's proposal to expand the Grand Teton National Park twice during his tenure in office. Rather than engage in conventional bargaining with Congress, Roosevelt accepted donated land from John D. Rockefeller Jr. to add to the Grand Teton National Park and declared unilaterally the Jackson Hole National Monument.

Congress opposed the creation of the monument because of the loss of tax revenue created through government acquisition. Also, by placing the 221,610 acres under monument protection, FDR restricted the grazing rights for cattle raisers in the area (Righter 1989). In defiance of the proclamation, Congress passed H.R 2241 which would have abolished the Jackson Hole Monument. FDR promptly vetoed the bill. In his veto message he stated

There are few official acts of the President of the United States, in the field of conservation or in any other phase of government...In the establishment of the Jackson Hole National Monument consideration was given to the interests of the people of the United State as a whole in order that the area might be preserved and made available to our citizens for the realization of its highest values (Roosevelt 1943).

Roosevelt's dispute with Congress over the Jackson Hole National Monument foreshadowed potential presidential-congressional conflicts in the future. During his presidency, President Dwight Eisenhower wanted national historical park legislation for the Chesapeake and Ohio Canal passed. The legislation met with local and congressional opposition. The vehement public opposition ultimately killed the bill. In a defiant move before leaving office, Eisenhower declared the Chesapeake and Ohio Canal as national monuments through a presidential proclamation.

In 1978, President Carter defied Congress and proclaimed 15 new national monuments in Alaska and enlarged two existing monuments. His proclamations covered 56 million acres of land, prompting one organization to claim it as “the strongest and most daring conservation action by any president in American history” (*The Living Wilderness* 1981). Despite the objection by the state of Alaska to legislation that supported the monuments, the House of Representatives passed an Alaskan Lands Bill 277-31, but the Senate used a filibuster to block an end of session vote. Carter recognized the statutory protection of the land would expire and waited until Congress adjourned before making his historically expansive monument proclamations.

Carter’s proclamations tested the boundaries of presidential unilateral authority under the Antiquities Act. Anaconda Copper Company challenged three of Carter’s new monument proclamations: the Gates of the Arctic, Yukon Flats and Admiralty Island. Anaconda claimed that the location of the monuments blocked them from continuing to mine in Alaska. The three monuments prevented them from reaching their mining holdings by road. However, the Federal District Judge argued that President Carter had 75 years of legal precedent behind him in protecting the Alaska lands. The monument proclamation was not used again until the next Democratic president came into power.

In 1996, President Clinton proclaimed the Grand Staircase-Escalante in Utah a national monument. He, too, met with a lot of opposition and criticism for his unilateral move. Specifically, the creation of the monument blocked the development of the largest known coal reserve in the country worth nearly a trillion dollars (Egan 1996). The Utah delegation unanimously opposed the monument development, but Clinton recognized the national popularity of preserving a large part of the red rock country. Despite threats by Republican Representative James V. Hansen to “blast Clinton every night before national television cameras” Clinton proceeded with his proclamation (Egan 1996).

However, the scrutiny he received did not compare to his ordeal when he proclaimed several “lame duck monuments” in his last nine months in office. Clinton’s last minute

proclamations met with great opposition from many industries. By declaring these lands as monuments, Clinton restricted the areas in mining, foresting, timber harvesting, water usage, grazing and even off-road vehicle use. Critics argued that Clinton did not declare the area as monuments in the proper spirit of the Antiquities Act. They claimed his primary purpose for the proclamations was to preserve natural resources in the specified areas. Critics alleged that he had inadvertently hurt those with mineral and energy leases and mining claims on those federal lands.

President Clinton with the support of Secretary Babbitt, not only designated a record number of monuments, but also expanded the definition of national monument. In designating the Canyon of the Ancients in Colorado a national monument, the president identified a new category of monuments known as “national landscape monuments” or “anthropological ecosystems.” The monument expands beyond the spirit of the Antiquities Act to preserve isolated areas. According to Secretary Babbitt, Clinton preserved the whole landscape “to facilitate an understanding of how communities lived in spiritual and physical equilibrium with the landscape” (Vincent & Baldwin 2000).

Almost from the inception of the Antiquities Act of 1906, presidents have seemingly used the proclamation as a powerful policy instrument. Presidents can use their unilateral power like monument proclamations to enhance their powers when they have strong political resources and a cooperative political environment or they can use them to compensate for the loss of political resources and a hostile political environment.

Historically, monument proclamations have caused a lot of political divisiveness. That is, presidential history shows that presidents like Eisenhower, Carter, and Clinton used monument proclamations in face of political opposition. According to Light (1982), the use of presidential resources depends on one’s political environment. By testing when presidents use monument proclamations, we can further our understanding of the strategic model and compensation theory.

3. Variables

The dependent variable is the number of monument proclamations issued by presidents. Monument proclamations include the creation of monuments and the expansion and revision of monument boundaries under the Antiquities Act. The Department of Interior has carefully recorded the creation of all monuments on their website. Expansions and boundary revisions are specifically addressed in *The Weekly Compilation, The Public Papers of the President*, and the *Federal Register*. The monument proclamations from the Department of Interior were cross-checked with monument proclamations referenced in the *Presidential Public Papers, The Weekly Compilation of Presidential Papers*, and *The Federal Register*. Two coders and I analyzed the aforementioned materials. I coded materials from the Department of Interior, *Presidential Public Papers, The Weekly Compilation*, and *The Federal Register*. A second coder duplicated the process. A third coder reconciled any discrepancies.

There are six independent variables in this study: lame duck term, presidential popularity, congressional support, divided government, campaign year, and first year in office.

Lame Duck: Scholars advise presidents to enact major policy initiatives as soon as they enter office because their political capital and resources dwindle over the course of their tenure. Light (1982) explains that presidential resources cycle. Therefore, the lame duck year essentially is when presidents have the lowest point of political resources. A president with little power and ineligibility for re-election (forced out by law, voted out by the electorate, bowed out based on personal decisions) would be more inclined to use monument proclamations more than non-lame duck presidents. In the last year one is not as fearful of political alienation. Lame duck presidents are defined as presidents facing their last year in office. This variable is a dichotomous variable 1 for last year in office (Lame Duck), 0 for other.

(H1) Lame duck presidents are more inclined to use monument proclamations than non-lame duck presidents.

Popularity: Rivers and Rose's study suggests that a president can orchestrate events to win over the public. In their article "Passing the President's Program: Public Opinion and Presidential Influence in Congress" they attempt to determine to what extent the fate of the president's legislative agenda is in the public's hands. The work attempts to test Edwards and Jones' theory, which claims that going public does not help presidential influence in Congress. They found public opinion is a source of presidential influence in Congress. Therefore, a popular president would not be inclined to use a unilateral power like monument proclamations because he would be able to successfully push his policies through Congress.

The variable is the Gallup Poll's annual measure for presidential approval.

(H2) Presidents with high popularity would not use monument proclamations as often as unpopular presidents.

Congressional support: George Edwards III talks about the influence of presidents working at the margins in Congress. Strong congressional support would indicate a strong presidency, which would logically lead to the passage of policies in Congress. Therefore, a president with strong congressional support would be less inclined to use unilateral power.

This variable is the Congressional Quarterly's measure for Congress' support for presidential initiatives.

(H3) *Presidents with high congressional support scores issue less monument proclamations than presidents with low support scores.*

Divided government: *The consequences of divided government are mixed at best. One of the major opponents of*

conventional thinking regarding divided government is David Mayhew. In his book, Divided We Govern, he challenges the notion that divided government leads to political stalemate. On the contrary, he finds that Congress and the president are in tune with the public's policy needs and wants and pass policy accordingly despite difference in party allegiance in the two branches.

Popular public view is that divided government leads to gridlock. In fact, the electorate deliberately instigates split ticket voting to create a divided government that does not run over the rights of the public. Many scholars have confirmed public sentiment in their studies (Sundquist 1981, Kernell 1997).

Upon examining specific incidences when presidents chose to use monument proclamations I would have to agree with scholars like Sundquist and Kernell. For instance, when President Clinton faced divided government he issued the controversial Grand Staircase-Escalante monument proclamation in Utah.

This variable is a dichotomous variable. 1 for divided government, 0 for other.

(H4 Presidents facing divided government issue more monument proclamations than those facing unified government.

Campaign: An incumbent president facing re-election has many advantages over the challenger. Specifically, he can exercise unilateral powers to generate quick policy. An incumbent president can use unilateral powers like monument proclamations to enlarge his credentials right before the election to win favor with the public. Before the 1996 election, President Clinton issued the infamous monument proclamation in the Grande-Staircase Escalante in Utah.

This variable is a dichotomous variable. 1 for re-election campaign, 0 for other.

Campaign: (H5) Presidents running for reelection will issue more monument proclamations than in other years.

First Year: Scholars like James Pfiffner suggest that presidents ‘hit the ground running’ in order to achieve as much as possible early in the presidential term. Presidents use their first year, especially the first 100 days, to deliver on their campaign promises. Monument proclamations are a fast way to achieve environmental policy goals. This variable is a dichotomous variable. 1 for first year, 0 for other years.

First Year: (H6) Presidents will issue more monument proclamations during their first year in office than in other years.

4. Methodology and Analysis

The coefficient vector is

$$\mu_i = \exp(\chi_i\beta),$$

where

$\chi_i\beta = b_1 \text{ lameduck} + b_2 \text{ popularity} + b_3 \text{ congressional Support} + b_4 \text{ first Year Party Change} + b_5 \text{ first year No Party Change} + b_6 \text{ campaign}$

The data for analysis are monthly totals of monument proclamations, including expansions of existing monuments, issued from 1960 to 2001. An event-count model is the appropriate method of analyzing the series because recess appointments can only take non-negative integer values.

The negative binomial model used here incorporates the formula in J. Scott Long’s *Regression Models for Categorical Dependent Variables*.

<i>Independent Variable</i>	<i>Coefficient Estimate</i>	<i>Standard Error</i>	<i>z-statistic</i>
Campaign	-0.947	1.078	0.89
First Yr change	-1.184	1.120	1.48
First Yr No change	3.148*	1.868	1.69
Kennedy	0.852	1.145	0.74
Johnson	-2.700*	1.647	1.64
Nixon	-16.229	2229.755	0.01
Ford	-2.458	2.196	1.12
Carter	1.613*	0.894	1.80
Reagan	-17.052	1234.259	0.01
HWBush	-18.090	1353.423	0.01
Clinton	0.082	0.925	0.09
Congressional Support	-.018	.033	0.55
Lame duck	2.910**	1.281	2.27
Popular	0.001	0.034	0.02
Constant	-1.074	3.465	1.04
LR chi ² (14) = 43.32			
Prob > chi ² = 0.0001			
Log likelihood = -113.571			
Pseudo R ² = 0.16			
** p<0.05 *p<0.10(n= 248)			

The research set out to look at the political environment in which a president is most inclined to make a monument proclamation. As expected, a president in his last year office makes 2.91 more monument proclamations than in non-lame duck years, which lends strong support to the strategic model theory. Also, presidents that obtain office after a same party predecessor also tend to have a higher level of monument proclamation activity. Perhaps, these presidents

feel emboldened by a mandate received from the public that the president should continue the work of his predecessor.

The empirical model shows that during a president's lame duck term does a president feel free to use his authority under the Antiquities Act. Presidents may feel that they will not face political consequences for their increase use of monument proclamations because they are ineligible for re-election. Moreover, they can leave an environmental legacy. It demonstrates the relevance of lame duck presidents. The courts have upheld the president's right to issue monument proclamations. The fact that presidents overwhelmingly choose to issue them at the end of their tenure brings into question the lameness of their presidential power.

Conventional wisdom argues that lame duck presidents are weak and unimportant. However, the data shows that during their lame duck months, presidents can be powerful and legally bind the hands of state officials, businessmen and the public through monument proclamations.

5. Conclusion

Neustadt would argue that presidents could not govern by unilateral power alone especially in cases where Congress voiced dissension. The public posturing by the president can cause him great consternation in subsequent political battles. However, lame duck presidents do not have to deal with political ramifications once out of office.

The significance of the lame duck variable could be an indication that monument proclamations serve as a legacy variable and deserves further exploration. The fact that lame duck presidents feel free to use monument proclamations helps place Neustadt's theory of presidential power in a time-relevant perspective. Scholars agree that a president's political capital declines once he is inaugurated and therefore he needs to move quickly to have a better chance of achieving his policy objectives as soon as possible. Perhaps lame duck presidents feel they have used all their political capital and they no longer can bargain and persuade Congress, therefore they are pushed to follow the strategic model theory. Moreover, lame duck presidents may feel they

have not achieved all the objectives they set when they entered office. Their only chance to leave a policy and environmental legacy is through “midnight” actions.

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