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Consolidation of Power: The use of executive orders, proclamations and signing statements during the George W. Bush Presidency

Steve Anderson

Introduction

Like other Presidents before him, George W. Bush used his executive authority to craft policy both domestically and internationally. During both of his terms, he issued executive orders, executive proclamations, and used signing statements as a way to influence policies and assert the authority of the executive branch. Over the course of his two terms in office, President Bush was dealt a series of challenges, including terrorists attacks, war, and natural disasters. His use of executive power has changed the federal government and expanded executive authority. These were not without controversy, as some of his decisions have been met with criticism, legal challenges, and the repeal of some executive orders by his successor, President Obama. Researching the use of these executive tools helps to understand how the executive branch operates within and how it affects other branches and departments of the federal government. These actions of the executive branch can have profound consequences, such as Lincoln's Emancipation Proclamation of Franklin Roosevelt's order to place Japanese-American citizens in internment camps.

In studying President Bush's use of signing statements, executive orders and proclamations, I plan to analyze the number of orders and proclamations, how they affected the scope of his authority, and how it was received by Congress and the courts. An executive order can be described as a rule or order issued by the president to an executive branch of the government having the force of law. An executive proclamation is "an instrument that states a condition, declares a law and requires obedience, recognizes an event or triggers the

implementation of a law” (Cooper 2005, 116). A signing statement is a written pronouncement issued by the President of the United States upon the signing of a bill into law.

Literature Review

Examining the use of executive orders, proclamations, and signing statements has built a large body of research analyzing the effect of these tools on presidential power. While there have been a few examples of executive orders that have carried substantial weight legally and policy wise, its use has been primarily for routine and minor administrative tasks (Mayer 1999). Many of the major policies that have been enacted via executive order have been studied by examining legal challenges filed against them and the resulting verdicts issued by the court system.

In the case of President Bush, scholarly work on his use of executive power, including signing statements, executive orders and proclamations, has been over some of the more controversial orders given during his first term in office. Several of those executive orders issued have been challenged in court. The resulting litigation and court decisions have provided a body of research to examine how this has affected certain policies put out by the President.

Executive orders were issued in the domestic policy area, but often the most far reaching involved foreign policy. These orders include the Military Order of November 13, 2001, which set up the Military Commission system to try non-citizens accused of terrorism. This particular order has been subject to serious scrutiny, as there has been controversy surrounding as to whether this order has resulted in detainees being subject to legalized torture, denial of due process, and violations of the Geneva Convention (Bassiouni 2006). A series of court challenges followed this and other orders related to national security.

Presidential proclamations are often symbolic in nature, but some have carried large legal and policy implications. Historical examples include Lincoln’s Emancipation Proclamation and

Nixon's wage and price freeze (Rottinghaus 2007). Proclamations have been used to declare disaster areas, including the areas affected by hurricane Katrina in 2005. The government's failure on handling the rescue operations after the hurricane had a serious affect on his Presidency, which he took personal blame for the mistakes made at the federal level (Sylves 2006).

Scholars have noted during his first term, President Bush didn't use his veto power on any bill (Cooper 2005). However, his use of a tool known as a signing statement, issued the presidents opinion on certain parts of the legislation and as a result the parts the president may find unconstitutional. This technique isn't the same as a veto, but it falls under the line of items that the president may not enforce. A 2006 news report stated that President Bush had used signing statements on up to 750 provisions of various bills, questioning the constitutionality of different parts of each bill (Kelly 2007). While President Bush's signing statements in his first term have been analyzed, there isn't an equal amount of work on his second term. Since President Bush has only been out of office for two years as of this writing, his use of signing statements, executive orders, and proclamations from his second term, along with their respective implications, have received less analysis than his first term.

While the policies of President Bush's first term have been analyzed in large detail, the policies of the second term have largely been not studied. Considering both the relatively brief period of time since President Bush left office, there isn't much research on the effects of his use of executive authority on the organization of the executive branch. As time goes on, it should be taken into account whether President Obama continues to use some of the policies implemented during the Bush administration. This particular research looks to compare the impact of executive orders, proclamations and signing statements in his second term to his first. Comparing

the two terms will seek the measure whether the second term had as much impact on the power of the office as the first term.

Methodology

To help research these particular tools of the executive branch, I examined the federal register which has the records of these on file, and will be used to compare the number of orders and proclamations in both of President Bush's terms. The Government Printing Office has recorded Presidential signing statements. The text of these statements gives insight as to the President's view on certain parts of the legislation he signed into law. These all impact how President Bush asserted his authority and his affect on policy.

Researching executive orders, proclamations, and signing statements requires analyzing numerous case studies and document analysis to understand the size and scope of their impact on the policy. The National Archives keep a detailed record of current and previous executive orders dating back to the Roosevelt Administration. When analyzing the Presidency of George W. Bush, it is noted he served two consecutive terms in office. This time ranges from January 20th, 2001 to January 19th 2005 as the first term and January 20th, 2005 to January 19th, 2009 as the second term. They total 291 over two terms, 169 is his first term and 122 in his second term. As the orders are separated into each year of Presidency, it is easy to study the types of issues during election years and the times of major events (natural disasters, terrorist attack, etc...).

Several particular orders during the Bush Administration have been the focus of academic study. These include the orders to set up military commissions for suspected terrorists and Executive Order 13233, allowing former Presidents, Vice Presidents, and their families to withhold information for twelve years after they leave office (Swartz 2008). Orders that have generated controversy and/or legal challenges have a wide range of coverage, including legal

briefs from the Administration and those who challenged the orders, government reports and media coverage.

Executive proclamations, particularly those given by President George W. Bush, are documented in the White House Archives; with the website listing Bush's proclamations is frozen as historical material. While many consider most proclamations as mostly symbolic, scholarly research has documented and analyzed proclamations that have significant policy impact, including declarations of emergency after September 11th and hurricane Katrina. Again, this list is divided by the years and exact dates proclamations were announced, the proclamations in election years, and the amount between his two terms in office. The majority of proclamations from 1977 to 2005 have involved trade (Rottinghaus 2007). Both of President Bush's terms have numerous proclamations involving trade, emergencies, and symbolic events. Comparing and contrasting the two terms requires examining the numbers of proclamations in each term, along with critical analysis of the impact those proclamations had on President Bush's influence in the realm of domestic and foreign policy.

Signing statements have been used by numerous Presidents, indicating their particular views on the bill being signed. President Bush had used signing statements on different bills, much like his predecessors before him. The signing statement is seen as not only a way for the President to voice views on the bills constitutionality, either in whole or in parts, but as a way to guide the Executive Branch on how to administer and enforce aspects of the law (Kelly 2007).

Signing statements are usually printed along with the bill in United States Code Congressional and Administrative News (Cooper 2005). Scholarly research has examined President Bush's use of signing statements in detail, citing specific statements that have generated controversy. The total number of signing statements issued during the Bush

Administration is issued in a report by the Congressional Research Service, numbering 152 in total (Halstead 2007).

Research Findings

President Bush issued numerous executive orders during his first term that created a long lasting impact on the nations both domestic and foreign policy. In the first year of his Presidency, Bush issued fifty-four executive orders, the most of any year in both terms. President Bush issued his first and second executive orders on January 29th, 2001. Executive Orders 13198 and 13199 established the White House Office of Faith Based and Community Initiatives (Federal Register). This new office became part of the Executive Office of the President of the United States. This agency was designed to strengthen faith-based and community organizations and expand their capacity to provide federally-funded social services, with the idea having been that these groups were well-situated to meet the needs of local individuals.

This office has come under controversy, as critics contend that the laws allowing the office to provide federal dollars to fund religious organizations as a violation of the Establishment Clause, and that the agency blurred the lines in regards to the separation of church and state. The agency survived throughout the Bush administration and it still part of the Obama Administration, although it has been renamed the White House Office of Faith-Based and Neighborhood Partnerships and has been amended via President Obama's own executive order.

President Bush would face the major test of his Presidency early, as the United States suffered a terrorist attack on September 11th, 2001. After the attacks, President Bush issued a series of executive orders that that would have an impact long after his Presidency ended. Among these orders include Executive Order 13228, establishing the Office of Homeland Security and the Homeland Security Council and 13239, establishing Afghanistan as a combat

zone. The Office of Homeland Security incorporated twenty-two different departments, including Immigration and Naturalization, Customs, the Federal Emergency Management Agency, the Secret Service and the Coast Guard.

President Bush made it America's mission to do all that was possible to combat terrorism. This included orders seizing the assets and blocking funding for groups suspected of aiding terrorist organizations along with increased sharing of information among intelligence agencies and the placing of suspected terrorist in detention at Guantanamo Bay. The Obama Administration, although promising to close the facility, has yet to do so as of this writing. Compared to his first term, Bush's second term had fewer executive orders overall, with more emphasis on funding for AIDS prevention, changing the Military Commissions System facing legal challenges, and efforts in Iraq and Afghanistan.

The uses of proclamations during President Bush's two terms were symbolic in nature. After the September 11th attacks, President Bush made proclamations on the 12th, 13th and 14th. These include both National Days of Prayer and Remembrance for the victims and declared a national state of emergency (White House archives). Through a proclamation, President Bush managed to craft immigration policy. On January 12th of 2004, Bush issued a proclamation to suspend entry as immigrants or nonimmigrants or persons engaged in or benefitting from corruption. Bush also used proclamations to modify parts of numerous trade agreements.

The most dramatic use of the President's emergency proclamation occurred after New Orleans was devastated by Hurricane Katrina. Not only did President Bush declare a state of emergency in the state of Louisiana, but to the states that took in Katrina evacuees, even if those states had no damage from the storm (Sylves 2006). This was the first major use of an emergency proclamation since the 9/11 attacks, when the administration began to use declaration

of emergencies as an instrument of national security. This shift in strategy gave President Bush more power in terms of dealing with a man-made or natural crisis. The Department of Homeland Security was only two years old when its major test came in the form of the response to Katrina.

With FEMA now incorporated into the DHS with other agencies responsible for disaster relief, it became a complex endeavor to figure out exactly where and how to properly deploy National Guard troops, medical staff and emergency workers. President Bush's complimentary feelings about then FEMA director Michael Brown, along with a photo of the Bush looking down at the damage from Air Force One hurt his credibility, already vulnerable after a close reelection and defeat his major initiatives in the second term. It would later be found that many of FEMA's directors had no experience in dealing with emergency management and were political supporters of the President (Sylves 2006). The first major exercise in crisis management since the 9/11 terrorist attacks showed that the problems that occurred with realignment of emergency management and national defense agencies. Comparing the handling of the terrorist attacks to Hurricane Katrina, Bush lost credibility as an effective manager.

As the President is the chief executive officer of the Executive Branch, he has major influence in how administrative duties are carried out by the EOP. The signing statement, a device used by Presidents to weigh in on laws generally, has been used by Bush much like it has been used by his predecessors (Halstead 2007). Although he used the signing statement less than President Clinton, more of Bush's statements challenged the constitutionality of parts of bills than Clinton's. As Congress tried to reign in the power of the executive branch in terms of the War on Terror, Bush responded with statements emphasizing that he would enforce the law "in a manner consistent with the President's constitutional authority to supervise the unitary executive

branch and to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties" (Patriot Act). President Bush's use of signing statements over the course of his presidency fits in well with his M.B.A style of executive management.

Discussion and Conclusions

President Bush, through the use of numerous tools available to the Executive Office of the President, consolidated power within the executive branch while changing the size and scope of the federal government. By using executive orders to create a large new Department in the response to a terrorist attack, national security and emergency management, immigration and intelligence agencies expanded and became integrated at levels unseen before in the history of the federal government. With questions about deficit control dominating political news, many of the features of the large security apparatus created by President Bush's actions have come under scrutiny; along the cost of maintaining troops in Iraq and Afghanistan. Despite the criticism and promise for change, President Obama has kept and most likely will keep many of the same policies in place. However, the botched response to Katrina has led to reforms to better manage the agencies, including filling executive positions with those experienced in emergency management, along with more clarity and communication between different agencies to coordinate disaster responses.

Many of the issues that began under Bush still linger today, including how to deal with suspected terrorist who have been captured. The Military Commissions System created by Bush's executive order has come under harsh criticism from academics for failing to protect the rights of U.S. citizens and prisoners of war under the Geneva Convention. Research shows the historical use of civilian courts to try suspected terrorists have proven to be more effective and

legitimate than those tried under the Military Commission System. Despite numerous court challenges and calls to use the civilian court system, Guantanamo Bay still houses prisoners who have yet to receive a trial. In the terms of executive authority, the ability to determine suspects as enemy combatants and hold special legal proceedings gives the executive branch more power than some believe the Constitution and statute provide.

Since many of the issues that began during the Bush Administration continue during the Obama Administration, it's very likely that those issues involving suspected terrorists and DHS will be further explored both through the legislative process and the courts. Further research into the DHS and its effectiveness in terms of safety and dollars spent is necessary to examine whether creating the large and complex office has proven to be useful in achieving its goals. Legal scholars have and will continue to examine the use of the Military Commissions System and the detention of suspected terrorists. Further research can determine whether or not using the special legal system can be an effective tool to administer justice or should be disbanded and left to civilian courts.

The Presidents signing statements are a window into the mind of how the President believes his branch should operate, along with his views on issues presented in numerous bills. The mindset of an administrator can determine how a particular office can change operations and procedures due to the chief executives personality, education and professional history. Since President Bush was the first M.B.A, but will most likely not be the last, his style of management will serve as an example of a more business minded model of government to compare to future Presidents of a similar background. Although every President manages the office a different way, Bush's style will be studied in the future as a model for executives in the future in terms of administrative control and consolidation of power within the Executive Office.

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