



LANDSCAPES OF PROTEST
A STUDY OF FIRST AMENDMENT EXPRESSION IN THE NATIONAL PARK SERVICE

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National Capital Region

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Cover and Title Page Photos: Dr. Martin Luther King, Jr. greets the crowd from the steps of the Lincoln Memorial where he delivered his famous, "I Have a Dream," speech during the August 28, 1963, March on Washington, DC.

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Introduction

Project Overview

The National Parks of the National Capital Region (hereafter National Capital Parks), as so many park staff are proud to say, are not just a place where history happened; they are a place where history *happens* every day. Each year, on any given day, Americans of all stripes gather in Washington, D.C. to petition the government—a form of direct democracy dating at least as early as the 1890s. Here, in the symbolically rich landscape of the national capital, Americans engage with the nation’s past as they seek to shape its future. As one park manager told me, the story of this place is not etched in stone, and it’s a wonderful thing to observe that history unfold each day. On the National Mall in particular, First Amendment gatherings are written directly into the park purpose statement alongside “national celebrations, active civic and cultural engagement, recreation, and public enjoyment.”¹ Within the National Mall’s Foundation Document, the first attribute listed under the park significance statement is that the National Mall serves as the “Stage of Democracy,” a vital forum from which Americans participate in the political process by speaking directly to national leaders and to their fellow Americans. It is a landscape of protest.

But who gets to participate in that history, and the conditions that inform that participation, are fundamentally informed by park policies and management decisions—the rules and regulations that govern park usage—and the implementation of policy by park administrative, interpretive, and law enforcement personnel. In addition to management, the physical and cultural landscapes of the parks shape the ways people engage with these spaces as sites of both recreation and civic participation.

A central theme that emerged from this study is that National Parks and other public spaces—their accessibility, their prevalence or scarcity, the types of public space available, and the uses to which people put them—reflect prevailing ideas about citizenship and nation and the hegemonic forces that shape these ideas. While this may be true of public spaces across the United States, the National Capital Parks bear the added significance of preserving and interpreting America’s stories at the seat of the national government. Perhaps nowhere else in the United States does the landscape itself make such a powerful statement about who we are as a

¹ National Park Service, National Mall and Memorial Park, *Foundation Document* (October 2017), 3. Accessed April 29, 2022, <http://npshistory.com/publications/foundation-documents/nama-fd-2017.pdf>.

nation as do the National Capital Parks. That many spaces within the National Capital Parks have come to be closely identified with national protest reflects the values of democracy and civic participation. And yet, these values are highly contested, just as the question of who is included within the nation has historically been contested. Indeed, it has been through protest—challenging prevailing power dynamics and value systems—that many marginalized groups, including women, African Americans, members of the LGBTQ+ community, and others, have achieved full citizenship rights, and through protest that many continue to struggle for justice.

Thus, not only are ideas about citizenship and nation bound up in our use of public space, but more importantly, public space is essential to a thriving democracy. Nowhere is this more evident than in the National Capital Parks, where visitors come for both recreation and political expression. Even in an era when people can instantly connect through social media, mobile phones, and round-the-clock news coverage, Washington D.C. remains as important as ever as a site of civic engagement. Indeed, until the Covid-19 crisis, the number and scale of protests had risen continuously year after year. And even as the nation locked down amid the uncertainties of the pandemic, thousands of people were moved to go to the street after the murder of George Floyd by Minneapolis police in 2020. Gathering in place, as this report demonstrates, creates new possibilities for political engagement, and National Capital Parks are among the most prominent and symbolically important spaces for Americans for political expression.

The study that follows explores the national capital as a landscape of protest. Based on archival research, interviews with park staff, and site studies, it explores the past and present use of National Parks in the National Capital Region as the foremost place where Americans come to petition the national government. Two objectives informed the direction this study took. The first was to critically examine the ways that park policy, management, and design intentionally or unintentionally shaped the ways people can engage with these spaces. Specifically, how has NPS management encouraged or discouraged the use of National Capital Parks for protest and what effects might this have on democratic expression? The second objective was to better understand how Americans have engaged with these spaces. How do people use the parks? What sort of meanings or interpretations do they derive from parks, and how do they contest, or even transform, the meanings of these symbolic spaces?

As steward of the National Capital Parks, the National Park Service has a significant role in the ways people engage with the nation's most important landscape of protest. The following report seeks to provide a historically grounded understanding of that space, as well as how Americans have used and interpreted these spaces over time, in order to guide NPS in its efforts

of “Telling All Americans’ Stories” and ensuring that National Capital Parks will remain a forum for democracy for generations to come.

Organizing Questions and Methodology

This study began by identifying a series of organizing questions to guide the research. Those questions are as follows:

- **How/why have certain National Capital Parks been used to demand and expand equitable treatment under the law?** How has NPS contributed to or limited that expansion? How/why have people chosen to engage with specific park sites? What is the meaning of these spaces for people who use them?
- **How have National Park Service policy, management, and design encouraged or discouraged individuals or groups in the use of National Parks for First Amendment expression (historically and in the present)?** Specifically, how has the National Park Service—in its management of these spaces—contributed to the expansion of social justice or reinforced social inequities?
- **How does the National Park Service balance its mandate to preserve natural and historic resources against its obligation to uphold Constitutional rights?** What informs park decisions in developing regulations for the protection of natural and historic resource? How does the National Park Service determine law enforcement priorities?
- **How has the National Park Service addressed the fraught question of memorialization, both historically and in recent years?** How does the National Park Service respond to controversies over monuments and demands for a more inclusive memorial landscape?

To address these questions, the research took two complementary approaches. The first of these involved looking at protest through the lens of specific subjects. In these subject matter studies, the research focused on a broader protest theme—like economic justice or indigenous sovereignty—and explored different demonstrations that were focused on this issue. On the theme of economic justice, for example, the research surveyed everything from the Bonus Army in 1932—to the Poor People’s Campaign of 1968—to the 2011 Occupy D.C. protests, which were part of the broader Occupy Wall Street movement. All of these were also protests that took place in National Parks (or, in the case of the Bonus Army, on lands that would become National Parks).

The other approach was to look at specific sites where protests and demonstrations frequently take place, such as the Lincoln Memorial, Lafayette Park, and the National Mall. The goal with these site studies was to explore how people have engaged with these different spaces to uncover the meanings they ascribed to park spaces independent of what any official documentation states.

This dual approach allowed for major themes to emerge. For example, although it is

widely known that people who organize demonstrations are often drawn to sites for specific symbolic reasons or because of the sites' proximity to places of power, the symbolic significance of a site for protesters often has nothing to do with why a park is considered historically significant according to official National Park history and documentation. A deeper, more nuanced understanding of how people engage with parks could vastly expand NPS's understanding of the ever-evolving social and cultural significance of a park, enabling NPS to better manage park resources for present and future generations. This point is explored further below, alongside other key issues and findings to emerge in the course of this study.

Key Issues

Balancing the Dual Mandate

The Organic Act of 1916, wherein Congress created the National Park Service, established a dual mandate for the National Park Service to “promote and regulate the use of Federal areas known as national parks, monuments, and reservations,” and “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”² As many observers have noted over the years, the dual mandate to promote the use of the parks on one hand and to conserve (and “leave unimpaired”) the natural and historic resources of the park creates inherent conflicts. As the nation’s premier site for First Amendment demonstrations, the National Capital Region faces unique challenges in balancing this dual mandate. As a government agency, the National Park Service is bound to uphold citizens’ First Amendment rights to free speech and peaceful assembly, rights which take on a particular valence in Washington, D.C., where American democracy itself is constantly debated, interpreted, and remade with the halls of power—Congress, the Supreme Court, and the White House. Further complicating this is the effort to preserve an atmosphere of respectful contemplation at various memorials within NPS jurisdiction.

When it comes to presiding over protests, the National Park Service is in the difficult position of balancing its mandates to preserve the natural and historic resources of the park with Americans’ First Amendment rights. The National Park Service’s approach to balancing these mandates has evolved over time, subject to extensive litigation, which is explored in the chapters

² National Park System Organic Act of 1916, ch. 408, 39 Stat. 535 (1916) (codified at 16 U.S.C. § 1 (2006)).

on First Amendment Demonstration Permits and Encampments. Understanding how NPS regulations have evolved over time and the legal considerations that have come forward, can inform NPS policy as it continues to evolve in response to social change.

Design: Use v. Intent

City planners, landscape architects, and civic societies design parks and monuments with ideas about how these spaces should be used and assumptions about the meanings or feelings park visitors would take from them. But time and time again, Americans have engaged with park spaces in ways their designers never intended and inscribed meanings and interpretations on park sites the designers never anticipated. As one scholar has observed, although the configuration of public space is important, “it matters more what democratic performances are conducted within them, and thus what symbolic associations are built up over time.”³ The Lincoln Memorial, for instance, intentionally downplayed Lincoln’s role in emancipating enslaved people, focusing instead on his role in unifying the nation. But African Americans remade the memorial into a space associated with the struggle for civil rights through powerful demonstrations that harnessed symbolic imagery for their own purposes. In another example, the Senate Park Commission’s redesign of the National Mall in 1901 conceived of the park as a representation of national union and harmony, but protests like the Bonus Army of 1932 remade the National Mall into a space of public assembly and political expression.

In the National Capital Parks, Americans have used these spaces in unanticipated ways to expand democracy and challenge exclusionary ideas about what it means to be American. As the agency that manages these spaces, the National Park Service plays a pivotal role in mediating these spaces. It is, therefore, crucial for the National Park Service to be responsive to the shifting meanings and significance of these park spaces. Key to achieving this is a deeper engagement with the ways people use the parks and the meanings and significance they attach to them.

Interpreting the Past and Telling all Americans’ Stories

As a recent study of monuments and memorials has found, America’s commemorative landscape fails to adequately represent the diversity and complex history of the nation. Across the country, including the nation’s capital, America’s monuments are overwhelmingly white and

³ Tali Hatuka, “The challenge of distance in designing civil protest: the case of Resurrection City in the Washington Mall and the Occupy Movement in Zuccotti Park,” *Planning Perspectives* 31, no. 2 (2016): 259.

male, with an emphasis on themes of war and conquest. Much progress has been made in bringing diversity to the commemorative landscape of the National Capital Region, particularly in places like the National Mall. However, there is yet more work to be done, particularly on the question of what to do with controversial monuments, such as those which honor people who enslaved others, promoted the conquest of Indigenous people, or held other values that are no longer in alignment with the values the National Park Service professes today. This question, which is explored at length in the final chapter, “Monuments, Memorials, and Sacred Spaces,” points to a need for greater investment in interpretation, which is best situated for being responsive to the shifting social context in which people experience the parks.

...

This study is far from the final word on protest in the National Parks. Rather, it is suggestive of a need for more site-specific study that can inform the decisions the National Park Service makes around interpretation and the regulation of activities on park lands. The National Capital Parks are places where history *happens*—it is important that these spaces reflect and interpret that history as it continues to unfold and that these spaces remain accessible to Americans as a forum for democracy.

Designing a Landscape of Protest

Chapter Summary

Pierre L'Enfant's 1791 proposed design for the capital city gave symbolic form to the principles of the new nation. But it was Americans' actual engagement with the landscape that transformed the city into a place that truly represented American principles of self-government. And it wasn't necessarily what L'Enfant envisioned or any subsequent city designers anticipated. Washington, D.C. became a landscape of protest only when citizens empowered by the city's symbolism and design went to Washington to petition the government. It was the unintended consequences of the physical design of the city that ultimately made it a landscape of protest in the twentieth century.

L'Enfant, McMillan, and Democratic Design

In 1791, President George Washington commissioned Pierre Charles L'Enfant to plan a new city along the shores of the Potomac River, which Congress had recently established as the site for the national capital. The site chosen for the federal city was imagined by the founders as a tabula rasa wherein the aspirations of the new nation would be projected onto the landscape that housed its governing institutions. In its design, L'Enfant's plan "embodied the history of the founding and the early organization of the federal government. Fundamental tenets of the Constitution—the balance of powers inherent in executive versus legislative prerogatives and federal versus states' rights—were built into the matrix of his city plan."¹ But while L'Enfant's plan symbolized the principles on which the new nation was built, it was Americans who came to petition their government directly at its doorstep who ultimately transformed the city from a mere symbol of democracy to a place where democracy happened—a landscape of protest.

It would be more than a century before most of L'Enfant's plan took physical form. For most of the 19th century, the federal city remained largely undeveloped. Rather than a grand public walk, the Mall developed into an irregularly shaped patchwork of gardens, industrial buildings, railroad tracks, and unpaved streets. On the eve of the Civil War, Washington remained a rustic backwater compared to the wealthier and more sophisticated cities of the North. Congressmen complained about the lack of adequate housing and the absence of the amenities of places like Philadelphia, Boston, and New York.² It is of little surprise, then, that mass

¹ Pamela Scott, "'This Vast Empire': The Iconography of the Mall, 1791-1848," *Studies in the History of Art* 30 (1991): 37.

² Daniel Drake Reiff, *Washington Architecture, 1791-1861: Problems in Development* (Washington, D.C.:

demonstrations were rare in Washington, D.C. for the first century of the city's history. But in the twentieth century, new efforts to develop the capital realized and extended L'Enfant's symbolic framework, and Washington emerged as the nation's premier site for participating in direct democracy. Beyond anything L'Enfant or subsequent city planners ever imagined, Americans came to the capital city to stage demonstrations before the seat of national government among the symbols of freedom and democracy embedded in the city's design.

L'Enfant Design

L'Enfant crafted his design of the city to represent both the power of the federal government and the democratic principles upon which the nation was founded. The presence of ample open space, the organization of major streets and thoroughfares, and the placement of significant buildings and statues were meant to illustrate the balance of power among the branches of government, as well as the relationship of citizens to the institutions of power. The symbolic and historical significance of L'Enfant's plan is outlined in the National Register of Historic Places as follows:

The historic plan of Washington, District of Columbia—the nation's capital—designed by Pierre L'Enfant in 1791 as the site of the Federal City, represents the sole American example of a comprehensive baroque city plan with a coordinated system of radiating avenues, parks and vistas laid over an orthogonal system. Influenced by the designs of several European cities and eighteenth-century gardens such as France's Palace of Versailles, the plan of Washington, D.C., was symbolic and innovative for the new nation.³

The design plan of the new federal city was not without its detractors, however, especially on the point of the high-style classicism of the President's House and the Capitol building. By 1796, partisan Republican representatives voiced opposition to both the scale of the design and its European style, which struck many as monarchical—antithetical to the revolutionary foundations of the nation.⁴

Despite Washington's determination to build a capital city that symbolized and matched the grandeur of his vision for the United States, the city remained largely undeveloped through

U.S. Commission of Fine Arts, 1971), 34.

³ National Register of Historic Places, *L'Enfant Plan of the City of Washington, District of Columbia*, Washington, District of Columbia, National Register #97000332, § 8, pp. 1-2 (hereafter cited as L'Enfant NR).

⁴ C. M. Harris, "Washington's Gamble, L'Enfant's Dream: Politics, Design, and the Founding of the National Capital," *William and Mary Quarterly* 56, no. 3 (July 1999): 530.

most of the nineteenth century. L'Enfant's grandiose plan—intended as an expression of American ideals—was undermined by the political divisions of a nation still trying to define what those ideals were. Jeffersonian Republicans objected to the immense cost required to establish a city that—in their struggle with the Federalists—represented the very concentration of powers to which they were opposed.⁵ Ironically, later observers would credit L'Enfant's design with creating a capital city particularly well-suited to democratic expression. Instead of calling to mind the autocratic rule of European monarchs, as Anti-Federalists complained, the future realization of L'Enfant's plan, with its wide streets and public parks, would present an ideal public forum for democratic engagement with the government.

L'Enfant's vision was a capital city whose design and structures gave physical expression to the ordering principles of American democracy. The overall plan for the city consists of a grid with broad avenues radiating outward from buildings that would serve as major centers of government, arts, and intellect. Circles and rectangular plazas were placed in the spaces where the diagonals crossed the grid. On these intersections, L'Enfant intended for the installation of significant statuary in honor of notable Americans. These intersections would also include fountains and green space that served as public squares, reflecting on the importance of public spaces to L'Enfant's vision. L'Enfant's plan allocated more than two-thirds of the city's space to avenues, streets, squares, and public reservations for citizens to gather for both civic engagement and recreation.⁶ At the center of the city was a “grand avenue 400 feet in breadth” extending from the Capitol to the Washington Monument. According L'Enfant's plan, “The ‘public walk and avenue’ would be a ‘place of general resort’ with theaters, assembly rooms, academies, ‘and all such sort of places as may be attractive to the learned and afford diversions to the idle.’”⁷ Even as the focuses of vision along the major axes of the city draw attention to federal structures that highlight the power and prestige of the national government, the prominence of open space promoting the freedom of movement and assembly indicates the central role of interactions among citizens and between citizens and the federal government.⁸ As the National Register's

⁵ Harris, “Washington's Gamble, L'Enfant's Dream,” 559.

⁶ Glen Worthington, “The Vision of Pierre L'Enfant: A City to Inspire, A Plan to Preserve,” *Georgetown Law Historic Preservation Papers Series 9* (2005): 9.

⁷ National Park Service, Cultural Landscapes Inventory, *The Mall, National Mall* (2006), 36 (hereafter cited as CLI NAMA).

⁸ Worthington, “The Vision of Pierre L'Enfant,” 2.

overview of the L'Enfant plan observes: “When L'Enfant designed the Federal City, he adapted the autocratic forms for democratic purposes.”⁹

From the beginning, then, L'Enfant designed the federal city in such a way as to connect the citizenry symbolically and physically to the institutions of power in the nation. Even as

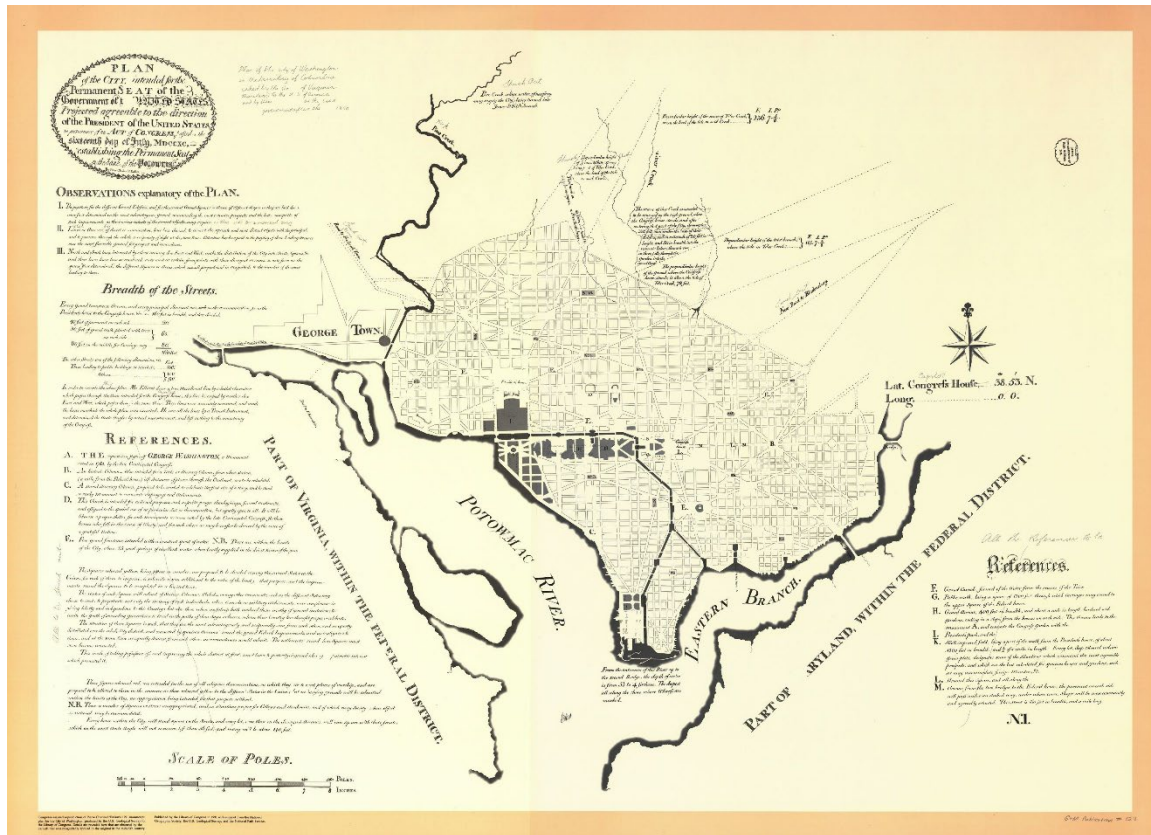


Figure 1 Computer-assisted reproduction of Pierre Charles L'Enfant's 1791 manuscript plan for the city of Washington. Originally titled, “Plan of the city intended for the permanent seat of the government of t[he] United States: projected agreeable to the direction of the President of the United States, in pursuance of an act of Congress, passed on the sixteenth day of July, MDCCXC, ‘establishing the permanent seat on the bank of the Potowmac.’” Library of Congress Geography and Map Division.

<https://lccn.loc.gov/97683585>. The plan is described in the National Register as follows:

The plan of the historic city of Washington is bounded by Florida Avenue from Rock Creek, NW, to 15th Street, NE; then south to C Street, and eastward to the Anacostia River—the same boundaries established more than 200 years ago. At the center of the plan are the ceremonial parks and greenswards which form the seat of the national government. The historic urban footprint is established by a grid of regular orthogonal streets designated numerically and alphabetically within four quadrants, with the U.S. Capitol occupying the center point. A series of diagonal avenues, named after states, are superimposed on this grid. The meeting of diagonal and orthogonal thoroughfares creates the historic and contemporary system of parks—both the large open areas at the intersections of avenues and the small geometric spaces—streets and avenues, and open space and vistas that contribute to the planned, baroque design of the capital of the United States.

⁹ L'Enfant NR, § 8, p. 3.



Figure 2 Close-up of L'Enfant design. Library of Congress Geography and Map Division.
<https://lccn.loc.gov/97683585>.

representative government and the executive branch form major focal points in Capitol Hill and the White House, it would be the commons—the National Mall—where future Americans would gather to exercise their rights, to speak directly to government, and to experience the nation's history through monuments, memorials, and museums. But the way L'Enfant and his contemporaries conceptualized American democracy and citizenship differed significantly from the way most Americans today understand these terms, as did the ways they imagined Americans would use these spaces to communicate with their government.

Citizenship and one's ability to participate in the democratic process in eighteenth-century America were sharply circumscribed by race, gender, and property ownership. In the early decades of U.S. history, relatively few Americans were able to participate in elections. Most African Americans, Native Americans, and women would not be able to vote until well into the twentieth century. Many non-property-owning white men were also excluded from voting until the mid-nineteenth century. Most of the founding fathers, including George Washington, Thomas Jefferson, and John Adams, believed that in order to vote, a person had to be truly independent; true independence, according to the philosophy of many eighteenth-century Anglo-American elites, required property ownership. Adams, a signer of the Declaration of the Independence, warned that if men without property were given the equal right and equal power to vote, "an

immediate revolution would ensue.”¹⁰ Though L’Enfant may have designed the capital city with democratic engagement in mind, it was with a far narrower understanding of who constituted the citizenry than most Americans today would recognize. And just as L’Enfant did not anticipate the way American democracy and citizenship would change, the eighteenth-century designer could not have predicted the ways future Americans would engage with the landscapes he designed.

Ultimately, then, it was not L’Enfant’s plan alone, but what later Americans would later make of the city’s design that transformed it into the premier location where direct democracy is practiced. As the District of Columbia Circuit Court has observed of the Mall, “It is here that the constitutional rights of speech and peaceful assembly find their fullest expression.”¹¹ Pierre L’Enfant may not have anticipated that his design would draw demonstrations in the tens, and even hundreds, of thousands, but time and time again, the nation’s courts have affirmed such demonstrations as “consistent with the special nature and sanctity of the Mall.”¹² But this transformation would take several generations, as the city’s development became caught up in the conflicts and tensions of the nation’s development.

Nineteenth-Century Development of Washington

Despite its significance as a symbol of democracy, the National Mall as we know it today—along with most of L’Enfant’s visionary design—would not be constructed until the twentieth century. L’Enfant clashed with the commissioners in charge of bringing the city into being and was forced to resign in March of 1792. Over the next fifty years, most of what remained of L’Enfant’s vision was neglected, falling to the partisan divide over the objective of building such an ostentatious federal city, together with the budget constraints of the fledgling nation.

Public and private interest in developing the city of Washington reemerged in the mid-nineteenth century, but a lack of funding and the growing sectional crisis over slavery (see the following chapter, “A Social History of Protest in the National Capital”) constrained efforts toward improvement until after the Civil War. In 1848, the cornerstone was laid for the Washington Monument along the east-west axis of the Capitol, where L’Enfant had proposed the

¹⁰ As quoted in Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, rev. ed. (New York: Basic Books, 2000), 9.

¹¹ *ISKON of Potomac v. Kennedy*, 116 F.3d 495, 496 (D.C. Cir. 1995), as quoted in CLI NAMA, 112.

¹² *Ibid.*

location of an equestrian statue of George Washington.¹³ That same year, Congress appropriated \$10,000 to install a system of gas lamps along Pennsylvania Avenue from the Treasury Building to the Capitol. Other improvements funded by the federal government included the grading and paving of some streets, the construction of a handful of public buildings, and the landscaping of some parks. But the prevailing opinion in Congress was that funding for general improvements should come from the city, not the U.S. Treasury.¹⁴

What improvements did occur during this period were made largely at the behest of Ignatius Mudd, the Commissioner of Public Buildings housed within the newly created Department of the Interior. Mudd secured funds for the first official efforts to landscape many of the triangular park spaces among the streets and oversaw the installation of a greenhouse and botanical garden near the Capitol grounds.¹⁵ He also appointed nationally recognized landscape architect Andrew Jackson Downing to develop plans for the public grounds. A proponent of what he called the “natural style” of landscape design, Downing developed ambitious designs for the National Mall and Lafayette Square that would serve “not simply to improve the public grounds but to create a great public park that would contribute to the improvement of individual taste and demonstrate to other cities the importance of open spaces within the urban environment.”¹⁶ Inspired by the English picturesque landscape gardening of the eighteenth and nineteenth centuries, Downing’s design of the Mall ignored the axis between the Capitol and the Washington

¹³ The equestrian statue that L’Enfant had initially proposed was meant to sit at the intersection of the east-west axis of the Capitol and the north-south axis of the White House. Although Congress authorized the erection of an equestrian statue of Washington in 1783, various efforts over the ensuing decades failed to come to fruition. Frustrated with Congress’s inability to realize a monument to the first president, a group of private citizens convened the Washington National Monument Society in 1833. Instead of an equestrian statue, the group decided on a design by the architect Robert Mills, which featured a grand circular colonnaded pantheon surrounding a huge obelisk. The grounds at the location of the axes intersection were not stable enough to accommodate the size and weight of the proposed monument, so the Washington Monument sits slightly off the north-south axis. Louis Torres, *“To the immortal name and memory of George Washington”: The United States Army Corps of Engineers and the Construction of the Washington Monument* (Washington, D.C.: Government Printing Office, 1984), 11.

¹⁴ Reiff, *Washington Architecture, 1791-1861*, 43-46.

¹⁵ L’Enfant NR, § 8, p. 17.

¹⁶ David Schuyler, *Apostle of Taste: Andrew Jackson Downing, 1815-1852* (Baltimore: Johns Hopkins University Press), 196.

Monument and featured curving pathways and plantings of trees and shrubs that would have obscured the monumental vistas at either end.¹⁷

Downing's plans were never realized, as he died in a steamboat accident in 1852. Although his successors William Easby and Benjamin B. French made intermittent improvements to the parks and roads over the following decade, their efforts were limited, first by budget constraints and then the outbreak of war.¹⁸ But long after his death, Downing's design principles continued to influence landscape designers, including Frederick Law Olmsted, the renowned landscape architect who designed the Capitol grounds after the Civil War and championed the creation and protection of public space. Though Downing and other champions of the natural style were more concerned with the elevation of taste, as well as the negative effects of industrialization, the creation of open spaces for public enjoyment had lasting consequences on the ways people engaged with the space.¹⁹

The most significant changes to the city emerged as a result of the Civil War. During the war, many residents fled south or north, depending on their loyalties, and Union soldiers descended upon the city in their wake, fortifying the capital with 68 forts. As casualties poured into the city Secretary of War Edwin Stanton established a new cemetery on the grounds of what had been Robert E. Lee's plantation in Arlington. After the Lees fled to the Confederacy in 1861, the U.S. Army had seized the Arlington estate for its strategic and symbolic value, installing three forts on the property. A large Freedman's Village was also established on the estate in 1863 to house African Americans who had fled slavery in the Confederate states.²⁰ Thousands of enslaved people seized upon the turmoil of the war to escape into freedom and sought refuge in the capital city. The city's ample open spaces served as sites for army barracks, refugee camps, and hospitals. An encampment of troops was stationed in Lafayette Square, and the White House resembled an armed camp.²¹ Though Washington was spared the damage suffered by major battleground cities, the war exacted a great deal of pressure on the city's already inadequate

¹⁷ CLI, NAMA 43.

¹⁸ L'Enfant NR, § 8, pp. 17-18.

¹⁹ Robert Twombly, "Introduction: Architect and Gardener to the Republic," in *Andrew Jackson Downing: Essential Texts*, ed. Robert Twombly (New York: W. W. Norton & Company, 2012), 15-16.

²⁰ "History of Arlington National Cemetery," Arlington National Cemetery, accessed March 2, 2022, <https://www.arlingtoncemetery.mil/Explore/History-of-Arlington-National-Cemetery>.

²¹ L'Enfant NR, § 8, pp. 17-18; National Park Service, *The White House and President's Park: Administrative History 1791-1983, Epilogue 1983-1997* (Washington, D.C.: U.S. Department of the Interior, National Park Service, 2001), 86.

infrastructure: during the war the city's population more than tripled, from 61,000 in 1860 to 200,000 in 1864, and many of the newcomers were newly free people with few resources.²²

As the nation rebuilt from the war, improvements were made to the national capital. The Republicans who controlled Congress after the war brought about a vast expansion of federal authority characterized by a larger, more powerful, and highly centralized federal government. The burgeoning federal bureaucracy necessitated improvements to the city's housing, roads, and sanitation systems. Furthermore, the growing prestige of the federal government amplified calls for the improvement of parks, signaling not only the rising prominence of the federal government, but a new relationship between the government and its citizens. Brigadier General Nathaniel Michler, who assumed leadership of the Office of Public Buildings and Grounds after it was transferred from civilian control to the Army Corps of Engineers in 1867, devised a scheme for the improvement of roads and parks that comported with L'Enfant's original design, acting on the belief that park development could lead to societal reform:

Parks would not only improve the appearance of the city, but would "largely contribute to the health, pleasure and recreation of its inhabitants." Additionally, the improvement and maintenance of both the parks and roads would provide much-needed employment in the war-ravaged capital. "Public works should be, in more sense than one, public benefactors," he wrote, and recommended that the city's innumerable indigent freed slaves be hired as laborers to grade and pave streets and improve the parks, and disabled veterans be employed as watchmen and gatekeepers in the public reservations.²³

Gradually, an improved infrastructure took shape, including the paving of streets, the laying of gas and power lines, and the construction of two new sewers. The Washington Monument was completed in 1884, and beautification of the city's parks and neighborhoods proceeded steadily, largely adhering to L'Enfant's original design.²⁴

The realization of the grandeur in L'Enfant's vision coincided with the emergence of the United States as an overseas imperial power and a formidable global competitor. In the years following the Civil War, the United States colonized the lands and peoples of North America to the far reaches of the West Coast; by 1898, the nation extended its dominion over the independent island nation of Hawai'i and the former Spanish colonies of Guam, Puerto Rico, and the Philippines. The capital thus realized the ambitions of L'Enfant's design—itsself modeled on the great empires of Europe—only once the federal government emerged as an imperial power in its

²² L'Enfant NR, § 8, p. 21.

²³ L'Enfant NR, § 8, p.21."

²⁴ CLI NAMA, 47; L'Enfant NR, § 8, p. 25-28.



Figure 3 The Mall in 1901. Note the divergence from L'Enfant's plan and the present-day landscaping. Commission of Fine Arts. https://www.nps.gov/parkhistory/online_books/ncr/designing-capital/sec7.html.

own right. Correspondingly, the city continued to flourish as the nation entered into what journalist Henry Luce dubbed “the American Century.”

The McMillan Commission

The story of the city's development in the twentieth century was one of constantly looking to the past to build a city for the future. Although the nineteenth century suggested an overall upward—if halting—trajectory from rustic backwater to modern metropolis, the twentieth-century city experienced phases of declension and renewal. As the nation experienced periods of rapid growth, economic turmoil, and war, the city correspondingly expanded and transformed.

One of the most important events in the city's development was the formation of the McMillan Commission, a team of architects and city planners who created a sweeping plan that laid out much of the city as we now know it: an extended and redesigned Mall, the Lincoln Memorial, an extensive park system, and other iconic features.²⁵ Although the most drastic

²⁵ William Walton, “Guide to the Landscape Architecture of Washington, D.C.,” *Landscape Architecture Magazine* 60, no 3 (April 1970): 179.

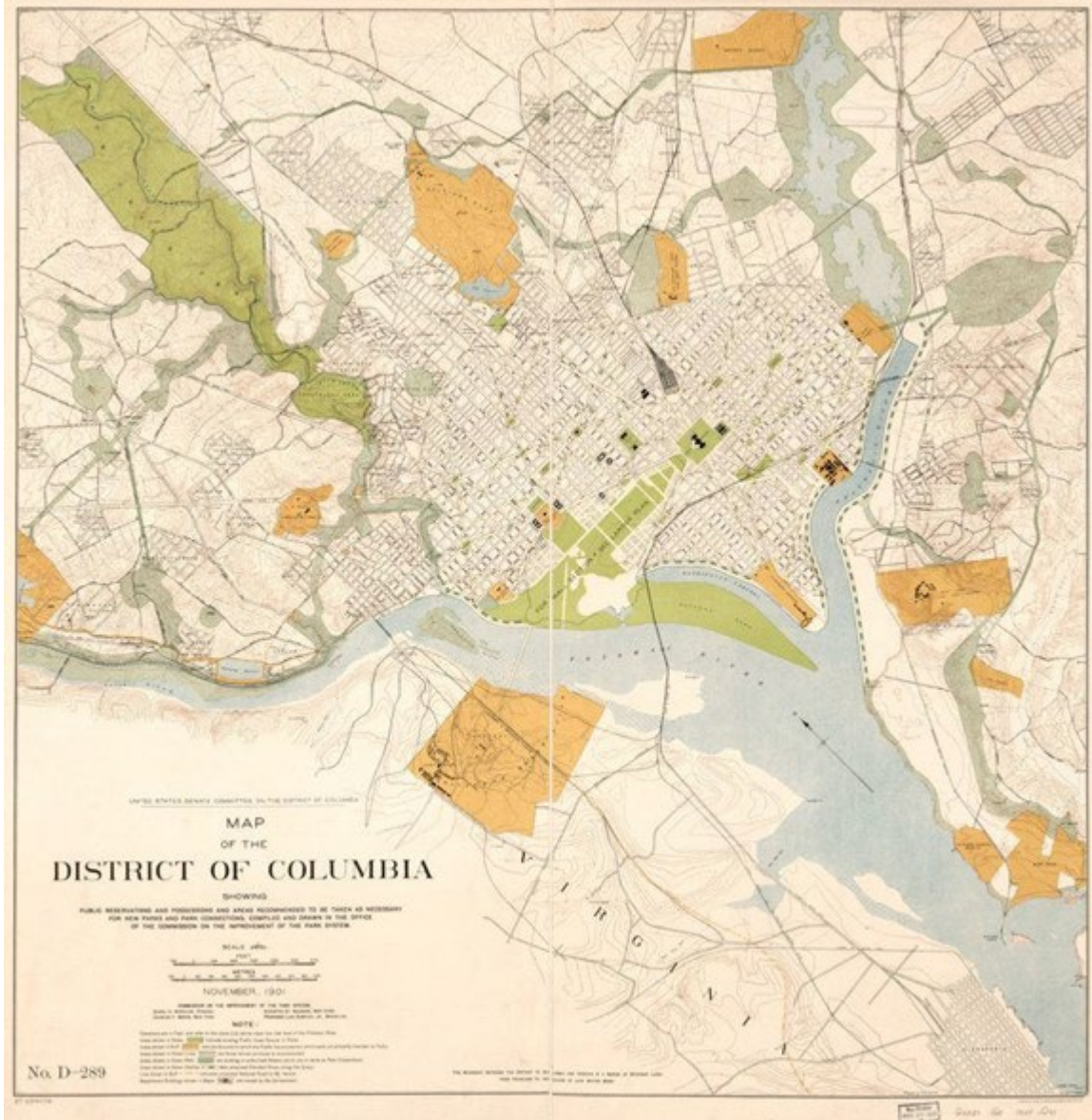


Figure 4 Map of the District of Columbia showing public reservations and possessions and areas recommended to be taken as necessary for new parks and park connections by the Senate Park Commission (1902). Library of Congress, Geography and Maps Division, <https://lccn.loc.gov/87694474>.

changes to the city took shape in the twentieth century, the development of the city's monumental core reinforced the most important principles of the original L'Enfant design. As the city prepared to commemorate its centennial in 1900, Senator James McMillan of Michigan chaired a joint committee of Congress that produced a plan to develop the National Mall. Inspired by the City Beautiful Movement, McMillan and his supporters endeavored to address the haphazard jumble of buildings, gardens, and refuse piles that had sprung up around the Mall and impose an aesthetic sense of order and beauty to reflect the city's stature. After facing resistance from conservative House members, who objected to using federal funds for aesthetic improvements,



Figure 5 The Mall, Washington, D.C. : plan showing building development to 1915 in accordance with the recommendations of the Park Commission of 1901. Library of Congress, Geography and Map Division, <https://lccn.loc.gov/88690909>.

McMillan pushed a Senate Resolution through an executive session in March 1901 to establish the Senate Park Commission (also known as the McMillan Commission), who developed a design plan for the city that adhered to the design tenets of the City Beautiful movement while also capturing the fundamental principles of the original L'Enfant plan.²⁶

City Beautiful was a Progressive-era reform effort concerned with improving urban communities by focusing on the beautification of cities. Begun in response to overcrowding in slums and tenements, the City Beautiful movement was based on the idea that improving the environment in which the urban poor lived and worked would uplift the masses and shape them into “ideal citizens.” City Beautiful advocates believed these efforts would complement other Progressive social reforms—such as those focusing on improving sanitary conditions or promoting legislation to regulate child labor—by inspiring civic loyalty and moral virtue among urban residents. Based on the design principles of the Beaux-Arts architectural style taught at the Ecole des Beaux-Arts in Paris, City Beautiful posited the moral uplift of urban dwellers through

²⁶ CLI NAMA, 61.

the creation of a grand and ordered civic space.²⁷ The McMillan Senate Park Commission—which included architects Daniel Burnham and Charles McKim, landscape architect Frederick Law Olmsted, Jr., and sculptor Augustus Saint Gaudens—applied this framework to the redesign of Washington’s central core.²⁸ As summarized by the National Register of Historic Places, “In total, the forward-looking plans made by the Senate Park Commission called for”:

relandscaping the ceremonial core, consisting of the Capitol Grounds and Mall, including new extensions west and south of the Washington Monument; consolidating city railways and alleviating at-grade crossings; clearing slums; designing a coordinated municipal office complex in the triangle formed by Pennsylvania Avenue, 15th Street, and the Mall; and establishing a comprehensive recreation and park system that would preserve the ring of Civil War fortifications around the city.²⁹

The centerpiece of the McMillan plan was the Mall, envisioned as a “great open vista” between the Capitol and the Washington Monument. Proposing the vista as a great architectural feature, the commission’s plan proposed that the width of the Mall should be approximately 800 feet. Legislation enacted in 1894 and 1910 had imposed restrictions on how high buildings could be built in the vicinity, keeping any buildings from overshadowing the broad open vista of the Mall.³⁰ The Baltimore and Potomac Railroad terminal was removed from the Mall in 1908, allowing for the reclamation of the site for the open green space provided for in the McMillan Commission’s plan. The report further recommended the expansion and modernization of the existing park system beyond the city’s core to ensure bountiful green spaces.³¹

In 1910, President William H. Taft established a Commission of Fine Arts (CFA) to serve as a consulting organization to the government on the design of bridges, sculptures, parks, and other artistic matters, including the design of public buildings. Made up of individuals like Frederick Law Olmsted Jr., Daniel Burnham, and others involved with the Senate Park Commission, the CFA focused its efforts on the development of Washington, D.C., ensuring that the city’s development would continue along the lines set forth in the McMillan plan. The CFA’s first major project, begun in 1911, was the design and construction of the Lincoln Memorial, which effectively closed the western vista of the Mall. They also influenced design decisions within the parks. For instance, whereas Andrew Jackson Downing’s natural style had favored

²⁷ Paul S. Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge: Harvard University Press, 1978), 252; L’Enfant NR, § 8, p. 32.

²⁸ CLI NAMA, 61.

²⁹ L’Enfant NR, § 8, pp. 32-33.

³⁰ CLI NAMA, 63.

³¹ L’Enfant NR, § 8, p. 33.

curvilinear, meandering routes, the Beaux Arts ideal favored straight, symmetrical paths.³² Rather than serving as a “natural style of Landscape Gardening which may have an influence on the general taste of the country,” as Downing had envisioned, the CFA plotted a design that emphasized the symbolic landscape through bold geometric lines directing the visitor from one dramatic vista to another.³³ Such design decisions would impact the ways people would conceptualize and engage with the space in the years to come. And yet, it is important not to assume that either the Senate Park Commission or the CFA designed the city with the mass mobilization of public protest that we now associate with these spaces. As historian Kirk Savage has observed:

Neither the [McMillan Senate Park Commission] plan’s text nor the illustrations even hint at the new social and psychological potential of this vast public space—its ability to attract and engage masses of tourists and demonstrators. If the plan rejected the spatial incoherence of public grounds, it seemed to embrace the social gentility of those grounds, in illustrations of decorous visitors and carriages scattered thinly across the landscape.³⁴

Indeed, Savage continues, “If the new monumental core originally aspired toward Arcadia, it took off in an entirely different direction.”³⁵ The landscapes designed by the early twentieth-century planners inspired social practices of civic engagement that the Senate Park Commission never anticipated as a changing American citizenry made new meanings of these spaces.

Over the next several decades, the city changed in response to war, population growth, and the technological innovation of the automobile, often undermining the McMillan Commission’s efforts to impose order and beautify the city. The number of people calling Washington home rose from 280,000 in 1900 to 525,000 during the first world war. To accommodate the rapid population growth, wood and stucco temporary buildings, or “tempo,” were constructed on federal lands such as the Mall, West Potomac Park, and the grounds southwest of Union Station. The growing availability of the automobile in the 1920s and 1930s promoted the growth of the surrounding suburbs and necessitated the expansion of existing

³² CLI NAMA, 64; L’Enfant NR, § 8, pp. 33-34.

³³ CLI NAMA, 43.

³⁴ Kirk Savage, *Monument Wars: Washington, D.C., the National Mall, and the Transformation of the Memorial Landscape* (Berkeley: University of California Press, 2009), 18.

³⁵ Savage, 19.

roadways. As car ownership became more popular, it also gave rise to the greenbelt cities of Maryland and Virginia and the construction of scenic roadways around the city.³⁶

The Depression years brought significant change to the federal park lands in the capital. In 1933, President Franklin Delano Roosevelt signed Executive Order #6166, transferring all public reservation and buildings to the Office of National Parks, Buildings, and Reservations (later renamed the National Park Service). Although the economic crisis strained the city's resources, New Deal programs allocated millions of dollars for the rehabilitation of parks in the capital region. The relief program employed 350 men to rebuild the Mall, work that included removing buildings and grading the land to create the broad, flat plateau that exists today. In addition to the National Mall development, the New Deal Public Works Program developed and refurbished many of the other park reservations according to City Beautiful design principles. These included Lafayette Park, Franklin Park, Folger Park, and Lincoln Park, sites that would figure largely in the city's emergent protest landscape.³⁷

By World War II, the framework of the monumental core was well established. The story of the city's development since that time has been less about the grand designs of L'Enfant and McMillan, as attention turned to the expansion of the city and suburbs beyond the urban core. The value placed on preserving design has, however, led to movements to remove "urban blight" at various moments in the decades since World War II, a story of exclusion and erasure that is explored in other parts of this report. Monuments and museums continue to proliferate along the National Mall and in many of the city's smaller parks, realizing a significant part of L'Enfant's original vision.

City Design and Protest in the 20th and 21st Century

Although it is unlikely that the Progressive reformers within the City Beautiful Movement had such an intention, their efforts to beautify the city also produced a landscape of protest. First conceptualized by L'Enfant then realized by the McMillan Commission, the broad vistas and straight paths leading from striking national symbol to another would prove ideal for the mass demonstrations to come in the twentieth century. Ample public space at doorsteps of the Capitol enables the citizens to peaceably assemble in numbers unimaginable in the eighteenth century. The monumental core, the Capitol grounds, the parks, and the broad avenues of L'Enfant's design, finally realized more than 100 years later, emerged as the premier forum for

³⁶ L'Enfant NR, § 8, pp. 37-39.

³⁷ CLI NAMA, 70; L'Enfant NR, § 8, p. 37.

democracy in the twentieth century. So powerful is the iconography of the city, it is difficult to picture many of the most significant moments in the history of social movements in the capital without the backdrop of some of our most potent symbols of democracy framing the scene, both literally and conceptually.

In addition to bringing people in contact with the government, the symbolism has become increasingly important in the age of television and mass media. The height restrictions imposed in 1910, together with broad streets, produce striking backdrops of the Capitol, the White House, and the Washington Monument, enabling demonstrators to use the landscape to visibly communicate the connection between their cause and the ideals of the nation. As citizens continue to debate the meanings of democracy in the twenty-first century, they continue to engage with the built environment, allowing the landscape of the city itself to represent the higher ideals of the nation.

Recommended Reading

Government Publications

National Register of Historic Places, *L'Enfant Plan of the City of Washington, District of Columbia*, Washington, District of Columbia, National Register #97000332.

National Park Service, Cultural Landscapes Inventory, *The Mall, National Mall* (2006).

Articles

C. M. Harris, "Washington's Gamble, L'Enfant's Dream: Politics, Design, and the Founding of the National Capital," *William and Mary Quarterly* 56, no. 3 (July 1999): 527-564.

Pamela Scott, "'This Vast Empire': The Iconography of the Mall, 1791-1848," *Studies in the History of Art* 30 (1991): 36-58.

A Social History of Protest in the National Capital before 1894

Chapter Summary

This chapter explores the social history of protest in Washington, D.C. before the city was transformed into a full-fledged “landscape of protest.” Focusing on the role of freedom seekers prior to and during the Civil War, this chapter explores how protest transformed the nation’s capital and how the city transformed the way we think about protest in American democracy.

Today, it is largely taken for granted that Washington, D.C., as the nation’s capital, is an ideal location for Americans to gather to petition their government. Mass marches and rallies before the National Capitol, the White House, and the Lincoln Memorial have become hallmarks of American democracy. However, demonstrations that bring together thousands of Americans are relatively new in our nation’s history. Indeed, when Coxey’s Army came to Washington in 1894 to deliver its “petition in boots”—the first mass march in the nation’s capital—politicians and journalists denounced the movement as an “invasion” by lawless tramps and radicals. At the time, writes historian Lucy Barber, “most authorities considered the demonstration in Washington an unreasonable assertion of a new role for American citizens in the national government.”¹ Similar accusations were made against demonstrators during the Veterans’ Bonus March of 1932 and against the organizers of the 1941 March on Washington Movement (MOWM).²

It was not until the twentieth century that the National Mall and the city as whole emerged as the premier stage for national civic engagement and protest. But, although mass marches and rallies to petition the government did not become a widely accepted practice until later, during the nineteenth century Washington, D.C. was the site of civil disobedience and Native American assertions of sovereignty that laid the foundation for the most significant movements of the twentieth and twenty-first century. What follows is a brief overview describing how protest

¹ Lucy G. Barber, *Marching on Washington: The Forging of an American Political Tradition* (Berkeley: University of California Press, 2002), 22.

² As discussed elsewhere in this report, the 1941 March on Washington, organized by A. Philip Randolph and other African American civil rights activists, was ultimately canceled after the March on Washington Movement successfully persuaded the Roosevelt administration to prohibit discrimination in the defense industry. But while Roosevelt gave into the movement’s demands, the FBI kept close watch on Randolph and the MOWM for years to come, making note of his associations with socialists and “militant” black activists, a strategy the FBI repeatedly used to undermine civil rights activists. See Merl E. Reed, “The FBI, MOWM, and CORE, 1941-1946,” *Journal of Black Studies* 21, no. 4 (June 1991): 465-466.

transformed the nation's capital, and how the city transformed how we think about the role of protest in American democracy.

Freedom and Slavery: Washington as a Nineteenth-Century Landscape of Protest

As discussed earlier in this report, by the mid-nineteenth century, L'Enfant's sweeping vision for the city was far from realized. But if the built environment failed to represent the ambitions of freedom and democracy to which the nation aspired, its social infrastructure was still more damning. The city's location helped to secure its position as a major center of the slave trade in the nineteenth century. Situated between the slaveholding states of Virginia and Maryland, the city was located at a major transportation nexus between the Upper and Lower South, connecting the city to southern markets through waterways, roads, and railways.³ In the early 1800s slave markets cropped up around the National Mall and along Pennsylvania Avenue, just blocks from the Capitol. Robey's slave market was notorious for its especially horrific treatment of enslaved people, who awaited sale and relocation in Robey's crowded slave pens located at 8th Street and B Street (now Independence Avenue).⁴

The slave trade remained legal in the District of Columbia until 1850, and the possession of enslaved people remained legal in the District until 1862. Just across the Potomac, in Alexandria, the traffic of enslaved people continued unabated until the Civil War; indeed, one of the largest slave-trading firms in the antebellum South, Franklin and Armfield, was located in Alexandria.⁵ Prior to the war, about one-fifth of the District's population was black, including 3,000 enslaved and 11,000 free African Americans. Whether free or enslaved, African Americans in the District were subject to Maryland's "black code," a series of arbitrary laws that limited the lives of African Americans. Among other restrictions, even free African Americans faced severe punishment if they assembled without permission. Free African Americans were required to carry a copy of their certificate of freedom at all times and were subject to arrest and imprisonment if they could not prove their free status. Even then, free African Americans lived in a constant state

³ Mary Beth Corrigan, "Imaginary Cruelties?: A History of the Slave Trade in Washington, D.C.," *Washington History: Magazine of the Historical Society of Washington, D.C.*, 13 (Fall/Winter 2001–2002): 5.

⁴ G. W. Colton, "Colton Atlas, 1855, showing former sites of slave trade bordering the National Mall," *Histories of the National Mall*, accessed April 23, 2022, <http://mallhistory.org/items/show/267>.

⁵ The site of the Franklin and Armfield office has been designated as a National Historic Landmark. See National Register of Historic Places, Franklin and Armfield Office, National Register #78003146.

of vulnerability, at risk of being kidnapped and sold into slavery in the deep South. These restraints meant that African Americans before the Civil War tended to engage in more subtle forms of resistance, rather than outright protest. Among other things, this included writing and speaking in support of the abolitionist cause and smuggling enslaved people to freedom.⁶

Though Washington had not yet become a site for mass marches and rallies, its central role in the slave trade focused the national debate over the institution of slavery on the federal city. The resulting conflicts presaged later trends in civil rights protest and activism, including petitioning the government and engaging in civil disobedience to demand legislative change. The horrific scenes of the slave trade in Washington became a rallying cry for antislavery activists, who argued that such scenes in the capital were a disgrace to the nation's ideals. Abolitionist newspapers like the *National Era* promoted the antislavery cause, bringing the testimony of formerly enslaved people to Washingtonians, many of whom signed petitions urging the prohibition of slavery in the nation's capital.⁷

Petitions and letter-writing campaigns were the most prominent means of democratic protest in the nineteenth century. Particularly in the 1830s, Americans regularly exercised their First Amendment right "to petition the government for a redress of grievances," to demand an end to the institution of slavery, support women's suffrage, and protest Indian Removal. In 1829, Cherokee and Creek leaders sent petitions to the federal government, which invoked their nations' respective treaties with the United States to protest Indian removal. As news of Indigenous resistance to removal spread, thousands of white Americans, mainly from Northern states, also signed petitions protesting the expulsion of Native Americans from their lands.⁸ In addition to signing petitions, Native American tribes regularly sent delegations to the capital city to negotiate U.S.-tribal relations and to protest American Indian policy, as in the 1830s, when Cherokee delegations led by Chief John Ross traveled to Washington to protest the policy of Indian Removal.⁹ The arguments laid forth by Native American activists in the nineteenth century established the basis for the sovereignty movements of the twentieth century and today.

Among the most striking forms of resistance to unfold in the capital city during the nineteenth century was civil disobedience in opposition to slavery. The Potomac River and

⁶ Damani Davis, "Slavery and Emancipation in the Nation's Capital: Using Federal Records to Explore the Lives of African American Ancestors," *Prologue Magazine* 42, no. 1 (Spring 2010).

⁷ Davis, "Slavery and Emancipation in the Nation's Capital."

⁸ Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory* (New York: W. W. Norton & Company, 2020), 56-58, 66-67.

⁹ Carl J. Vipperman, "The Bungled Treaty of New Echota: The Failure of Cherokee Removal, 1836-

Chesapeake Bay served as escape routes for many freedom seekers fleeing bondage along the Underground Railroad. Black and white abolitionists who lived in Washington assisted enslaved people on their journey to freedom in violation of federal law. The Fugitive Slave Acts of 1793 and 1850 not only imposed heavy penalties on individuals who assisted in the escape of an enslaved person, but the latter law also required law enforcement officials in every U.S. state and territory to arrest individuals suspected of escaping enslavement, whether or not slavery was legal in that location. By helping enslaved people escape to freedom, black and white Washingtonians engaged in one of the most important forms of civil disobedience in American history.

Acts of resistance to slavery were not without backlash, however. In 1848, the single largest recorded escape attempt by enslaved people in U.S. history unfolded in the capital city and its surrounding waters. On April 15, 1848, 77 freedom seekers—among them, men, women, and children from the city and surrounding areas—made their way to a wharf on the Potomac. There they boarded the *Pearl*, a ship commissioned by black and white abolitionists to bring the escapees north up the Chesapeake Bay before they crossed overland to the Delaware River and then to the free state of New Jersey. On the night of April 15, however, the winds forced the boat to anchor for the night. Upon realizing the absence of the escapees the following morning, slaveholders formed an armed posse to pursue the *Pearl*, which they seized and returned to Washington. Outraged at the attempted escape, a mob of slavery supporters rioted for the next three days, targeting white abolitionists and the entire free black community of Washington in what has come to be known as the first Washington Riot.¹⁰

The Fugitive Slave Act of 1850 and incidents like the Washington Riot intensified the sectional divisions between North and South that eventually led to the Civil War. These tensions erupted in the violent raid on Harper’s Ferry in 1859 by abolitionist John Brown. Brown was a radical abolitionist, meaning that he advocated not only for an immediate end to slavery, but for racial equality before the law. After the passage of the 1850 Fugitive Slave Act and the 1854 Kansas-Nebraska Act, which repealed the Missouri Compromise and escalated tensions between North and South, Brown and some other radical abolitionists became convinced that slavery would only end if it was overthrown by a violent uprising. And so, in 1859, Brown set out to incite a slave rebellion. On October 16, 1859, Brown and group of 21 men, black and white, gathered at Harper’s Ferry. The plan was to overtake the federal arsenal there and arm the

1838,” *The Georgia Historical Quarterly* Vol. 73, No. 3 (1989), 540.

¹⁰ Samuel Momodu, “The Pearl Incident, 1848,” last modified September 23, 2016, *BlackPast.org*, accessed April 2, 2022, <https://www.blackpast.org/african-american-history/pearl-incident/>.

enslaved and free black population to rise up against their masters and destroy slavery once and for all. Brown and his men held Harper's Ferry for 36 hours, but they were eventually surrounded and overwhelmed by militias, including a contingent led by Robert E. Lee. Brown and his comrades who survived were found guilty of treason and executed. Considered by many historians the opening salvo of the Civil War, the storming of Harper's Ferry brought the sectional tensions dividing the expanding nation to the nation's capital.

The Civil War and Reconstruction

The slave went free; stood a brief moment in the sun; then moved back again toward slavery.

W. E. B. Du Bois, *Black Reconstruction in America*

The Civil War had an enormous impact on the social and physical landscape of the city. As discussed in the section above, Washington was a sleepy backwater in the years leading up to the war. This all changed in a matter of weeks as the city mobilized for war. Union soldiers and others involved in the war effort poured into the city. To accommodate the influx of people and materiel:

Dozens of barracks and hospitals were erected on reservations and other open land. At the Washington Monument grounds, a "remount depot" for horses was set up, and also a cattleyard for the slaughtering of beef... On the Mall itself, the enormous Armory Square hospital complex occupied the width of the Mall between 7th and 8th Streets. The Armory Building served as the nucleus of a group of structures containing 50 wards (barracks), a morgue, a church, and quarters for nurses, a chaplain, and escaped slaves.¹¹

But while the temporary structures that sprang up during the war were eventually dismantled after the war's end, the war completely transformed Washington's social landscape.

Once a central node in the American slave trade, the nation's capital was at the forefront of racial and political change by the end of the Civil War. This is all the more remarkable considering that slavery was still legal in Washington at the start of the war. Although Lincoln opposed slavery, his primary concern upon entering the war was in preserving the Union, and he initially resisted calls to emancipate enslaved people within the Union. Under pressure from abolitionists in the city, however, Lincoln signed a bill on April 16, 1862, that emancipated all enslaved people in the nation's capital. And within a few months, Republicans in Congress acted

¹¹ CLI NAMA, 47.

to eliminate the legal vestiges of slavery in the city, passing legislation to dismantle the city's black codes and establish a public school system for black students by early summer.¹²

With the passage of the city's emancipation law, Washington became a beacon for thousands of enslaved African Americans who escaped to the capital city. They arrived as refugees, with few, if any, belongings and crowded into tenements and "contraband" camps (so-called because enslaved people were considered Confederate property confiscated by the Union). After President Lincoln issued the Emancipation Proclamation on January 1, 1863, freeing all enslaved people in the Confederacy, still more refugees escaped to the capital and settled in camps across the city and the surrounding countryside. Camps were overcrowded and the living conditions squalid, but they provided refugees with an intellectual and spiritual outlet denied them under slavery. The refugees, in turn, provided critical support to the union war effort. Indeed, by removing their labor from the South and transferring it to the North, the masses of enslaved people who escaped to the North tipped the scales decisively to turn the tide of the war.¹³

All told, an estimated 40,000 freedom seekers escaped to Washington during the Civil War years. Still more arrived as the city and the nation rebuilt in the years that followed, forever changing the social and cultural landscape of the capital city. That most of the city's African American population—and a significant portion of its total population—after the war was made of individuals and families who had escaped slavery indelibly transformed the city's social and cultural foundations, many of which have been written into the landscape, as in the Mount Zion and Female Union Band Cemeteries and the historically black neighborhoods that began to take shape in the wake of the war.¹⁴

As the nation and the city rebuilt from the Civil War, Republicans in Congress used the nation's capital as a "laboratory for experiments with democracy and racial equality."¹⁵

Historians Chris Myers Asch and George Derek Musgrove capture the remarkable social

¹² Asch and Musgrove, 115.

¹³ Chris Myers Asch and George Derek Musgrove, *Chocolate City: A History of Race and Democracy in the Nation's Capital* (Chapel Hill: University of North Carolina Press, 2017), 123-128.

¹⁴ National Park Service, "Living Contraband – Former Slaves in the Nation's Capital During the Civil War," accessed May 2, 2022, <https://www.nps.gov/articles/living-contraband-former-slaves-in-the-nation-s-capital-during-the-civil-war.htm>.

¹⁵ Kate Masur, *An Example for All the Land: Emancipation and the Struggle over Equality in Washington, D.C.* (Chapel Hill: University of North Carolina Press, 2010), 1.

transformation in the following reflection of the fourth anniversary of Emancipation Day in Washington, D.C.:

Not even half a decade before, Washington was a slave city ruled by black codes that barred “tumultuous” meetings of black people; now thousands of organized black Washingtonians commandeered much of downtown for a day of festivities. Just a few years earlier, individual black people faced legal barriers to owning firearms and no black man could serve in the military; now entire regiments of black militiamen marched openly in the streets. Before the war, politics was the realm of white men alone; now, with support from white Radicals in Congress, black people in Washington organized politically and pushed publicly for the right to vote. It was a stunning transformation that infused black people across the region with hope that they would be able to participate fully in an interracial democracy unlike anything the nation, indeed the world, had ever seen.¹⁶

Congress had virtually unchallengeable authority within the District of Columbia, and during the period of Reconstruction, which lasted from war’s end until roughly 1877, radical Republicans controlled the Congressional agenda. Under the leadership of radical abolitionist Charles Sumner, Congress established schools for black children, banned discrimination on streetcars and railroads, enfranchised black men, and forbade racial discrimination in office-holding and jury service. While radical Republicans sought to impose these conditions across the United States, it was in the capital, where they were free from state and local interference, that they initiated the most expansive reforms.¹⁷

Among the most remarkable reforms was black suffrage. Service in the Union army drew many black soldiers into political organizing, and they asserted their claims to full citizenship through black suffrage organizations like the Union League, founded in 1863. After the war, black Washingtonians made voting rights a top priority. They found support from Republicans in Congress, who supported black suffrage for both political and egalitarian reasons, with the most radical members of Congress like Charles Sumner and Thaddeus Stevens insisting that suffrage was essential to full citizenship. Most white Washingtonians and conservatives in Congress, meanwhile, reacted to the proposal for black men’s suffrage with alarm, if not open hostility, arguing that black men lacked the intellectual capacity for self-government. But Republicans in Congress, bolstered by the Southern states’ intransigence on African American civil rights, held sway and overrode President Johnson’s veto to enact a black suffrage bill in Washington, D.C. in

¹⁶ Asch and Musgrove, *Chocolate City*, 121.

¹⁷ Masur, *An Example for All the Land*; Asch and Musgrove, *Chocolate City*, 122.

1867, more than three years before the passage of the Fifteenth Amendment extended this right to all African American men.¹⁸

The Rise and Fall of Biracial Democracy in Washington, D.C.

Black Washingtonians embraced the new political opportunities that came with suffrage and rapidly mobilized; in the first year of black enfranchisement, African Americans accounted for nearly 50 percent of registered voters despite making up only about 30 percent of the city's population. Through an interracial, cross-class coalition forged with white Republicans, politically empowered African Americans brought remarkable change to the nation's capital. Newly elected leaders employed black workers in public works projects, simultaneously modernizing the city and putting thousands of unemployed laborers to work. Black men were also integrated into the city's police force and fire department, and a black middle class and intellectual culture flourished. But as the nation's capital emerged as a vanguard for biracial democracy, it inspired a forceful backlash from conservative Washingtonians and members of Congress. In a pattern that would be repeated nationwide, opponents of Reconstruction-era reforms repeatedly used black voters as scapegoats for the city's and the nation's struggles as the United States rebuilt from the Civil War. These opponents of Reconstruction ultimately succeeded in bringing an end to Reconstruction, but not before African Americans acquired a political education that would serve as the foundation of movements for generations to come.¹⁹

By the time the Fifteenth Amendment of the U.S. Constitution enshrined black men's right to vote in 1870, a counterrevolution was underway that would undermine democracy in the District for generations to come. Around 1865, a movement to consolidate the District's three local governments (Washington City, Georgetown, and Washington County) into a single

¹⁸ Aware that they had the sympathy of President Andrew Johnson, Southern legislatures after the Civil War quickly acted to pass state and local laws designed to limit the freedom of African Americans. Known as the Black Codes, the central objective of these various laws was to restrict the rights and movements of newly freed people. One example of this was a law called a vagrancy law. Vagrancy laws made it a crime to be unemployed. Those who did not sign long-term labor contracts, for example, could be arrested for vagrancy and forced to work on public projects without pay. The Black Codes also included the Apprenticeship Act, which would often take children away from their parents or other family members and place them in "good" homes until the age of 21. For many black children, wardship under the Apprenticeship Act meant being re-enslaved until they became adults. In some particularly egregious cases, state and local authorities simply updated the existing laws governing the treatment of enslaved people by replacing the word "slave" with "black." This brazen disregard for Northern reforms ultimately galvanized support for Radical Republicans, who sought demanded stronger civil rights protections for formerly enslaved people than their moderate counterparts.

¹⁹ Asch and Musgrove, *Chocolate City*, 141-147; Masur, *An Example for All the Land*, 214-217.

administrative unit began to gain traction among some District residents. Advocates of consolidation also wanted to revoke self-government in the district and replace elected city officials with an unelected board of commissioners appointed by the president. Consolidationists argued that that a streamlined government would be more efficient and promote the District's business interests. But neither African Americans, who only began to enjoy the hard-won right to vote in 1867, nor radical Republicans, who were intent on expanding these rights to all the states in the union, were willing to relinquish democratic power in the city. When Consolidationists attempted to replace elected officials with a federally appointed commission in 1868, the measure was soundly defeated.²⁰

Plagued by budget issues, however, the city's Republican coalition began to show signs of weakness as early as 1869. In 1870, the radical Republican mayor Sayles Jenks Bowen lost his reelection bid to the more moderate Republican Matthew Emery. Conservatives and some moderates blamed the city's financial troubles on black voters, who, they claimed, were incapable of choosing adequate leaders. Consolidationists seized on the dissatisfaction with the city's government to advance their agenda to restructure the local government. Consolidationists' efforts unfolded in two stages. They began by successfully lobbying Congress to consolidate and reorganize the city as a territorial government in 1871. Under territorial government, voters could still elect some local officials, but most of the power resided in the hands of presidential appointees.²¹

While consolidationists had courted allies in the business community, they had not given much consideration to the city's laborers, many of whom were recently enfranchised African Americans. For black workers in particular, the vote had been essential to ensuring that black men received a fair distribution of public works jobs; city officials risked being voted out of office if they disregarded the demands of their constituents. But as more power rested in the hands of appointed officials, the territorial government diminished the political power of black workers. Lacking political or financial clout, the workers protested the change in government by removing their labor. On June 1, 1871, the day the territorial government took office, black and white laborers engaged in a general strike. A week into the strike, however, many white laborers returned to work, while black laborers continued to press for higher wages. As the strike wore on,

²⁰ Asch and Musgrove, *Chocolate City* 156-157.

²¹ Masur, *An Example for All the Lands*, 216-217.

the territorial government coordinated with the police an all-out effort to bring the strike to an end.²²

The 1871 strike serves as a bellwether for political expression in the era of disfranchisement. In the national capital, labor activism became an important form of political expression for workers whose access to traditional channels of political power was diminished. As historian Kate Masur explains:

In launching their general strike at the moment the territorial government took office, black laborers not only alerted the new administration to their demand for higher wages, but also drew attention to the attenuation of political structures that heretofore had held such mass actions at bay. Since black men's enfranchisement in 1867, the demands of unskilled laborers had been channeled through the Republican Party, the ward-based workingmen's associations, and the distribution of patronage in the form of work for underemployed freedmen in the city. With the reorganization of the District's government and the installation of a cadre of political leaders largely unaccountable to voters, those structures threatened to give way, causing laborers to take to the streets to demand redress.²³

Nationwide, labor activism became especially important for African Americans after Reconstruction ended. As other channels of political power were closed to African Americans, labor activism was one of the most effective means of protest that remained. It should come as no surprise, then, that black labor organizations like the Brotherhood of Sleeping Car Porters were at the forefront of the civil rights struggles of the nineteenth and twentieth century. Additionally, the forms of direct action espoused by the labor movement—such as strikes, boycotts, and pickets—readily translated to civil rights protest.

The consolidation and reorganization of Washington, D.C., into a territorial government set in motion a series of events that ultimately ended what remained of local democratic control in the city. The unraveling of democracy began when shortly after the district government took control in June 1871. District voters approved a \$4 million loan for large-scale public works improvements. Significant improvements were made to streets, sidewalks, sewers, and streetcar lines. These public works efforts, in turn, drove development in the outlying areas and fueled a real estate boom that expanded the city outward. Businesses welcomed the improvements and laborers welcomed the employment, but the enormous public debt created controversy. Although most white conservatives had supported consolidation, they were outraged at the massive debt, which, some claimed, had been used to bribe and manipulate black voters. To rid the city of

²² Masur, *An Example for All the Land*, 208-210.

²³ Masur, *An Example for All the Land*, 211.

corruption, they argued, conservative and some moderate voices began to argue that Congress should abolish democracy in the District once and for all.²⁴

By 1873, the city's financial system had already severely deteriorated when the Panic of 1873 struck, bringing the entire national economy to a standstill. In Washington, black voters again became the scapegoats for the city's financial woes. After the city went bankrupt that year, a bipartisan congressional investigation of the city's finances revealed evidence of graft in the city's public works program and issued a blistering rebuke of democracy in the District. In June of 1874, upon releasing the findings of the investigation, Congress voted 216-22 to end territorial government and establish a presidentially-appointed board of commissioners to manage the city. Less than a decade after it began, the nation's first experiment in biracial democracy had come to an end.²⁵

The events in Washington foreshadowed the nationwide retreat from its commitment to civil rights. Though black and white District residents were effectively disfranchised from the decision, consolidationists and conservatives in Congress frequently referred to the electoral influence of black voters in the nation's capital as a reason for revoking the franchise and instituting government by commission. Nationwide, the Compromise of 1877 brought an end to Reconstruction by removing federal troops from the South, the last remaining bulwark of interracial democracy in the former Confederacy. Legislatures across the South enacted laws and social practices that reversed many of the important gains of Reconstruction, and a series of Supreme Court decisions undermined the Fourteenth and Fifteenth Amendments.²⁶ Within

²⁴ Masur, *An Example for All the Land*, 218.

²⁵ Asch and Musgrove, *Chocolate City*, 165; Masur, *An Example for All the Land*, ch. 6 and Epilogue.

²⁶ In an 1872 decision known as the *Slaughterhouse Cases*, the U.S. Supreme Court upheld only the most narrow interpretation of the Fourteenth Amendment. At the heart of the 14th Amendment was a guarantee of equal protection under the law. In its ruling for the *Slaughterhouses Cases*, the court determined that the Fourteenth Amendment protected only those rights guaranteed by the federal government, not the rights that fell within the purview individual states. And in the court's interpretation, the rights of national citizenship were limited to travel between states and the navigation of waterways. According to this decision, then, the states controlled all other aspects of regulating citizenship rights. This limited the ability of the federal government to protect an individuals' civil rights, and ruled that states controlled other aspects of regulating citizenship rights. In effect, this limited the federal government's ability to enforce the major reforms of Reconstruction.

The U.S. Supreme Court undermined the Fifteenth Amendment with its ruling in the case *U.S. v. Cruikshank* (1876). This case gutted the Enforcement Acts, ruling that the federal government could only prohibit the violations of an individuals' voting rights by state governments, and not by individuals. Private actors who violated another person of their constitutional rights were under the jurisdiction of state governments, not the federal government. If an individual or organization conspired to prevent African Americans from voting, for example, the Supreme Court ruled in 1876 that that was a state matter, and the federal government could not step in.

Washington, segregation returned to public accommodations and entertainment. Across the District and the nation, the era of Jim Crow had arrived.

Power and Resistance in an Era of Disfranchisement

Among the greatest ironies of the Reconstruction era is that the city was in the midst of a physical transformation into an emblem of American democracy at the same time its residents were divested of what we now consider to be among the most fundamental rights of a democracy: the right to vote. Despite the dismantling of democracy in D.C. and the reversal of Reconstruction gains across the South, however, Washington's black community flourished. It enjoyed a rich intellectual tradition and strong middle class supported by federal jobs and good public schools. A steady stream of black migrants fleeing the Jim Crow governments and white vigilantism of the South contributed to the cultural and spiritual growth of the community. Though they were disfranchised alongside the city's white voters, black political activism continued.

Black activists focused in particular on regaining the vote, an effort in which they found many allies across racial lines, including representatives of organized labor. But not all white Washingtonians supported the restoration of local government. In part, they feared that the return to local government might come at the expense of the federal government's sizable contribution to the city budget. However, as several scholars have observed, racism lay at the core of most arguments against democracy. As Asch and Musgrove explain:

Once the commissioner government had been established in 1874, it quickly gained the favor of the city's white elites, who "soon ceased even to regret the loss of the right to vote," wrote the *Nation*. Instead of having government in the hands of black Republicans and their untrustworthy white allies, the city now was safely in the hands of three esteemed white men, all appointed by a Congress that had safely abandoned its Radical agenda and was growing far more attuned to elite concerns.²⁷

Drawing on a racialized interpretation of Reconstruction as a period in which the government had been placed in the hands of undeserving and incapable black voters—a narrative that had quickly gained acceptance among white Americans in the years following Reconstruction—many

In another case that same year, *U.S. v. Reese*, the Supreme Court held that the Fifteenth Amendment did not prohibit all restrictions on voting, just those based explicitly on race, opening the door to various restrictions and regulations, such as poll taxes, literacy tests, and grandfather clauses, that would effectively disenfranchise African Americans in the coming years.

²⁷ Asch and Musgrove, *Chocolate City*, 175.

Washingtonians feared that suffrage would lead, once again, to “negro domination” and a return to D.C.’s Reconstruction-era mismanagement.

Building the White City: American Expansion and D.C. Development after Reconstruction

When Reconstruction came to an end, the United States looked increasingly outward, to its interests in the American West, Latin America, and the Pacific. As the U.S. empire expanded outward, the power and prestige of its capital city grew. Between 1870 and 1890 Washington’s population more than doubled, from 131,700 to 280,000. Among the newly arrived were many nouveaux riches and well-educated Northerners seeking opportunity in the expanding federal bureaucracy.²⁸

As money and newcomers poured into the District, the city grew increasingly segregated. Low and middle-income black families were pushed out of the West End as property taxes rose to unaffordable levels by the 1880s and 1890s. New suburban communities developed along the streetcar line excluded black and Asian families, restricting them to older, often less accessible neighborhoods. As was the case elsewhere in the United States, this pattern of residential segregation was reinforced by white homeowners, who sought to uphold property values by maintaining racially exclusive neighborhoods.²⁹

The efforts of Progressive reformers and city planners intensified the tendency toward racially exclusion and segregation. As the United States and its capital city grew in stature, architects envisioned Washington as a model city for the City Beautiful movement (described further in the previous section, “Designing a Landscape of Protest”). Inspired by the “White City” exhibition at the 1893 World’s Fair in Chicago, the commission tasked with redesigning the city believed Washington could serve as an example to the rest of the nation of how enlightened city planning could transform both the physical and social landscape of a city. Washington appealed to City Beautiful advocates not only as an opportunity to manifest the nation’s ideals in the

²⁸ Asch and Musgrove, *Chocolate City*, 188.

²⁹ Asch and Musgrove, *Chocolate City*, 193.

physical structure of the capital city, but also because commission government meant that planners could execute their vision with little concern for local accountability.³⁰

As discussed in the previous section, the Senate Park Commission realized the objectives of the City Beautiful movement in the twentieth-century redevelopment of Washington. Local business leaders generally embraced the commission's efforts. But the focus on beautification and improvement to infrastructure paid little heed to the poor neighborhoods and African American communities that had been forced to the fringes. The construction of Union Station, as one example, involved the eviction of more than 1,500 residents from the neighborhood Swampoodle. The residents were mostly poor Irish and African Americans who lived primarily in ramshackle alley dwellings, and their eviction forced them to even more crowded alleys. Union Station was considered an essential component of the McMillan Plan, not because it would necessarily improve transportation, but because it enabled them to remove unsightly railroad tracks and stations—and people—from their existing location near the Mall.

City planners prioritized clearing away alley residences and run-down tenements with little regard for the residents who occupied them. As one historian has observed, “planners such as Rick Olmsted consistently showed more concern for displaced trees than for residents; a number of old trees that stood in the way of the vista were carefully transplanted at considerable cost.”³¹ No such provisions were made for displaced residents. Efforts by Progressive reformers to develop low-income housing gained little traction in the late-nineteenth and early twentieth century. Instead, developers emphasized the need to clear away slums as sources of blight and disease. As a result, it became increasingly difficult for poor residents to find housing.

Conclusion: Forming a Twentieth-Century Landscape of Protest

Ironically, disfranchisement encouraged D.C. residents to engage in directly petitioning the federal government—a process that would later come to define Washington, D.C., as a landscape of protest. Lacking the normal political avenues of ballot initiatives and elected leadership, Washingtonians were more likely than most Americans in the nineteenth and early twentieth century to petition the government directly. Foreshadowing later developments in American politics, Washingtonians formed special interest groups to air their grievances or place their

³⁰ Asch and Musgrove, *Chocolate City*, 198.

³¹ Kirk Savage, *Monument Wars: Washington, D.C., the National Mall, and the Transformation of the Memorial Landscape* (Berkeley: University of California Press, 2009), 172.

demands before Congress and city commissioners. Washington homeowners, for instance, formed associations to lobby the city's commissioners. White residents formed citizens' associations, which were largely concerned with neighborhood improvement and maintaining racial exclusivity. Excluded from most citizens' associations, black residents formed their own organizations—dubbed civic associations—to advocate on behalf of their communities.

This framework of citizen engagement sustained and fostered black activism in Washington, D.C., and throughout the United States, establishing the organizational and institutional structures that would last into twentieth- and twenty-first century movements for social change. In the face of renewed restrictions and limits to political power, black Washingtonians forged cross-class alliances, focusing on self-help and promoting black institutions to combat racial discrimination. Lacking the vote, black community leaders testified before Congress, organized mass meetings, signed petitions, and staged protests to give voice to their community's demands. By the time the movements for social and economic justice coalesced into the civil rights movement, black activists were well versed in mobilizing a variety of strategies and tactics to petition the government. Though seldom exercised before the twentieth century, these forms of First Amendment expression would become a vital component of democratic discourse.

Recommending Reading

Books

Chris Myers Asch and George Derek Musgrove, *Chocolate City: A History of Race and Democracy in the Nation's Capital* (Chapel Hill: University of North Carolina Press, 2017).

Lucy G. Barber, *Marching on Washington: The Forging of an American Political Tradition* (Berkeley: University of California Press, 2002).

Kate Masur, *An Example for All the Land: Emancipation and the Struggle over Equality in Washington, D.C.* (Chapel Hill: University of North Carolina Press, 2010).

First Amendment Demonstration Permits

Chapter Summary

This chapter explores the history of NPS regulations governing First Amendment demonstrations in National Capital Parks. It provides an overview of the National Park Service's efforts to regulate protest via permits and the significant courts cases that tested the legality of the regulations between the 1960s, when the National Park Service first began requiring permits for some activities, through the current regulations.

Introduction to First Amendment Demonstration Permits and Regulations

The National Mall and other parks within the National Park Service's National Capital Region celebrate their role as a venue for people to exercise their First Amendment rights. To that end, the NPS has developed regulations, policies, and procedures to facilitate the use of federal park lands for First Amendment demonstrations. Beyond the symbolic and historical importance of the National Mall for demonstrations, these federally managed national park sites are places where people may exercise the right to free speech and peaceful assembly as guaranteed by the U.S. Constitution. The National Park Service is also charged with the stewardship of park lands for the use and enjoyment by current and future generations. Occasionally, these two mandates—free speech and the protection of park resources—come into conflict with one another. Within the National Capital Region's federal parkland located in the District of Columbia (hereafter referred to as National Capital Parks), moreover, there are significant security concerns since it is the seat of the Federal Government. For this reason, the National Park Service regulates the time, place, and manner¹ in which demonstrations on park lands may occur by requiring permits for all demonstrations unless they involve 25 persons or less or unless they occur at one of four specific parks (explained further below).

The National Park Service states that it requires First Amendment demonstration permits to “address potential safety and resource protection considerations and to avoid conflicts with other permitted activities.”² Permits are meant to protect and facilitate the use of national park

¹ “Manner” restrictions refer to content-neutral limitations, such as the number of persons, the noise level, the types of equipment and structures used, and the size of the signs and placards that may be carried.

² “First Amendment Demonstration Permits,” National Mall and Memorial Parks, accessed November 8, 2021, <https://www.nps.gov/nama/planyourvisit/demonstrations.htm>. The NPS's rulemaking for its general permit requirements may be found at 35 Federal Register 11485-11493 (July 17, 1970) (proposed); 40 Federal Register 58651-58656 (December 18, 1975) (proposed); 41 Federal Register 12879-12883 (March 29, 1976) (final); 45 Federal Register 29856-29863 (May 6, 1980) (proposed); 46 Federal Register 55959-

lands for a variety of purposes, including not just First Amendment demonstrations, but also celebrations, commemorative events, recreational activity, and research. That the National Park Service has the authority to limit and impose conditions on various activities taking place on National Park lands is widely accepted. When it comes to regulating First Amendment demonstrations, however, there are significant legal questions involved, which run deeper than any single demonstration. Indeed, the questions raised lie at the heart of our most fundamental rights as Americans.

Since the National Park Service began requiring permits for First Amendment demonstrations in 1966, some have questioned whether the regulatory system of permits may itself constitute a violation of the First Amendment. This question has been the subject of numerous lawsuits, particularly with regard to protests in the national capital. To begin with, the First Amendment of the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In its decision upholding the NPS's camping regulation in *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 289, 293 (1984) (discussed further in the following chapter, "Encampments") the Supreme Court expressly recognized that the "National Park Service, is charged with responsibility for the management and maintenance of the National Parks and is authorized to promulgate rules and regulations for the use of the parks in accordance with the purposes for which they were established." The Supreme Court also outlined its three-part test to determine whether a regulation of a demonstration is a constitutional time, place, and manner restriction in a public forum area:

Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that [1] they are justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information.³

After more than five decades of litigation, the courts have affirmed both the right to free speech and assembly in National Capital Parks and the authority (with limitations) of the National Park Service to regulate such activity. Still, questions about the exercise of First Amendment

55966 (November 13, 1981) (final).

³ *Clark v. Community for Creative Non-Violence* (Supreme Court of the United States, 1984).

rights have continued to emerge and will likely continue to do so long into the future, as demonstrators engage in new and creative means of protest, security concerns shift, and ideas about protest among the general public evolve. What has so far remained inviolable, however, is the importance of First Amendment rights.

What follows is an overview of the NPS permit regulations in National Capital Parks and their implications for the exercise of First Amendment rights therein. To understand the complex legal questions involved in regulating First Amendment activities, this section includes a historical overview of the permitting process and the early lawsuits that helped to establish and refine the National Park Service’s regulatory authority. It concludes with a reflection on recent developments in First Amendment activity and the challenges of regulating demonstrations within the Constitutional framework.

Overview of Regulations Governing First Amendment Demonstration

The regulations governing First Amendment demonstrations on national park lands in the National Capital Parks reflect the significance of the national capital not only as a place of national historical significance, but also as a forum for democracy—a place where history is made every day. According to their website, “The National Mall and Memorial Parks Division of Permits Management manages more than 4,000 permitted activities each year.”⁴ Events range from annual celebrations, such as the National Cherry Blossom Festival and the Smithsonian Folklife Festival, to sports and other recreational events, to First Amendment demonstrations. Of the permitted activities that take place in the National Mall and Memorial Parks each year, more than half are considered First Amendment demonstrations. In addition to the thousands of permitted activities, there are many unpermitted demonstrations that take place in the capital each year, as most demonstrations involving fewer than 25 people do not require a permit.

The National Park Service maintains a rigorous adherence to neutrality in its regulation of First Amendment demonstrations. While the agency enforces rules on the time, place, and manner of demonstrations, it never regulates the content of the message. Applications for permits are accepted on a first-come, first-served basis. A complete and fully executed permit application is approved unless another permit has already been granted for the time and place in question,⁵

⁴ “Permits and Contact Information,” National Mall and Memorial Parks, accessed November 8, 2021, <https://www.nps.gov/nama/planyourvisit/permit-office-contact-information.htm>.

⁵ Concurrent demonstrations are allowed in a single location if there is sufficient space for the number of

the proposed event presents a danger to public safety or park resources, or the event violates any other existing law or regulation.⁶ The National Park Service does not charge a fee for First Amendment applications or recover costs for the use of park lands for these demonstrations.⁷ The parks cannot charge for First Amendment demonstrations, as this would constitute a violation of First Amendment rights. As discussed below, the volume of First Amendment activity in some parks has put considerable strain on park resources.

Demonstrations in the National Capital Region

The National Park Service has two sets of regulations that govern demonstrations in national parks. Title 36 CFR § 2.51 governs demonstrations for most of the National Park System, which requires park superintendents to identify areas designated for First Amendment demonstrations on a map, which is available at the Superintendent’s office and is typically included in the Superintendent’s Compendium for each park. In designating areas as “available” for demonstrations, 36 CFR § 2.51(c) requires the Park Superintendent to consider, among other things, the park area’s “atmosphere of peace and tranquility maintained in

people in each of the groups.

⁶ Most permit applications that arrive fully executed and are compliant with all other laws and regulations of a given place are approved unless a permit has already been granted at the same time and place for another event. The conditions under which a permit may be denied are detailed in 36-CFR§ 7.96(g)(4)(vii)(A)-(D): “if...[a] fully executed prior application for the same time and place has been received [and]...multiple uses cannot be accommodated in the same area at the same time”; or “if it reasonably appears that the proposed demonstration...will present a clear and present danger to the public safety, good order, or health”; or “the proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in a certain area...”; or “the application proposes activities that are contrary to...applicable laws or regulations.”

⁷ As stated on the Supplemental Information for NPS Form 10-941, First Amendment demonstrations applications are not subject to application processing fees, but there may be charges for other costs, including services, resource damage cost by the activity, and personnel deemed necessary to support the activity. Depending on the size and scope of the event, a deposit and liability insurance may be required. Applications are reviewed by the United States Park Police to determine if Park Police officers are required to be onsite for the proposed event. National Park Service, “Supplemental Information for NPS Form 10-941, ‘Application for a Permit to Conduct a Demonstration or Special Event in Park Areas,’” accessed April 4, 2022, <https://www.nps.gov/nama/planyourvisit/upload/10-941-Public-Gathering-Permit-and-Instructions-accessible-v19.pdf>.

wilderness, natural, historic, or commemorative zones” as well as the park area’s “natural and traditional use.”⁸

Most of the National Park Service’s National Capital Region—which includes all of the federal parkland in the District of Columbia—is governed however by 36 CFR § 7.96 (Appendix A).⁹ Within the National Capital Parks subject to 36 CFR § 7.96, however, most park areas are available for First Amendment demonstrations. As the United States Court of Appeals for the District of Columbia Circuit has determined: “the Mall is more than home to these enduring symbols of our nationhood’ in that ‘its location in the heart of our nation’s capital makes it a prime location for demonstrations. . . . As the court has stated before, ‘It is here that the constitutional rights of speech and peaceful assembly find their fullest expression.’”¹⁰ With only a few exceptions, then, demonstrations are permissible on most National Park lands within the District of Columbia, provided that all other regulations, including obtaining necessary permits, are followed. Exceptions include most of the area immediately around the White House, the Washington Monument, and several memorial sites, where demonstrations are prohibited either for security concerns or to maintain the respectful and contemplative atmosphere of monuments and memorials.¹¹ There are additional NPS regulations for demonstrations at Lafayette Park and the White House sidewalk, which restrict structures, the size, type, and location of signs and

⁸ 36 CFR § 2.51, <https://www.ecfr.gov/current/title-36/chapter-I/part-2/section-2.51>.

⁹ The special regulations of the National Capital Region do not apply to all of the National Capital Region’s park areas such as Antietam National Battlefield or Catoctin Mountain Park, which are located in Northern Maryland. Rather, 36 CFR § 7.96(a) states that its special regulations “applies only to all park areas administered by National Capital Region in the District of Columbia and in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland” The full text of the law can be found at <https://www.ecfr.gov/current/title-36/chapter-I/part-7/section-7.96>.

¹⁰ *ISKON of Potomac v. Kennedy*, 116 F.3d 495, 496 (D.C. Cir. 1995), as quoted in National Park Service, Cultural Landscapes Inventory, *The Mall, National Mall* (2006) 112 (hereafter cited as CLI NAMA).

¹¹ The use of monuments and memorials as sites of protest and other forms of First Amendment expression is a complex topic. It is covered at greater length in the section “Monuments and Memorials” later in this report. Sites where demonstrations are restricted include the Lincoln Memorial, the Jefferson Memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial. The description and maps showing where the National Park Service prohibits demonstrations and special events are at 36 CFR § 7.96(g)(3)(ii)(A)-(D). The Constitutionality of the NPS regulation prohibiting demonstrations in the chamber of the Jefferson Memorial was upheld in the D.C. Circuit Court decision of *Oberwetter v Hilliard*, 639 F.3d 545 (D.C. Cir. 2011). Besides stating that the designated memorial was a “nonpublic forum,” the Court stated on page 552 “National memorials are places of public commemoration, not freewheeling forums for open expression, and thus the government may reserve them for purposes that preclude expressive activity.”

banners displayed, the type of equipment that may be used for sound amplifications, and the provision of marshals to ensure the safety and discipline of larger demonstrations.¹²

Like other NPS parks, the National Capital Region's regulations at 36 CFR § 7.96(g)(2)(i) do not require permits for demonstrations involving 25 persons or fewer, provided that demonstrators are not merely an extension of another group availing itself for the small-group permit exception and that it does not unreasonably interfere with other demonstrations or special events. Additionally, 36 CFR § 7.96(g)(2)(ii) designates four areas where the numerical limitation is higher, meaning that larger demonstrations up to a designated limit may take place without obtaining a permit. These include Franklin Park (500-person limit), McPherson Square (500-person limit), U.S. Reservation No. 31 (100-person limit), and Rock Creek and Potomac Parkway to the west of 23rd Street and south of P Street NW (1,000-person limit). Demonstrations exceeding the designated limits at these locations may take place if a permit is obtained. Located in key sites within the monumental core, these designated areas have served as the sites of significant demonstrations in recent years.

Historical Overview

The regulations around First Amendment demonstrations in the National Capital Region that exist today came about through extensive litigation over the past five and a half decades. Although the antiwar movement and civil rights struggles of the 1960s were far from the first time demonstrators had assembled in the nation's capital to petition their government, these movements represented a new era in the history of Washington, D.C. as a landscape of protest. The size and frequency of protests had grown to unprecedented levels, while new security concerns emerged from within the United States and abroad. With these new challenges, the National Park Service attempted to regulate the increasingly large and numerous demonstrations taking place under its jurisdiction. With little precedent, however, there was no roadmap for how protests should be regulated—if at all—on NPS land.

The efforts by the National Park Service to regulate protests on park lands resulted in a legal struggle that continues to this day. What follows is not an exhaustive history of this litigation, but rather an overview of the basic legal questions that emerged from some of the early cases. At the heart of this challenge was the question, how does the National Park Service, or any

¹² 36 CFR § 7.96.

federal agency, balance the vital rights guaranteed by the U.S. Constitution when weighed against legitimate governmental interests of public order and safety?

Establishing First Amendment Regulations in the National Capital Parks: 1960s-1970s

The impetus for regulating protest in the National Parks was the dramatic increase in the size and number of civil rights and antiwar demonstrations in the 1960s, particularly those taking place in front of the White House. One historical account describes the growing trend of antiwar demonstrations in front of the White House as follows:

Twenty-five thousand people marched along the White House sidewalk in a demonstration of The Committee for a Sane Nuclear Policy (SANE) in November of 1965. In May of 1966, there was a totally peaceful SANE demonstration on the White House sidewalk of over 8,000 people. The all-night Moratorium demonstration in October of 1969 involved 30,000 people marching in single file, each with a lighted candle, in front of the White House; this march was without incident. During this period there were dozens and dozens of other anti-war marches in front of the White House. Virtually all were completely peaceful; only in a handful were there disruptions, violence or any arrests.¹³

In addition to the protests in front of the White House, there were even larger antiwar and civil rights protests, some bringing demonstrators by the hundreds of thousands, on the National Mall in the 1960s. Despite the vast increase in protest activity, however, demonstrations were overwhelmingly peaceful. Even so, the demonstrations were a major source of concern within the White House, which sought to tamp down the demonstrations at the President's front door.¹⁴

In 1965, the Secret Service and the Johnson administration attempted to prohibit all demonstrations on the White House sidewalk. They cited security concerns as their primary objective in curbing demonstrations, but Cold War tensions and the effect of these protests on America's image abroad also factored into these efforts. In the late 1950s through the early 1960s, Cold War propagandists used stories about the desegregation of schools and the passage of civil rights legislation to frame American race relations as a story of progress and redemption that illustrated American moral superiority over the Soviet Union. But as civil rights activists became increasingly radicalized in the 1960s, with movement leaders from Martin Luther King, Jr., to Stokely Carmichael explicitly linking the struggles of African Americans at home to the war in

¹³ Arnold & Porter, "Demonstrating at the Front Door of the White House," accessed February 2, 2022, <https://www.arnoldporter.com/en/perspectives/publications/1996/01/demonstrating-at-the-front-door-of-the-white-house>.

¹⁴ Arnold & Porter, "Demonstrating at the Front Door of the White House."

Vietnam, it became increasingly difficult for the U.S. government to control America's image abroad. Images of massive protests taking place in the nation's capital that criticized American foreign policy, in particular, undermined U.S. efforts to project an image of freedom and democracy to third world nations.¹⁵

The NPS policy of requiring permits for demonstrations began in 1966, though it was not put into practice until 1967. Amid the growing civil rights and antiwar movements, Secretary of the Interior Stewart Udall promulgated new regulations requiring an official permit for public gatherings on certain park lands in the national capital under the jurisdiction of the National Park Service. Although many amendments have been made in the years since, the regulations enacted on April 23, 1966, established the basic regulatory framework that exists today in 36 CFR § 7.96, including the exemption of certain parks from requiring a permit. According to the new regulations of 1966, a permit issued by the park superintendent was required for demonstrations in most National Capital Parks, including the White House sidewalk, Lafayette Park, and the National Mall. Unlike the regulations today, the original regulation provided no small-group permit exemption for demonstrations of 25 or fewer persons. Demonstrators lacking an official permit were subject to fines and imprisonment for violating the regulation.¹⁶

These regulations have been repeatedly challenged in court as a violation of First Amendment rights, leading to amendments to the regulations over time. The first challenge to the new regulations was in 1969. Although the National Park Service had required permits for demonstrations in National Capital Parks since 1966, the agency did not begin enforcing permit

¹⁵ Whereas the intense battles of the Civil Rights Movement are often portrayed as sectional conflicts, historian Mary Dudziak situates the movement within a broader transnational framework, tracing “the emergence, the development, and the decline of Cold War foreign affairs as a factor in influencing civil rights policy” (17). Civil Rights activists and government officials alike seized upon the context of Cold War ideological warfare: as the government used progress in American race relations to project a positive image of American democracy abroad, civil rights activists used the same international stage to pressure the government into enacting reforms. This served as an effective strategy for both times until the mid-1960s, when civil rights leaders grew increasingly frustrated with the slow pace of change and American involvement in the Vietnam War escalated and grew more controversial. See Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000).

¹⁶ The regulations governing National Capital Region Parks were redesignated from part 50 of the CFR to 36 CFR § 7.96 in 1986. The only significant changes to the regulations at the time involved the geographical applicability of the provisions concerning demonstrations, solicitations, sales, and camping. Parks not requiring a permit within the 1966 CFR governing park usage included McPherson Square, U.S. Reservation No. 31, and Rock Creek and Potomac Parkway, which remain designated spaces today. Also included in the 1966 regulations as designated First Amendment spaces requiring no permit were Judiciary Park, Garfield Park, and U.S. Reservation No. 46. Title 36—Parks, Forests, and Memorials,” Chapter I, Part 3—National Capital Region Regulations, § 3.19 (1966), <https://www.govinfo.gov/content/pkg/FR-1966-04-23/pdf/FR-1966-04-23.pdf>.

requirements until August 10, 1967. On that date, the NPS regional director issued a memorandum announcing the enforcement of permit regulations. The memorandum also added a new provision to the regulation stating that, “No permit will be issued for the South sidewalk of Pennsylvania Avenue to a group of more than 100 persons,” and “No permit will be issued for Lafayette Park to a group of more than 500 persons.”¹⁷ The memorandum provided no explanation for the numerical restrictions. After the announcement that permit regulations would be enforced, protesters lacking a permit were to be arrested.

Mindful of these events, in March 1969, four separate organizations applied for permits on the White House sidewalk or Lafayette Park—the Clergy and Laymen Concerned About Vietnam, Women Strike for Peace, Jews for Urban Justice, and the Action Committee on American-Arab Relations. Each of the permits was denied, three for violating the numerical restrictions and one because of construction and rehabilitation work taking place in Lafayette Park. The four organizations, joined by an organization called the Quaker Action Group, filed an action with the district court on March 19, 1969.¹⁸

The plaintiffs in *Quaker Action Group v. Hickel* (1969) argued that the regulations violated their First Amendment rights to assemble and petition the President by limiting the size of demonstrations and requiring a permit. When the plaintiffs filed for a preliminary injunction against the restrictions on the demonstrations, the NPS regional director advanced for the first time the safety of the President and the security of the White House as justification for the requirement of permits and numerical limits. Despite this argument, the judge granted the preliminary injunction in April 1969, which prevented National Capital Parks from requiring an official permit for demonstrations. In granting the temporary injunction, the court reasoned that “any delay in the exercise of First Amendment rights constitutes an irreparable injury to those seeking such exercise” and that “the convenience to defendants of continuing to enforce the numerical limitations and the permits requirements...is greatly outweighed by the harm to plaintiffs and all other citizens of deprivation of First Amendment rights.”¹⁹ Temporary relief was granted to the protesters, but the question as to whether the National Park Service could enforce

¹⁷ *Quaker Action Group v. Hickel*, 421 F.2d 1111 (D.C. Cir., 1969).

¹⁸ Arnold & Porter, “Demonstrating at the Front Door of the White House.”

¹⁹ *Quaker Action Group v. Hickel*, 421 F.2d 1111, 1116 (D.C. Cir. 1969).

permit requirements and establish numerical limits on First Amendment demonstrations was left unsettled.

The litigation on the issues raised in *Quaker Action v. Hickel* lasted for nearly a decade and was the subject of five decisions by the U.S. Court of Appeals for the District of Columbia. The National Park Service, supported in its position by the Secretary of the Interior, the Secret Service, and the Johnson administration, continued to press for the authority to regulate the size and manner of protests through a permitting process, while the plaintiffs sought a permanent injunction against the permit regulations as a limitation on free speech. The case went back and forth between the District Court, which tended to uphold the government's position based on security concerns, and the Court of Appeals, which attempted to balance the legitimate security concerns of the administration against the plaintiffs' Constitutional right to petition the government.²⁰

Current events also informed the debate unfolding in the courts. In November 1970, the District Court ruled in favor of the government's demand to require any groups planning to hold a public gathering to provide NPS at least 15 days advance notice, thereby giving the government sufficient opportunity to seek a temporary restraining order against any demonstration that presented a potential danger to the President. To support his decision in the case, the judge referenced recent outbreaks of violence in connection with demonstrations around the country, including the Kent State shooting that claimed the lives of four students. On appeal, the plaintiffs successfully rebutted the claim that demonstrations before the White House had posed any threat to the President in the past, but the Court stated that it could not be denied that a public gathering presents some measure of hazard to the security of the President and the White House.²¹

As current events shaped the courts' interpretations of the law, ideas about protest also continued to evolve. In 1973, the District Court affirmed the need for a permit system, but eased the numerical restrictions somewhat, raising the limits to 750 demonstrators on the White House sidewalk and 3,000 in Lafayette Park. On appeal, the limits were sustained, but the judge's decision in the appeal stated that the new limits represented a minimum allowance and that the Interior Department had to provide a procedure for waiving the established limits for larger demonstrations.²²

²⁰ Arnold & Porter, "Demonstrating at the Front Door of the White House."

²¹ *Quaker Action Group v. Morton*, 516 F.2d 717, 730-731 (D.C. Cir 1975).

²² *Quaker Action Group v. Morton* 516 F.2d 717, 732 (D.C. Cir. 1975).



Figure 6 Above: A group of Quakers hold a demonstration against the Vietnam War outside the White House in 1969. Demonstrations like this were subject to new regulations established in 1967 that limited permissible activities outside of the White House. Library of Congress Prints and Photographs Division Washington, D.C.

Figure 7 Below: Coretta Scott King led a group of marchers to a candlelight vigil to the White House as part of the Moratorium to End the War in Vietnam which took place on October 15, 1969.



Plaintiffs in the original *Quaker Action Group* case continued to litigate on the specifics of the regulations through 1977. Prior to this series of lawsuits, it was unclear how—or whether—First Amendment activity should be regulated on lands under NPS jurisdiction. The rapid rise of protest activity, not just in the size of demonstrations but also the frequency, raised new questions about how considerations of security, the protection of park resources, and the disruption to daily life should be balanced against First Amendment rights. There were no easy answers to these questions, but the litigation that began with *Quaker Action v. Hickel* established a few key principles for the regulation of First Amendment demonstrations in National Capital Parks. First, it affirmed the need for a permit system and approved existing permit regulations, with modifications, on such factors as numerical restrictions and advance notice of demonstrations. It also affirmed that restrictions might sometimes be necessary to ensure the security of the President, while also stating that such security should not be achieved “at the unnecessary expense of First Amendment Freedoms.”²³

It was also in this series of litigation that the Court of Appeals established that the “use of parks for public assembly and airing of opinions is historic in our democratic society, and one of its cardinal values,” and that demonstrations in front of the White House bear a “unique quality from the viewpoint of First Amendment interests.”²⁴ Circuit Judge Harold Levanthal made this latter point in the context of criticizing the National Park Service for its apparent hostility to protests on park lands. It is worth noting here that just as Americans’ ideas about protest have shifted over time, NPS, particularly within the National Capital Parks, has since embraced its role as the premier site of First Amendment demonstrations. First Amendment demonstration is, in fact, listed as a key purpose and function of President’s Park (which manages Lafayette Park, the Ellipse, and the White House sidewalk) and the National Mall and Memorial Parks (which manages the National Mall and the parks south to the Potomac River) in their official documents such as Park Foundation documents and Cultural Landscape Inventories. The shift in NPS attitudes toward First Amendment expression in the parks in the 1960s-1970s is also evident in the way NCR park staff, at all levels, talk about First Amendment expression as both a core

²³ *Quaker Action Group v. Morton*, 460 F.2d 854 (D.C. Cir. 1971).

²⁴ The opinion in *Quaker Action v. Morton* (1975) elaborated on this point, stating that “there are unique First Amendment values in use of the White House sidewalk; and citizens seeking redress of grievances are not unreasonable if they propose to come to the front of the House rather than be shunted to the back door.”

function of National Capital Parks and a source of pride in the role they play in American democracy.

Though the cases above established some important precedents, the details about how the National Park Service could regulate First Amendment activity were far from settled. Indeed, even as the case discussed above worked its way through the courts, other cases emerged that raised new questions about whether NPS regulations violated First Amendment rights. Shortly after the *Quaker Action* litigation began, one of the appellants named in that case, Women Strike for Peace, filed a separate action when the organization was denied a permit for a demonstration on the Ellipse in August 1969, on the anniversary of the nuclear bombing of Hiroshima and Nagasaki. As part of the demonstration, the organization wished to construct a visual display that measured eight feet high, twenty feet long, and six feet deep to convey their message. While NPS was willing to issue a permit for a gathering on the Ellipse, it refused to authorize the construction of the display proposed by the organization. Women Strike for Peace brought its suit against NPS on the grounds that by refusing to allow them to build their display, the park service violated their right to freedom of expression.

As with the *Quaker Action* litigation, Women Strike for Peace's case evolved into a protracted legal battle. In this case, the government argued that while Women Strike for Peace had a First Amendment right to use the Ellipse, the proposed structure (the display) was forbidden by NPS regulations, and that "these regulations constitute a proper exercise of the Government's plenary powers over public land."²⁵ The appeals court determined, in 1972, that because NPS allowed structures on park lands for other events, then permission to erect structures must be granted "with an even hand," and Women Strike for Peace were entitled to an injunction against the prohibition of structures as part of their demonstrations. However, the judge continued, they were not entitled to a "display or structure that establishes interference" with the use and enjoyment of the Capital park area by other park visitors.²⁶

While the ruling helped to clarify the question of whether structures could be erected on park lands as part of First Amendment demonstrations, questions remained about the park service's discretionary power to regulate the time, place, and manner of protests within its jurisdiction. As the Judge Levanthal stated in his concurring opinion: "At the end of the line we are left without a coherent framework of regulations, governing public gatherings in park areas subject to the jurisdiction of the National Park Service based on thorough and reflective

²⁵ As discussed in the appeal. See *Women Strike for Peace v. Morton*, 472 F.2d 1273 (D.C. Cir. 1972).

²⁶ *Women Strike for Peace v. Morton*, 472 F.2d 1273, 1303 (D.C. Cir. 1972).



Figure 6 Structures in Lafayette Square before the enactment of NPS regulations governing the use of structures. Thanks to Randolph Myers for sharing these photographs and providing the context surrounding them.

consideration of park values, including First Amendment rights.”²⁷ Once again, a years-long legal battle brought about important precedents for the proper exercise of First Amendment rights on park lands, but the precise regulations would continue to change as citizens brought forth new challenges.

Judge Levanthal’s questions were successfully addressed later when the NPS focused on the sensitive areas of the White House sidewalk and Lafayette Park. After engaging in a thorough and reflective consideration of park values and First Amendment rights, the NPS developed a coherent framework of regulations. These NPS detailed regulations at 36 CFR § 7.96(g)(5)(vi) prohibit structures and limit signage on the White House sidewalk while 36 CFR § 7.96(g)(5)(ix) limit structures and signage in Lafayette Park.²⁸

Below are photographs of some demonstrators’ structures on the White House sidewalk and in Lafayette Park prior to the enactment of the NPS structure regulations.²⁹

The NPS regulations for the White House sidewalk and Lafayette Park were subsequently litigated and upheld as constitutional in *White House Vigil for the ERA Committee v Clark*, 746 F.2d 1518 (D.C. Cir. 1984), *United States v Grace*, 778 F.2d 818 (D.C. Cir. 1985), and *United States v Musser*, 873 F.2d 1513 (D.C. Cir. 1989). As the Court of Appeals explained in *White House Vigil for the ERA Committee v Clark*, 746 F.2d 1518, 1527-1528 (D.C. Cir. 1984) (footnotes omitted) when it upheld the constitutionality of the NPS White House sidewalk regulations:

The regulations challenged here are clearly not based “upon either the content or subject matter of speech.” There is nothing in the text or the history of the regulations to suggest that one group’s viewpoint is to be preferred at the expense of others. They meet the test of being content-neutral. Appellees contend that the Park Service has applied the regulations in a discriminatory fashion, favoring demonstrators who espouse Administration views and disfavoring those with contrary positions, but we find the evidence for such discrimination speculative and unpersuasive.

...

The regulations also clearly serve a “substantial governmental interest.” No one can deny the substantiality or the significance of America's interest in presidential security. At stake

²⁷ *Women Strike for Peace v. Morton*, 472 F.2d 1273, 1303 (D.C. Cir. 1972).

²⁸ The NPS’s regulatory history, which explained the security and aesthetic considerations for its White House sidewalk regulations, is at 79 Federal Register 17352-17354 (April 22, 1983)(interim); 48 Federal Register 22284-22296 (May 17, 1983)(proposed); 48 Federal Register 28058-28063 (June 17, 1983)(final). The NPS’s regulatory history, which explains the security and aesthetic considerations for its Lafayette Park regulations, is at 50 Federal Register 33571-33574 (August 20, 1985)(proposed); 51 Federal Register 7556-7566 (March 5, 1986) (final).

²⁹ Thanks to Randolph Myers for sharing these photographs and providing the context surrounding them.

is not merely the safety of one man, but also the ability of the executive branch to function in an orderly fashion and the capacity of the United States to respond to threats and crises affecting the entire free world. Nor is the interest in pedestrian safety and traffic insubstantial; the value of sidewalks as public fora would be considerably vitiated were the state unable to provide for the orderly passage of those persons who use them. Finally, the government has a substantial interest in the preservation and enhancement of the human environment; aesthetics are a proper focus of governmental regulation.

...

The regulations also clearly satisfy the constitutional requirement that they leave open ample alternative channels of communication. Demonstrators on the sidewalk are free to engage in a rich variety of expressive activities: they may picket, march, hand out leaflets, carry signs, sing, shout, chant, perform dramatic presentations, solicit signatures for petitions, and appeal to passersby. The content of the message they espouse is theirs and theirs alone....³⁰

Liberty, Security, and the Evolution of First Amendment Regulations in National Parks

A decade after the National Park Service first established a policy of regulations on protest in National Capital Parks, the basic regulatory framework that exists today had been refined and revised. Through a series of legal challenges, the courts had affirmed the agency's ability to regulate the time, place, and manner in which demonstrations could take place, while also limiting NPS's regulatory authority in the interest of upholding the First Amendment rights of people wishing to use the parks to assemble, petition the government, and hold demonstrations. The courts also affirmed that parks served an important role in the American democratic tradition. As the court stated in *Women Strike for Peace v. Morton* (D.C. Cir. 1973):

Parks are a particular kind of community that, under the Anglo-American tradition, are available, at least to some extent and on a reasonable basis, for groups of citizens concerned with expression of ideas. The regulations of the National Park Service expressly contemplate that parks may be used for this purpose.³¹

That First Amendment expression was a legitimate, and even fundamental, use of National Capital Parks is now established in both the park policy and the litigation. But in the years that followed this litigation, new security concerns and unconventional forms of expression would challenge the existing regulatory framework. Establishing campsites on park lands to creatively

³⁰ *White House Vigil for the ERA Committee v Clark*, 746 F.2d 1518, 1527-1528 (D.C. Cir. 1984). Context provided by Randolph Myers.

³¹ *Women Strike for Peace v. Morton*, 472 F.2d 1273, 1287 (D.C. Cir. 1972).

symbolize the plight of the homeless, for example, emerged as a new form of protest that has tested the NPS and the courts on numerous occasions.

The history of camping as a form of protest is explored in greater depth in a later section of this report. In terms of permitting, however, it is important to note here that camping can be a challenge. Although camping “for living accommodation purposes,” which is extensively defined at 36 CFR § 7.96(g)(i), is prohibited in National Capital Region parks, 36 CFR § 7.96(g)(5)(vi) does allow round-the-clock vigils to have temporary structures, including tents, if they are part of an ongoing demonstrations’ logistical needs and for symbolic purposes. But the challenge of regulating camping “for living accommodation purposes” has become more complicated in recent years as the unhoused population in Washington seeks shelter in National Capital Parks.

Though government officials from the White House and the United States Secret Service had long invoked security in their efforts to curb protest activity near the White House (particularly under the Johnson Administration), security really began to expand in the 1970s and 1980s in response to political unrest in Iran and an alarming increase in terrorist activity at home and abroad. On December 8, 1982, the need for increased security in National Capital Parks was tragically illustrated when a protester named Norman Mayer drove a van to the base of the Washington Monument. He claimed the vehicle was loaded with 1,000 pounds of TNT, which he would detonate if the United States did not take steps to ban nuclear weapons. Mayer, who had protested daily in front of the White House for several months prior to the incident, was fatally shot by Park Police officers after he began to drive away in his van, threatening to detonate the explosives in downtown Washington. Subsequent investigation revealed that Mayer’s van carried no explosives, but this incident and the larger context of domestic and international threats highlighted security risks.³²

In response to the growing security risks, representatives from the National Park Service, the Secret Service, and the Department of Justice met in late 1982 to consider ways of securing the White House and National Capital Parks. On April 22, 1983, NPS published new regulations that enumerated further restrictions of demonstrations, particularly near the White House. Among other requirements, these included restrictions on the size, placement, and construction (materials used) of signs displayed on the White House sidewalk. The new restrictions also established a center zone, defined as the central twenty yards of the sidewalk in front of the White House, within which demonstrators bearing signs could not be stationary, but were permitted to carry

³² Joe Pichirallo and Blaine Harden, “The Odyssey of Norman Mayer: Victim of an Unyielding Will,” *Washington Post*, December 19, 1982.

signs “if they continue to move along the sidewalk.”³³ As with the original regulations established in 1967, these new regulations became the subject of numerous lawsuits in the ensuing years that challenged the regulations’ legality on First Amendment grounds, but which the Court of Appeals have upheld as constitutional.

Through these legal challenges, the NPS regulations were refined and rewritten. Security concerns would only continue to grow as various high profile events—such as the 1983 bombing of the U.S. Marine barracks in Beirut, the 1995 Oklahoma City Bombing, the September 11, 2001 terrorist attacks, and, most recently, the storming of the U.S. Capitol on January 6, 2021—heightened awareness of security vulnerabilities in the nation’s capital. Aside from the regulations around permitting, the landscape itself has been transformed out of concern for security, with security fences, bollards, and strategic landscaping limiting the degree and type of access people have to various National Capital Parks.³⁴ Balancing the need for security against First Amendment rights has been and will likely continue to be an issue for the National Park Service in the years to come.

The Challenges of Regulating First Amendment Demonstration in National Capital Parks

Park management and staff evince a great deal of pride in the fact that people come from all over the country—and the world—to exercise their First Amendment rights at National Capital Parks. For some parks, however, the rising number and size of demonstrations over the past several years has strained park resources. This includes having sufficient staff to assist people planning demonstrations and to ensure that demonstrators adhere to the park-specific policies and regulations.

The overall trend in First Amendment activities in the National Capital Region has been an increase in both the number and size of demonstrations. Each year the National Mall processes roughly 750 First Amendment demonstration permits.³⁵ These permitted activities represent only

³³ *White House Vigil for the Era Committee v. Clark*, 746 F.2d 1518 (D.C. Cir. 1984).

³⁴ Examples of heightened security protection include new and more secure fencing at various park sites, including around the White House, the traffic closure of Pennsylvania Avenue adjacent to the White House, and the landscaping around the Washington Monument completed in 2005. The incorporation of security features into the landscape of National Capital Parks is covered in greater depth in the section on site studies.

³⁵ The number of permitted activities dropped significantly as a result of the COVID-19 pandemic, but permit specialists with the National Mall and President’s Park have commented that numbers had already begun to climb again as of February 2022.

a portion of the First Amendment activities taking place on NPS lands in the capital; as noted above, permits are not required for groups of fewer than 25 people, or for larger groups in designated locations, such as Franklin Park and McPherson Square.

Rules and Regulations: The Permit Application

Although the permit process is generally straightforward, one permit specialist has remarked that the permit application is misleading in its simplicity. The National Mall permit office is responsible for issuing permits not only to the park units under the jurisdiction of the National Mall and Memorial Parks, but all NPS park units within the District of Columbia and some of the parks in the surrounding counties. An individual or group planning a protest involving more than 25 persons must complete the application, NPS Form 10-941, which is available online, and submit it to the Division of Permits Management Office in person or by mail (emailed forms are not accepted) no more than one year in advance of the first day of setup. Permits are accepted on a first-come, first-served basis. According to the NPS permit procedures, “All demonstrations are deemed granted, subject to all limitations and restrictions applicable to said park area, unless denied within 24 hours of receipt of the application.”³⁶ Each application is assigned to a permit specialist, who will review the application to determine whether additional meetings, discussions, or documents are required to continue with the permit process. It is at this point that the confusion often begins.

While all parks within the District follow the same NPS regulations, individual parks have their own permit conditions, which are not all listed on the application. For instance, some parks have limitations on the kinds of equipment that may be used in a protest. Individual parks also have restrictions on where people can set up their demonstrations. In Lafayette Park, for example, many groups planning demonstrations or events hope to set up their demonstration on the center lawn of the square, which provides a striking backdrop of the White House. However, demonstrations are prohibited from setting up in the center lawn of the square, as such activity would disrupt the historic flower beds. Additionally, demonstrations in Lafayette Park are limited to only one structure, which must adhere to specific dimensions. But what constitutes a “structure” as defined at 36 CFR § 7.96(g)(5)(ix)(A)(4) would likely come as a surprise to most visitors. Something as simple as a camera tripod or a chair constitutes a “structure,” as defined by park regulations and could, therefore, put a demonstration in technical violation of the park’s

³⁶ “First Amendment Demonstration Permits,” National Mall and Memorial Parks, accessed November 8, 2021, <https://www.nps.gov/nama/planyourvisit/demonstrations.htm>.

regulations. Similarly, banners, signs, and placards are generally unrestricted, so long as they are handheld. Place a banner on the ground or attach it to an existing structure in Lafayette Park, however, and the same signage becomes a structure, which is prohibited under park regulations.

Adding to the confusion, many protests that take place in the National Capital Region extend beyond the jurisdiction of the National Park Service. While Lafayette Park and the White House sidewalk fall under NPS jurisdiction, the traffic-closed section of Pennsylvania Avenue that runs between these areas is under the jurisdiction of the city and does not have the same restrictions. Savvy demonstrators who do not wish to follow NPS regulations will often simply move into the street. But those who are not familiar with the minutiae of regulations and jurisdictions will often view the discrepancy between what is allowed on Lafayette Park and the White House sidewalk on the one hand and the street in between these spaces on the other hand as an arbitrary exercise of power on the part of NPS staff.

For the general visitor, there is nothing obvious about the jurisdictional shift between sidewalk and street, particularly on the section of Pennsylvania Avenue in front of the White House. Because the street is closed to vehicle traffic, it seems to most visitors to function as an extension of the park. Tourists and protesters alike move between sidewalk and street simply to capture a better angle of the White House for photos without any awareness that they are moving from a national park to a city street, and minor breaches of park regulations frequently occur. As a result, when someone witnesses park staff or park police enforcing the regulations on organized events like First Amendment demonstrations, it is sometimes perceived as an uneven application of the rules, leaving NPS personnel vulnerable to accusations of partiality. Ironically, it is out of a commitment to remain impartial that park permit staff insist upon adhering to the regulations. If park staff were to look the other way when a demonstration violated the park's regulations, one permit specialist explained, that could be seen as a form of favoritism, and that would undermine NPS's role in regulating the use of park spaces for First Amendment demonstrations.

The larger an event, the more complex it is to permit. Depending on the size and nature of the event, some permit applications require working with law enforcement agencies to ensure the security of the event. Marches and other events that involve more than one location require additional permits from the District of Columbia Metropolitan Police or the U.S. Capitol Police, depending on jurisdiction. All of this requires a great deal of coordination and communication among the various agencies involved and the permit-seeker.

One of the major challenges confronting NPS management is the lack of adequate personnel available to interact with the public to explain how the regulations work and why they exist. This extends from the permitting office to the park sidewalks. It is largely taken for granted

today that people can gather in front of the White House or on the National Mall to stage a protest. It is also largely taken for granted that tourists from around the world and local residents alike should be able to enjoy these spaces for leisure and recreation with an expectation of safety. In addition to balancing the various uses of the parks, NPS staff are responsible for preserving the natural and historic resources of the parks. And yet, while all types of uses of the parks have expanded in recent years, and national parks have reached historically high visitation numbers, the number of park staff interacting with the public has declined. As a result, it is difficult to explain and enforce confusing rules about demonstrations and park usage.

The lack of adequate personnel poses particular challenges in the permitting of First Amendment demonstrations. When a permit specialist reviews an application that violates some park regulation, rather than issuing a blanket denial, the permit specialist will try to work with the applicant to revise the planned demonstration so it conforms to the regulations. The goal, one permit specialist has explained, is to help them execute their vision while being consistent with NPS regulations. This can be a challenge with creative and unconventional demonstrations that do not fit neatly within the regulations, but permit specialists consulted for this project generally embrace the challenge of working with communities to realize their ideas within the specific regulations of a park. An issue that arises, however, is that the lack of personnel to work with applicants has led to apparent inconsistencies between what is deemed permissible by the permitting office at the National Mall and what is allowed within an individual park.

Enforcing the Rules: Consistency, Neutrality, and Discretion

If questions of structures or the movement (or lack thereof) of individuals wielding signs seem mundane to the most outside observers, the issue can emerge at the center of major controversies. Structures—ranging from a small camera tripod to an elaborate display consisting of stages, screens, and portable toilets—are a frequent point of contention between NPS staff and park users who either misunderstand or dismiss the regulations. Most times, Park Police officers will simply direct news crews to set up their tripods on the street in front of the White House, which is under the District’s jurisdiction and not subject to NPS regulations. Yet the question of structures recently arose in the planning of a demonstration on the Ellipse on January 6, 2021, an event that unexpectedly became the staging ground for the January 6 riot at the U.S. Capitol. Consistent with long-standing policy, the NPS initially denied a permit request from an organization called Women for America First to erect a stage, a press riser, and two large LED screens on the Ellipse, where the display would disrupt the protected historic vista sight line from

the White House to the Jefferson Memorial. The National Park Service has had a policy of protecting the 150-foot-wide sight line from the encroachment of structures in order to maintain the historic and aesthetic integrity of the cultural landscape in President's Park.³⁷ A small exception has been made in the past: each year, a group displays a large menorah on the Ellipse during Hanukkah, and though it is not fully within the protected vista, the eastern arm or the menorah extends a few feet into the sight line. The organizers for the January 6, 2021 event raised this example in their efforts to obtain a similar exception. Initially NPS was willing to concede to Women for America First the same limited degree of encroachment on the sight line as was allowed for the menorah, but the organization continued to press the issue, seeking to construct their display at the center of the historic vista. Eventually, NPS granted a rare exception to the policy against locating displays within the sight line because of the unusual circumstance that a wooden construction fence impaired views of the White House from alternate locations not within the vista.³⁸

This is not to suggest that the NPS's decision to make an exception on the vista sight line in any way influenced the events that followed the demonstration on the Ellipse. To the contrary, the release of documents pertaining to the January 6 event indicate that NPS worked extensively with event organizers to ensure an orderly event. But because of all that proceeded from the initial planned demonstration, everything about the event has drawn increased scrutiny, including the details on the staging of the event at the Ellipse and decisions made by NPS management and staff. For an organization that relies on precedent to justify the decisions it makes in regulating

³⁷ The historic vista sight line in question was established in the 1934-35 Olmsted Plan, which sought to preserve the axial design first envisioned in the L'Enfant design of the city. The National Park Service has a longstanding policy of protecting the historic sight line created in this design, as it remains one of the defining attributes for Washington, DC's, Monumental Core. U.S. Department of the Interior, National Park Service, National Capital Region, Resource Stewardship and Science, *Evaluation of Visual Impact Analysis for Temporary Structures on the National Mall: Cultural Landscape Vista and View Preservation*, (Washington, DC), 11, https://www.nps.gov/nama/learn/news/upload/NCR_Evaluation_of_Visual_Impact_Analysis_for_the_National_Mall_2018.pdf.

³⁸ The permit discussions were the subject of lengthy correspondence among the permit applicants, NPS administration and staff, and the Department of the Interior Solicitor's office. The correspondence began in November of 2020, when the organization first applied for the permit, and lasted through January of 2021, in the days leading up to January 6. The correspondence, which the NPS made public as part of a Freedom of Information Act request, reflects the efforts of NPS staff to work with the event organizers within the framework of the regulations. U.S. Department of the Interior, National Park Service, National Mall & Memorial Parks, "Women for America First January 6, 2021, Permit Processing Records," (September 30, 2021), accessed May 2, 2022, https://www.nps.gov/features/foia/Jan6_WomenForAmericaFirstPermitEmails_REDACTED_Oct18.pdf.

First Amendment activity, such prominent examples could pose a challenge to future regulatory decisions, if other groups seek similar concessions.

Among the most frustrating challenges, from the perspective of permit specialists, is an occasional lack of consistency in enforcing park regulations. U.S. Park Police officers have the freedom to exercise discretion in enforcing park regulations for both permitted and non-permitted activities and frequently overlook minor infractions. For example, in Lafayette Park, where small structures are prohibited, park visitors often bring in structures like camera tripods, which violates the park's prohibition of structures. Similar infractions can be witnessed with some regularity within the park on any given day. But while a lone camera tripod may not interfere with the general public's use of the parks, the presence of several tripods stationed in key places around the capital can have this effect. Consider, for example, any time a major news story breaks. Members of the news media often seek the same symbolic backdrops for their reporting, to deliver a report with the White House or the Lincoln Memorial in the background, as a few common examples. The media has no greater right to these spaces than the general public, but a large number of news cameras could easily crowd out other users of the park and has done so in the past. Thus, while it may seem reasonable to overlook minor infractions by an individual or small group of individuals, doing so creates an inconsistency in enforcement, which can result in confusion for an applicant and frustration for permit specialists, who strive for complete neutrality in regulating First Amendment demonstrations.

Thus, while permitting First Amendment demonstrations is important to balancing the Constitutional rights of individuals with the protection of park resources and other uses of the parks, it can serve as a stumbling block. Other challenges arise when the rules themselves are unclear or when demonstrators misrepresent the nature of their planned demonstration on the application. Ironically, openly violating the regulations through civil disobedience does not generally pose the greatest challenge to park staff. In fact, civil disobedience has become so deeply ingrained in the culture of protest that NPS's application form for First Amendment protest includes the question, "Are you planning to conduct civil disobedience?" with a simple check-box response for "Yes" or "No."³⁹

Violations of park regulations, both intentional and unintentional, are frequent occurrences in First Amendment demonstrations. Although the National Park Service technically

³⁹ National Park Service, National Mall & Memorial Parks, "NPS Form 10-941," accessed November 8, 2021, <https://www.nps.gov/nama/planyourvisit/upload/10-941-Public-Gathering-Permit-and-Instructions-accessible-v19.pdf>.

has the authority to revoke permits, the reality on the ground can be significantly more complicated, and the decision to revoke a permit involves more than a simple consideration of the regulations. The Park Service must also weigh substance of the violation with the objective of keeping the peace and protecting demonstrators' First Amendment rights. As former NPS director Jonathan B. Jarvis explained in 2012, "the courts have recognized that the NPS has certain discretion to enforce rules and regulations in the manner that best fits the situation":

The NPS's and USPP's handling of First Amendment activity begins with the lowest level of enforcement in order to allow demonstrators the opportunity to express their views; enforcement then increases if the situation warrants. This strategy allows our officers to work with demonstrators—if the demonstrators are cooperative—to ensure the health and safety of the demonstrators as well as DC residents and visitors. This means that our officers respect the demonstrators' First Amendment rights, but also enforce quality of life regulations. Courts have recognized that this kind of measured, preventive technique of law enforcement helps minimize the potential for disorder.⁴⁰

Director Jarvis's made these comments in relation to the NPS's handling of the Occupy movement, which featured encampments on two NPS sites in Washington, D.C.: McPherson Square and Freedom Plaza. In 2011-2012, demonstrators established protest encampments in violation of NPS regulations, which do not allow for camping on the parks in question. Many lawmakers and some residents who opposed the protest demanded that the permit be revoked and the protesters evicted. However, as other Occupy demonstrations across the country were evicted and cleared, the National Park Service exercised discretion to allow activists to remain until February of 2012, after which NPS took enforcement action for camping violations.

Another challenge in enforcing regulations consistently is that National Capital Parks exist on a landscape of competing authorities who have their own areas under their jurisdiction and their own laws and regulations. In any given demonstration, the National Park Service may have to coordinate with the U.S. Capitol Police, metropolitan authorities, and the U.S. Secret Service. Regardless of the existence of permitted or other activities planned by NPS, for example, the U.S. Secret Service has the authority to close the Ellipse and Lafayette Park to the public if they deem it necessary for security, a precaution that is often taken as a short-term measure to secure the President or the First Family. Typically, the Secret Service requests such closures in writing, but on occasion, the Park Police must act on an oral request by the Secret Service to

⁴⁰ "Occupy DC McPherson Square Encampment: Statement of Jonathan B. Jarvis, Director, National Park Service, Department of the Interior, before the Subcommittee on Health Care, District of Columbia, Census and the National Archives of the House Committee on Oversight and Government Reform Concerning Issues surrounding the National Park Service's (NPS) Handling of Demonstrations at McPherson Square," January 24, 2012, https://www.doi.gov/ocl/hearings/112/OccupyMcPhersonSquare_012412.

quickly close the park for security reasons. When litigated, such closures have been upheld. Even so, the yearlong closure of Lafayette Park that began during the civil unrest in June of 2020 caused a great deal of frustration among park managers and would-be park users alike.

Financial Constraints and Other Challenges

According to how the First Amendment has been interpreted by the NPS and DOI Solicitor's Office, the National Park Service cannot charge fees to conduct activities that fall under the category of First Amendment expression on National Park lands, including permitted and unpermitted demonstrations, vigils, and rallies. Though protesters are responsible for certain costs, such as the provision of on-site emergency medics, trash cleanup, and portable toilets, particularly for larger demonstrations, the National Park Service cannot recover costs for the use of National Park sites, including the provision of additional NPS personnel.

In 2018 the NPS proposed a series of amendments to the NPS regulations for the National Capital Area at 83 Federal Register 40460-40485 (August 15, 2018). Among these amendments was one seeking comments about charging people who apply for a demonstration permit to allow the NPS to recover some of its costs. Another provision proposed to restrict the amount of the White House sidewalk available for protests, reducing the area available by about 80 percent.⁴¹ The proposed changes faced overwhelming criticism from across the political spectrum, eliciting more than 140,000 comments from the public, nearly all of which opposed the changes. Among those who submitted comments opposing the proposed regulations was former DOI attorney Randy Myers who, during his 28-year career as a federal attorney had helped to draft NPS regulations before he retired in 2016. Of the proposed regulations in 2018, he wrote, in part:

The change proposed here would disrupt the delicate balance between guaranteeing the exercise of First Amendment rights and ensuring public safety. Indeed, the result will be to constrain First Amendment rights significantly and in violation of established legal principles and for no legitimate reason.⁴²

In the face of the public backlash the NPS withdrew the proposed regulations in October 2019.⁴³

Among the most prominent challenges to managing First Amendment Activities in National Capital Parks is a lack of adequate staffing to ensure the consistent enforcement of the

⁴¹ Olivia Paschal, "The Backlash to New Rules on Protests in D.C.," *The Atlantic*, October 13, 2018.

⁴² Randy Myers, as quoted in Paschael, "The Backlash to New Rules on Protest in D.C."

⁴³ 84 Federal Register 57883 (October 29, 2019).

regulations. The NPS regulations are complex and lengthy, and ensuring that the public understands them requires a great deal of staff time and effort. For most of the other park units within the National Park Service, the costs of First Amendment demonstrations are negligible or even non-existent. But for many of National Capital Parks, First Amendment demonstrations are a frequent, even near-daily occurrence. According to an NPS spokesman consulted by the *Washington Post* in 2019, the National Park Service does not track how much it spends to support First Amendment demonstrations, but that processing the permits alone costs NPS an average of \$700,000 per year annually in staff time. In President’s Park, which includes Lafayette Park, the Ellipse, and the White House, an overwhelming majority of permitted activities are demonstrations, for which NPS can recover no costs. Damages to park resources, like gardens, turf, or structures, cannot be recovered. A large portion of the park’s budget goes to repairing damage and protecting park resources, and the agency has increasingly had to pull from emergency funds to cover the costs of security, permit processing, cleanup, and repair.⁴⁴ As a result, the park is able to support fewer interpretive rangers and other staff, who serve not only as key public relations figures on the history and significance of the park, but also as stewards of the park who oversee the use of park resources. These financial challenges have only escalated in recent years as the size and number of First Amendment demonstrations have grown, overall park usage has expanded, and Congress has failed to adequately fund the agency.

Conclusion

Park administrators and staff in the National Capital Parks are deeply committed to upholding First Amendment principles in the National Parks. Those who manage the National Mall and Memorial Parks and President’s Park, in particular, see this as a core function and mission of their parks. For all the discussion of limitations in the regulations, the goal for park staff who work with organizers on First Amendment demonstrations is not to deny permission, but to work with organizers to realize their vision and to ensure fairness in their interactions with the public.

Alongside staff, communication is one of the greatest challenges for National Capital Parks to carry out their mission, particularly as it relates to First Amendment demonstrations. Better communication and coordination are needed all around, according to park staff. Specifically, there could be better communication among the various law enforcement agencies

⁴⁴ Marissa J. Lang, “Liberal, conservative organizations unite against National Park Service proposal to charge protest fees,” *Washington Post*, April 1, 2019.

and park staff about regulations and definitions, so that all entities involved have a clear and common interpretation of park rules and enforcement priorities. For example, while the permitting office considers a tripod a “structure” that is prohibited in Lafayette Park according to 36 CFR 7.96(g)(5)(ix)(A)(4), some U.S. Park Police officers do not take action by exercising their discretion. While courts have recognized that agencies have certain enforcement discretion, greater consistency and agreement on enforcement priorities could help to prevent, or at least mitigate, confusion among the public.

An improved strategy for communicating park regulations to the public in clear language that the average person would understand could also help to ensure demonstrators understand their rights and limitations. Many of the regulations are written in a complicated legalese and lack a compelling explanation to help the public understand why certain regulations exist. While the NPS’s explanation for its regulations can be found in its regulatory history published in the Federal Register, and the ACLU of the District of Columbia has published user’s guides for those planning to demonstrate in Washington, D.C.,⁴⁵ a stronger communications strategy could help educate the public and advance equity in the use of public parks for First Amendment purposes. Although everyone technically has the same rights, and can read the same NPS regulations, not everyone may understand how to work within the regulations to accomplish their vision. This could discourage people with fewer resources, or who are unfamiliar with the permitting process, from exercising their rights. Park resources that are already regularly updated, such as the Superintendent’s Compendium, could be incorporated into a communications strategy.

Finally, the issue of the cost of First Amendment demonstrations should be addressed. Requiring organizers to cover the cost of a First Amendment event on National Park Lands would be a clear violation of that very amendment. But the parks that experience the most frequent First Amendment activity need more resources to accommodate the growing number of First Amendment demonstrations on parks and their effects on park resources. They could also better formulate permit conditions that are allowed under 36 CFR 7.96(g)(5)(xii) to impose “additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources....” The damages and costs incurred as a result of First Amendment demonstrations may be a small price to pay for vital role these demonstrations play in a functioning democracy. However, these parks are also important places for recreation,

⁴⁵ The ACLU’s “Know Your Rights: Demonstrations in D.C.” may be found at <https://www.acludc.org/en/know-your-rights/know-your-rights-demonstrations-dc> and as a downloadable printed trifold at https://www.acludc.org/sites/default/files/aclu_8.5_x_11_trifold_nov2020_final.pdf.

community, and experiencing American history. Neither First Amendment expression nor any of these other important park uses should come at the expense of another. National Capital Parks need to be adequately resourced to fulfill their complex mission.

Recommending Reading

Books and Articles

Lucy G. Barber, *Marching on Washington: The Forging of an American Political Tradition* (Berkeley: University of California Press, 2002).

Olivia Paschal, “The Backlash to New Rules on Protests in D.C.,” *The Atlantic*, October 13, 2018.

Miscellaneous

36-CFR§ 7.96. National Capital Region (included as Appendix).

ACLU District of Columbia, “Know Your Rights,” <https://www.acludc.org/en/know-your-rights>.

Encampments

Chapter Summary

This chapter explores the issue of protest encampments in National Capital Parks. It provides a historical overview of the encampment as both a form of protest and a claim to citizenship and national belonging. It also provides an overview of the major legal tests that informed current NPS regulations on protest encampments.

Introduction: Public Space and Competing Claims of Citizenship

While most demonstrations in Washington, D.C., disperse after a day of rallies, marches, or pickets, some remain much longer, stretching into weeks- or even months-long occupations of highly visible and symbolic places. In 1968 the Poor People's Campaign built a shantytown on the National Mall that remained for six weeks as a live-in protest of economic injustice. Known as Resurrection City, the encampment was established as a self-sustaining community with its own food bank, medical center, and school—a living demonstration of possibilities beyond the American system of government that had failed the nation's poor. In addition to its symbolic significance, the encampment served as a base from which to march to the halls of power for sit-ins and demonstrations, empowering people who had been marginalized in the political process to address the nation's leaders directly. The spectacle of A-frame tents in the shadow of the Washington Monument aroused a great deal of controversy in the nation's capital, but the model of sustained protest supported by an encampment was not unprecedented in 1968, nor would Resurrection City be the last.

This section explores protest encampments in the National Capital Parks. Although they are by no means the most prevalent form of First Amendment expression, protest encampments are significant for what they reveal about the nation and our relationship to public space. As a steward of public lands, the National Park Service plays a unique role in mediating this relationship. For decades the National Park Service and the courts have wrestled with whether camping may constitute a form of expression protected under the First Amendment. Meanwhile, communities and municipalities have sought to preserve public spaces for leisure and recreation in the face of a crisis in homelessness that has intensified since the 1980s, leaving many unhoused individuals to take up residence in parks and other public spaces. Managing these spaces, as the

National Park Service is charged to do, means managing these competing and often conflicting claims on public space—recreation, speech, and shelter.

The tensions over the use of public space come down to competing ideas of citizenship. As historian Phoebe S. K. Young has observed, Americans’ engagement with outdoor public spaces—what Young refers to as “public nature”—has served as “a critical forum at the center of American culture and politics.” As the United States transitioned from agrarian society toward urban industrial consumer culture, camping and outdoor recreation soothed anxieties about the perceived negative effects of modernity on American culture by reconciling modernity to the values of an America born of pioneering westward expansion. “Since the middle of the nineteenth century,” writes Young, “Americans have laid claim to public nature, often through forms of camping and with assertions of belonging, identity, and visibility.”¹ Engaging with public nature for recreation has become an expression of citizenship in American consumer society. Indeed, the National Park Service was founded to conserve America’s natural and historic resources for the enjoyment of all Americans, and camping was always a part of that mission. Young explains,

Conservation of forests, rivers, and wildlife as “public goods,” held in common trust by and for the people, expanded government authority and national meaning in these spaces. Camping and outdoor recreation weren’t the sole factors driving these endeavors, but they did help articulate parts of the justification for preserving these spaces as public nature. [Theodore] Roosevelt, for example, hoped that these lands could serve as a place for citizens to resist both the “base spirit of gain” and the appeal of “a life of slothful ease” by testing their strength and building their character through “natural outdoor play” and “wisely used leisure.”²

Although Roosevelt was more concerned with conserving wilderness areas, his contemporaries in the progressive social reform movement—including advocates of the City Beautiful movement (see chapter “Designing a Landscape of Protest”)—saw urban parks playing a similar role in American civic improvement. Progressive reformers and city planners argued that creating more

¹ Phoebe S. K. Young, *Camping Grounds: Public Nature in American Life from the Civil War to the Occupy Movement* (New York: Oxford University Press, 2021), 5. This section draws extensively from the analysis in Young’s book. For an in-depth analysis of the issues surrounding protest encampments in the National Capital Parks, the Introduction “A Public Nature” and Chapter 6 “Occupying Public Ground” are highly recommended readings.

² Young, *Camping Grounds*, 10.

park spaces and promoting outdoor recreation would alleviate the social problems related to industrialization and urbanization, leading to a healthier, more enlightened citizenry.

The National Capital Parks, particularly those within the monumental core, bear additional symbolic significance in expressing the relationship between public nature and American national identity. Whereas many public parks function primarily as sites for visitors to engage with public nature for leisure and recreation, the National Capital Parks also provide an opportunity for visitors to engage directly with the symbols of nationhood and government. Annual events like the Smithsonian's Folklife Festival or the staging of the National Christmas Tree on the Ellipse mobilize that symbolism to promote national belonging through recreation. Protests, including protest encampments, seek to harness the same symbolic significance for an entirely different type of civic engagement. Both uses of public land are expressions of American citizenship and national belonging. The question that emerges when the two come into conflict, as Young observes, is: "Which forms of citizenship should take precedence: leisure and consumption, or speech and assembly?"³ This question lies at the heart of many of the conflicts over the use of National Park lands for First Amendment expression.

The following pages explore how prevailing ideas about the relationship between public space and citizenship have evolved through an engagement with public space in the National Capital Parks, focusing on the issue of camping and the Park Service's role as a steward of public land. As many of the controversies over protest encampments in the National Capital Parks reveal, there is no easy response to encampments. Though camping is clearly prohibited by NPS regulations that have been extensively litigated, adjudicating whether a tent constitutes camping or a form of permissible speech (as in a vigil) is not always straightforward. Moreover, it is often in Park Service's interest to exercise discretion in enforcing the prohibition on camping, as the heavy-handed application of the law will often generate unnecessary conflict. Understanding how and why people have used "camping" or encampments in their demonstrations can guide NPS in its responses to such events.

What is "camping?"

In an early and famous protest encampment, the Bonus Army brought the plight of veterans and other Americans suffering the economic downturn of the Great Depression to the center stage of American government where the nation's leaders could not ignore their suffering. By 1932 the practice of bringing grievances directly to the national capital had become an

³ Young, *Camping Grounds*, 269.

established—if still somewhat unusual—practice, owing in large part to the regular protests of the women’s suffrage movement. The suffragists staged a march on the capital in 1913 and regularly picketed the White House from 1917 to 1919 demanding the right to vote. But, while the suffragists’ tactics were controversial at the time, occasionally eliciting mob violence and city police harassment, pickets and vigils have since become widely accepted forms of protest. By contrast, the encampments established by the Bonus Army raised a controversy over the use of public space that continues to this day, including the recent Occupy demonstrations. Many Americans do not see camping as a legitimate means of petitioning the government. In contrast to pickets, marches, and even round-the-clock vigils, camping as a form of protest remains a persistent source of consternation and frustration for lawmakers, the courts, and those—like the National Park Service—who manage these spaces. But what differentiates an encampment from a vigil? What is “camping,” anyway?

From the vantage point of twenty-first century America, the answer to this question may seem self-evident. For most Americans, camping is associated with leisure, recreation, and the great outdoors. The National Park Service played a significant role in strengthening this association in the decades following World War II. The Mission 66 program, in particular, established a framework for camping that brought the order of civilization to the wilderness in a recreational experience. Many of those who questioned the legitimacy of protest encampments took issue with the explicitly political nature of the camps, as was the case in the Occupy protests discussed below. Those who voiced this objection seemed to be of the belief that camping was—or should be—an inherently apolitical act. This would be a common thread throughout the history of protest camps.

But camping is not inherently apolitical; it is also associated with military installations, colonization, the displacement of refugees, and the experience of homelessness. Historian Phoebe Young points to the shared etymological roots of “camp” and “campaign,” both of military origin, and the purely utilitarian function of sleeping outdoors through the history of American expansion.⁴ A history of “camping” in the national capital might include troops stationed there during the Civil War as well as formerly enslaved people who fled to the city seeking refuge finding homes in contraband camps and makeshift shantytowns. Such a history might also include families in Airstream trailers vacationing at Hains Point, which featured a recreational campground until the 1960s, or it may include unhoused people, for whom living outside, often in

⁴ As Young observes, “From archaic associations as the field of combat, camp came to indicate the site that soldiers dwelled and defended, before it acquired a more general meaning. Campaign referenced a series of military operations before its connection with politics.” Young, *Camping Grounds*, 20.

public spaces like parks, is done not for recreation but out of necessity. In the 1920s and 1930s, many African American residents who lived in poorly ventilated and overcrowded tenements sought relief from the summer heat by sleeping outdoors in Meridian Hill Park and other public spaces, to the distress of many upper-class residents.⁵

Protest encampments—like many recreational camps—involve establishing a claim on public space. To assert a claim over public space, even temporarily, is to assert a claim to citizenship and belonging—a rightful occupation of that which belongs to all Americans. It follows that exclusion from public space reflects exclusion from full citizenship. Historically, this has manifested through racial segregation and the exclusion of women from the public sphere. A critical feature of the American Civil Rights Movement involved the claiming public space at lunch counters and on public transportation to demand full and equal citizenship. The Occupy demonstration of 2011-2012 self-consciously claimed and occupied space in a symbolic act of reclaiming space for those the movement said were politically and economically disfranchised.

Except for designated camp sites, the act of “camping” is prohibited in National Capital Parks, even when undertaken as part of a First Amendment demonstration. The Code of Federal Regulations for National Capital Parks at 36 CFR § 7.96(g)(6)(i) defines camping as follows:

Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground.

The prohibition of camping in First Amendment demonstrations has been tested and revised, but ultimately upheld, through extensive litigation beginning with the *Quaker Action Group* cases discussed in the previous section. But as the previous section of this report (“First Amendment Demonstration Permits”) suggests, camping can constitute a gray area when an encampment is established as part of a First Amendment demonstration.

As of 1984, the U.S. Supreme Court has determined that “camping” is not protected speech, though a symbolic encampment may be. In the case of *Clark v. Community for Creative*

⁵ Elise Elder, *Meridian Hill Park—African American Experiences Since the Civil War: A Special Resource Study* (Washington, DC: U.S. Department of the Interior, National Park Service, 2019), 3, 84.

Nonviolence, 468 U.S. 288 (U.S. 1984) (CCNV), activists demonstrating on behalf of the homeless argued that camping was not merely a symbolic act of protest but constituted the message itself. The U.S. Supreme Court disagreed. The ruling in this case established that tents and other physical manifestations of an encampment could be erected as a form of symbolic speech, in this case to symbolize the plight of the homeless, but upheld the NPS regulation prohibiting actual camping, as defined above. The Court determined that while symbolic tents could be construed as speech protected under the First Amendment, sleeping did not, leaving open the possibility of building a protest camp that is well within the regulations. Complicating matters is an intensifying housing crisis across the United States. In 2019 the U.S. Supreme Court declined to take up the U.S. Court of Appeals for the Ninth Circuit’s decision that unhoused individuals had a right to sleep on sidewalks, public trails, or in public parks if alternate shelter is not available.⁶ But how does one distinguish between a person sleeping in an act of protest and a person simply sleeping? And what of the rights of the unhoused to protest?

The right to recreate, the right to protest, and the right to live exist in constant tension in National Capital Parks, occasionally leading to Congressional hearings and lawsuits over the Park Service’s efforts to manage competing claims over these lands. This report does not seek to take sides in any dispute over encampments. Rather, the purpose is to explain the issue in its complexity to show what is at stake in resolving these issues. The solutions to these issues have never been straightforward, but understanding the history of protest encampments and the significance of camping as a tactic of First Amendment is critical to addressing complex questions around the management of the public’s use of National Capital Parks.

Power and Place: The Spatial Dynamics of Protest Encampments

Encampments serve three key functions in protests: providing shelter and other logistical needs, fostering collaboration and innovation among demonstrators, and serving as symbolic speech. In each of these functions, the spatial dynamics of protest encampments subvert or

⁶ A group of homeless and formerly homeless residents of Boise, Idaho, challenged the city’s anti-camping ordinance, arguing that it violates the Eighth Amendment’s ban on cruel and unusual punishment when it is used to impose criminal penalties on homeless people who are sleeping outside because they do not have shelter. The U.S. Court of Appeals for the 9th Circuit agreed with those who challenged the law. The city appealed to the U.S. Supreme Court. But the Supreme Court declined to take up the appeal, leaving the 9th Circuit’s decision invalidating the law in place. *City of Boise v. Martin*, cert. denied (19-294) (U.S. December 16, 2019). For further explanation of the decision, see Amy Howe, “City of Boise, Idaho v. Martin,” Scotus Blog, December 16, 2019, <https://www.scotusblog.com/2019/12/justices-turn-aside-major-case-on-homelessness-law/>.

reinforce existing power dynamics. For individuals or groups who feel politically disenfranchised or inadequately represented, encampments have served as a means of challenging prevailing power dynamics; by placing themselves in close proximity to literal and symbolic power, demonstrators gain access to power that is typically inaccessible to them. In a study of the Poor People's Campaign, urban studies scholar Tali Hatuka argues, "Resurrection City should not be seen as just a protest, but rather as an ambitious project that attempted to challenge the distance between the government and the poor. Resurrection City's spatial manifestation reflects the social and political power structures of the actors that initiated it."⁷

These spatial dynamics are also true of marches, rallies, and other protests that last a single day and regularly occupy many of the same symbolic spaces. But protest encampments have offered possibilities for political critiques and movement organization that exceed the limitations of the traditional march or rally. They do so in the following ways:

- Disrupting the public/private binary to enable a politicization and critique of social reproduction,
- Serving as a base of operations for organizing and mobilizing demonstrations, and
- Creating space for new forms of social organization.

Disrupting the public/private binary

Among the explicit objectives of the Poor People's Campaign was bringing the nation's poor within close physical proximity of lawmakers and publicizing the campaign's cause to a national audience. And, indeed, the encampment in West Potomac Park was visited by Congressmen, news media, and members of the general public. The campaign's long-term presence in the capital opened space for dialogue between the politically marginalized and the nation's leaders. "In its essence," writes Hatuka, "this dialogue was about reducing the distance between the poor and the government, as noted by one of the reporters: 'probably for the first time, in American history, nameless poor persons faced high-ranking cabinet officers and told them what they thought was wrong with this nation.'"⁸ But beyond communicating the message of the Poor People's Campaign, Resurrection City served the basic logistical need of housing demonstrators who would have otherwise lacked the resources to stage a long-term protest in

⁷ Tali Hatuka, "The Challenge of Distance in Designing Civil Protest: The case of Resurrection City in the Washington Mall and The Occupy Movement in Zuccotti Park," *Planning Perspectives* 31, no. 2 (2016): 263.

⁸ Hatuka, "The Challenge of Distance in Designing Civil Protest," 268.

Washington, D.C. In Resurrection City, the practical needs of shelter and housing dovetailed seamlessly with the message of the protest itself, which was about the struggles of the nation's poor.

...civil protest challenges the socio-spatial order by challenging agreed-upon practices of distance. If the relationships between citizens and the state during daily life can be seen as distant and abstract, then civil action makes these relationships concrete and places them in the here and now.⁹

By claiming space at the center of the capital, demonstrators made the day-to-day struggles of the nation's poor visible to policymakers in a way that a march or demonstration could not. Unlike a typical march or rally, Resurrection City had to contend with the everyday challenges of providing food, housing, medical care, and childcare over an extended period of time. The simple plywood structures that served as shelter for the demonstrators and the mule train that brought a small contingent of the campaign to Washington were designed to create a spectacle of the poverty that was typically overlooked. The protest encampment served as a literal demonstration of that which is normally private: the everyday tasks of feeding, sheltering, caring for, and reproducing life—what social scientists often refer to as social reproduction. Resurrection City intentionally disrupted the public/private binary to render the needs of the poor concrete, thereby supporting the campaign's specific demands around housing, food assistance, and childcare. The result, writes Fabian Frenzel, is that social reproduction is rendered a political matter.¹⁰ Other encampments, such as the CCNV's Reaganvilles (1981-1982) and Occupy D.C. (2011-2012), intentionally or unintentionally followed this model, making that which is normally private the very domain of protest. In protest encampments like these, the material conditions of social reproduction were, in and of themselves, the protest made tangible to a broader audience.

Organizing and Mobilizing Demonstrations

On a purely functional level, encampments have served as bases of operations for groups engaging in longer or more complex demonstrations. This has been particularly true for groups and individuals of limited means. The Bonus Army encampments and Resurrection City not only

⁹ Hatuka, "The Challenge of Distance in Designing Civil Protest," 254

¹⁰ Fabian Frenzel, "The Role of Spatial Organization in Resurrection City and Other Protest Camps," *Contention* 8, no. 1 (2020): 41.

lent visibility to their respective campaigns, they also served as staging grounds for additional actions, including testifying before Congress, staging pickets and sit-ins, and holding rallies. Through the leadership of the Southern Christian Leadership Conference, the Poor People's Campaign brought a particularly high level of organization to these efforts. Led by the Southern Christian Leadership Conference (SCLC), the Poor People's Campaign held daily demonstrations across the city. Campaigners made repeat visits to Capitol Hill, the Bureau of Indian Affairs, the Department of Agriculture, and the Department of Health, Education and Welfare to speak directly to the policymakers whose work most directly affected their lives. They rallied and marched at the nation's most iconic national spaces and demonstrated at the U.S. Supreme Court. From their encampment at West Potomac Park, these representatives of the nation's poorest and most marginalized communities maintained a persistent presence in the halls of power that were normally inaccessible to them.

In the years following the Poor People's Campaign, however, this functional aspect of protest encampments was challenged in the courts, primarily through the *Quaker Action* lawsuits (discussed in the previous chapter on permitting). As discussed below, when the Vietnam Veterans Against the War (VVAW) pursued a permit to hold a six-day camp-out on the National Mall as part of a protest against the Vietnam War in 1971, NPS denied the organization's request, citing damage to park resources in the Poor People's Campaign as further reasoning for upholding the camping ban. In the initial lawsuit disputing the Park Service's decision, the VVAW argued that camping played not only a symbolic but also a functional role, providing accommodations to veterans, many of whom would not be able to afford to stay in a hotel room for the duration of the demonstration. The VVAW encampment proceeded, even after the Supreme Court declared it illegal. Not wishing to repeat the mistake of the Hoover administration in its treatment of veterans encamped in the capital, the Nixon administration did not force the eviction of veterans. The protest continued, with veterans using their encampment as both a living demonstration and a base of operations for staging protests across the city, including one at the Supreme Court. In the following decades, activists would continue to challenge the prohibition against camping, insisting that camping itself—not just the symbols of camping—was a legitimate form of protest.

New Forms of Social Organization

Protest encampments are not just demonstrations, but spaces where dynamic social relations unfold over the length of a protest, giving rise to new organizations and political formations. In order to address the basic needs of social reproduction (food, shelter, health care

and sanitation), protest encampments necessarily give rise to social organization and decision-making processes. In demonstrations like Resurrection City and Occupy D.C., activists constructed an alternative social order within the encampments, serving as a literal demonstration of how alternative modes of governance might better serve marginalized communities and expand democracy. At the same time, these movements consciously sought to forge new political coalitions to realize this alternative order. The Poor People's Campaign brought together activists of diverse racial and ethnic backgrounds from across the United States with the explicit goal of putting a representative group of America's poor at the center of policy discussions about poverty in America. By bringing together activists from different parts of the country and from different backgrounds, Fabian Frenzel has observed, the Poor People's Campaign was able to forge a new cross-racial, class-based challenge to the U.S. status quo: "The joint organization of the permanent presence of activists together in one place, in some ways very much like a Congress, enabled the forging of a political coalition on the ground." Frenzel continues,

Politically speaking, the question emerged how organizational forms could accommodate diversity and democracy while still enabling mass participation and shared power. Camps became an answer to this problem by allowing for more flexible networked organizational patterns to still produce spatially visible mass movements."¹¹

The Poor People's Campaign envisioned a politics that was truly of the people, by the people, and for the people, and this was reflected not only in their demands, but in their very organizational forms—the medium became the message.

The sustained protest model of the encampment has enabled various groups to mobilize more effectively by coming together in support of one another to argue for a larger systemic change. Again, the Poor People's Campaign is instructive in this regard. American Indians, for instance, made up a relatively small contingent of the campaign, an estimated 200 of the 3,000 participants. But when the Supreme Court handed down a ruling that diminished Native fishing rights in the Pacific Northwest, more than 400 people made their way from Resurrection City to protest before the Court. While American Indian issues generally received little attention on the national scale, the Poor People's Campaign placed their efforts on the front pages of newspapers nationwide. Rallying together in this way, the Poor People's Campaign brought the strength of numbers of every corner of the federal government, from Congress to the White House and to the various departments and agencies that carried out American domestic policy. Although many of these movements have fallen short of the major policy challenges they pursued, encampments

¹¹ Frenzel, "The Role of Spatial Organization in Resurrection City," 40.

have given rise to new tactics and coalitions that shaped the history of social movements in the United States for more than a century.

Resistance to Protest Encampments

As with other forms of First Amendment demonstration, protest encampments in the National Capital Parks have been the subject of extensive litigation. At various times, and for various reasons, the National Park Service, members of Congress, presidential administrations, local government officials, and members of the public have resisted the use of public lands for this manner of demonstration. For the National Park Service, resistance to encampments generally stems from the difficult task of balancing the protection of park resources and the Constitutional right to First Amendment expression, all while ensuring that parks are available for general public enjoyment. As one judge, unsympathetic to the Vietnam Veterans seeking to stage a protest camp in 1971, said: “The parks are for all the people...[Y]ou can’t just simply take over the park for your own purpose and deprive the other people of a right to use them.”¹² In this case, the judge distinguished protest encampments from other, ostensibly legitimate, uses of the parks. Among the objections voiced by opponents of Occupy D.C. in 2011-2012 was the complaint that the encampment interfered with general park usage. The movement was, after all, a literal “occupation” of the space, and though the park technically remained open to all who would visit, city officials and local businesses complained that sanitation issues kept visitors away. In the Congressional hearings on the McPherson Square encampment, both the supporters and detractors of the encampment upheld the rights of citizens to the use and enjoyment of public space, including for the purposes of First Amendment expression. But the two sides divided on the extent to which the Constitutionally protected freedom of speech superseded other uses of public space.

The arguments against protest encampments, together with the legal wrangling over the definition of camping, is indicative of the strong relationship between public space and citizenship. Who has access to public spaces and how individuals are able to engage with these spaces reflect prevailing ideas about citizenship. During the Bonus Army protest of 1932—in which demonstrators occupied Anacostia Flats and portions of the National Mall and squatted in vacant buildings—critics of the movement attempted to discredit the campers by dismissing them as Communists and anarchists, out of line with American values. For their part, participants of the

¹² *Vietnam Veterans Against the War v. Morton* (District Court, District of Columbia, 1971), as quoted in Young, *Camping Grounds*, 256.

Bonus Army emphasized their status as veterans, responding to critics by invoking their service to the nation to shore up their claims. Although the Hoover administration had the Bonus Army violently removed, the public roundly condemned this action and voted Hoover out of office. Notably, in 1971 the Nixon administration made the decision not to evict the encampment of Vietnam veterans from the National Mall, mindful of the history of the Bonus Army and of the poor optics this action would generate. It is unsurprising that the veterans' protest marked the limit of official resistance to encampments if we consider how claims to public space are bound up with popular ideas about citizenship. For many Americans, military service stands as the epitome of good citizenship; regardless of how they felt about either the message or medium of the veterans' protest, most Americans supported their right to demonstrate on the Mall.

A History of Protest Encampments in the Nation's Capital

As the issues discussed above indicate, the ways Americans engage with public space—including camping—are bound up with ideas about citizenship and national values. It follows that as ideas about citizenship have changed, so have ideas about what constitutes legitimate use of public space. Among the many changes to roil the nation in the aftermath of the Civil War was an accelerated shift from a primarily agrarian population to an increasingly industrialized, consumer-based society. It was with this shift that camping transformed from an almost exclusively utilitarian act to, increasingly, a recreational one. Over time, the privileging of recreational camping would inform what the National Park Service and other public entities considered the proper use of public land. For as long as camping has been a recreational practice, however, it has also been a political practice. As camping emerged as a leisure activity beginning in the late-nineteenth century, it simultaneously became an important political and symbolic act. Indeed, the notion that camping was somehow apolitical seems only to have emerged in the post-World War II era, as articulated through much of the litigation discussed above.

What follows is a historical overview of protest encampments in Washington, D.C., focusing on the cases that shaped the legal precedent around the use of camps to stage protests. Through the stories of the various movements that claimed space in the nation's capital, it explores how ideas about citizenship, democracy, and protest changed over time, as reflected in

Americans' engagement with public lands. It further discusses how the National Park Service, as a steward of public lands, promoted a particular vision of citizenship and democratic engagement.

Saviors of the Union: The Grand Army of the Republic Camps on the National Mall (1892)

During the Civil War, Union and Confederate soldiers alike slept outside as a matter of necessity. The practice of camping was, generally, involuntary and highly regimented. Diseases and pests flourished in camps, and soldiers found only minimal protection from the elements. And yet, while the Civil War camps may have been characterized by discomfort, drudgery, and even outright misery, many veterans looked back fondly on the experience of fellowship over a campfire and a shared mission. In the years following the war, veterans began coming together to recapture that sense of fraternity and common purpose. Beginning in the 1870s, a fraternal organization for Union veterans called the Grand Army of the Republic (GAR) hosted an annual reunion called the National Encampment. Each year, the National Encampments brought Union veterans together to exchange stories and memories with former brothers-in-arms over campfires. Participants slept in tents set up in urban parks and performed the rituals of camp life without the hardship of war. The National Encampments marked the emergence of a new type of camping based not on the necessities of an advancing military but on leisure. But from the beginning, the GAR blended recreation and advocacy, using the National Encampment to lobby the federal government for veterans' pensions and other benefits. Held in a different city each year, the National Encampment was a powerful political tool: an effective means of mobilizing veterans politically and of communicating the GAR's political message to the government and the broader public.¹³

In 1892, the GAR held its twenty-sixth National Encampment in Washington, D.C. The demonstration that year featured a mass parade down Pennsylvania Avenue. The Washington Monument cast a striking backdrop against the rows of white tents that formed the encampment. As with all National Encampments, the Washington Encampment welcomed civilians to tour the camps and participate in nightly campfires so that new generations might learn of the hardships and sacrifices soldiers made to preserve the Union. The message, made explicit in speeches and newspaper coverage of the event, was that Union soldiers were saviors of the nation and thus deserving of proper recompense. As Phoebe Young explains, "The narrative of Union victory and veteran-saviors was crucial to show that pensions were not charity for beggars, but a debt owed

¹³ Young, *Camping Grounds*, 18-19.

by the nation and the new generation—a message made more powerful by camping on the nation’s capital.”¹⁴ By literally staking a claim to public lands, the National Encampment expressed a claim on the nation for veterans’ care and support. Even as veterans reminisced about days gone by over coffee and hardtack, they were engaged in a powerful political demonstration that ultimately helped to establish the notion of the veteran as model citizen to whom the nation owed a debt. As several of the following examples show, this framework was repeatedly in First Amendment demonstrations in the decades that followed.

“Petition in Boots”: Coxey’s Army (1894)

In 1894, two years after the GAR’s National Encampment convened at the nation’s capital, thousands of unemployed workers from across the country descended on Washington, D.C., to deliver a “petition in boots,” demanding federal relief from unemployment caused by the Panic of 1893.¹⁵ Organized by Ohio businessman Jacob Coxey, together with California labor activist Carl Browne, the “Commonweal of Christ,” as they called themselves, intended to mobilize Americans suffering unemployment to travel by foot, horseback, and rail in a movement that would culminate in a mass rally on the Capitol steps, where the demonstrators would demand that the federal government pass public works legislation to put Americans to work. But whereas the participants of the GAR’s encampment were hailed as saviors of the nation, the Commonwealers were dismissed as lawless tramps. The different reception Coxey’s Army received reveals how ideas about citizenship and national belonging shaped the terms by which individuals and groups could make demands of their government. At the same time, the Commonwealers’ march and encampment on Washington set an important precedent that expanded the possibilities for democratic political participation in the federal government.

While it is better known as the first major protest march in the nation’s capital, Coxey’s Army was also significant as one of the first protest encampments in the capital. The thousands of unemployed who took part in the protest camped at Brightwood Riding Park, just north of the city. That the camp served a basic logistical need—shelter—is significant in its own right, insofar as it democratized access to the capital city. In a model that would be repeated in the Bonus Army, the Poor People’s Campaign, and other movements, camping made the capital accessible to the nation’s poor and unemployed. But to many in government, the idea of disaffected masses

¹⁴ Young, *Camping Grounds*, 45-46.

¹⁵ Lucy G. Barber, *Marching on Washington: The Forging of an American Political Tradition* (Berkeley: University of California Press, 2002), 11.

laying claim to public spaces to demand reform raised the specter of revolution at a time of growing anxiety about the purported influence of foreign anarchists and radical socialists within the growing American labor movement.

Both the Commonwealers and their opponents employed a common framework of citizenship in their efforts to legitimize or delegitimize the movement. As marchers made their way across the country to the national capital, Coxey's Army commanded significant national media attention, much of it highly critical. As historian Lucy Barber explains, "Most journalists saw Coxey's Army and its trip to Washington as a challenge to the political order they supported. Consequently, they sought to control the meaning of the protest by attacking the men behind the movement as unworthy."¹⁶ Journalists openly mocked the movement and cast suspicions on those who orchestrated it, suggesting their affiliation with subversive elements. To refute such charges, the marchers attempted to present themselves as ideal citizens: honest workingmen, heads of households, and deserving veterans. On the road to Washington, Commonwealers assembled into disciplined ranks like soldiers upon approaching each town, a performance calculated to signal "not revolution but a desire for a social order firmly rooted in the flag, the family, and discipline."¹⁷ Such arguments garnered limited support among Populist politicians, but most authorities considered the demonstration to be beyond the scope of acceptable participation in the national government. The Metropolitan Police prohibited Coxey's Army from using the Capitol Grounds for their demonstration, rejecting the protesters' claims that they belonged in the central space of American politics. Coxey's Army proceeded with its demonstration in defiance of the authorities' orders, leading to the arrest of Coxey and Browne and touching off an impassioned debate in the Senate over the right to peaceably assemble in the capital.

Ultimately, Coxey's Army dissipated while the courts and Congress deliberated over the fate of its leaders. By August, those who remained in the camps on the edge of the city were evicted, and the movement was largely unsuccessful in achieving its economic objectives. Despite the criticism of the movement, however, Coxey's Army established an important precedent, claiming Washington, D.C., as a site for the people to engage in direct democracy. As

¹⁶ Barber, *Marching on Washington*, 22.

¹⁷ Barber, *Marching on Washington*, 23.

Lucy Barber has observed, Coxey’s Army made the “unprecedented claim that ordinary Americans had a right to voice their demands in the capital.”¹⁸

Bonus Army (1932)

In the summer of 1932, World War I veterans and their families came to Washington, D.C., seeking relief from the economic ravages of the Great Depression. Their demand was simple: an early release of the bonus money the federal government had promised them for their service in the war. They began arriving in May, their numbers eventually reaching an estimated 43,000. Calling themselves the Bonus Expeditionary Forces, they set up shantytowns on the National Mall and the Capitol Grounds and occupied vacant buildings throughout the city. The largest camp, Camp Marks, sat just across the Anacostia River from Washington’s Navy Yard in what is now [Anacostia Park](#). At the height of the Bonus Army campaign at least 10,000 people occupied this space, with a clear view of the Capitol dome providing a striking backdrop against the squalid camp—a grim metaphor for the government’s handling of the economic crisis. From the beginning of the campaign President Herbert Hoover, perturbed by the impact of the encampment on his administration, attempted to discredit the Bonus Army as a movement controlled by communists and criminals. The encampment ended violently on July 28, 1932, when the U.S. military, under orders from President Hoover and with the assistance of the Washington police, forcefully evicted Bonus Army demonstrators. The eviction triggered a massive confrontation between veterans and the military that ended with at least two demonstrators dead and more than one hundred casualties, an outcome that all but sealed the fate on Hoover’s unsuccessful run for a second term.

Americans were outraged by President Hoover’s handling of the Bonus Army. Regardless of how the general public felt about the protesters’ demands or tactics, Hoover’s heavy-handed response struck many as unconscionable; these were, after all, veterans—model citizens who had made great sacrifices in service to the nation. It was precisely this message that the Bonus Army had sought to emphasize. Drawing on the script the GAR had established more than four decades earlier, the Bonus Army invoked their service to the nation to frame their demands as an obligation owed them, rather than a plea for charity. Emphasizing their veteran status also enabled the veterans to deflect charges of disloyalty. The encampments enabled

¹⁸ Barber, *Marching on Washington*, 12.

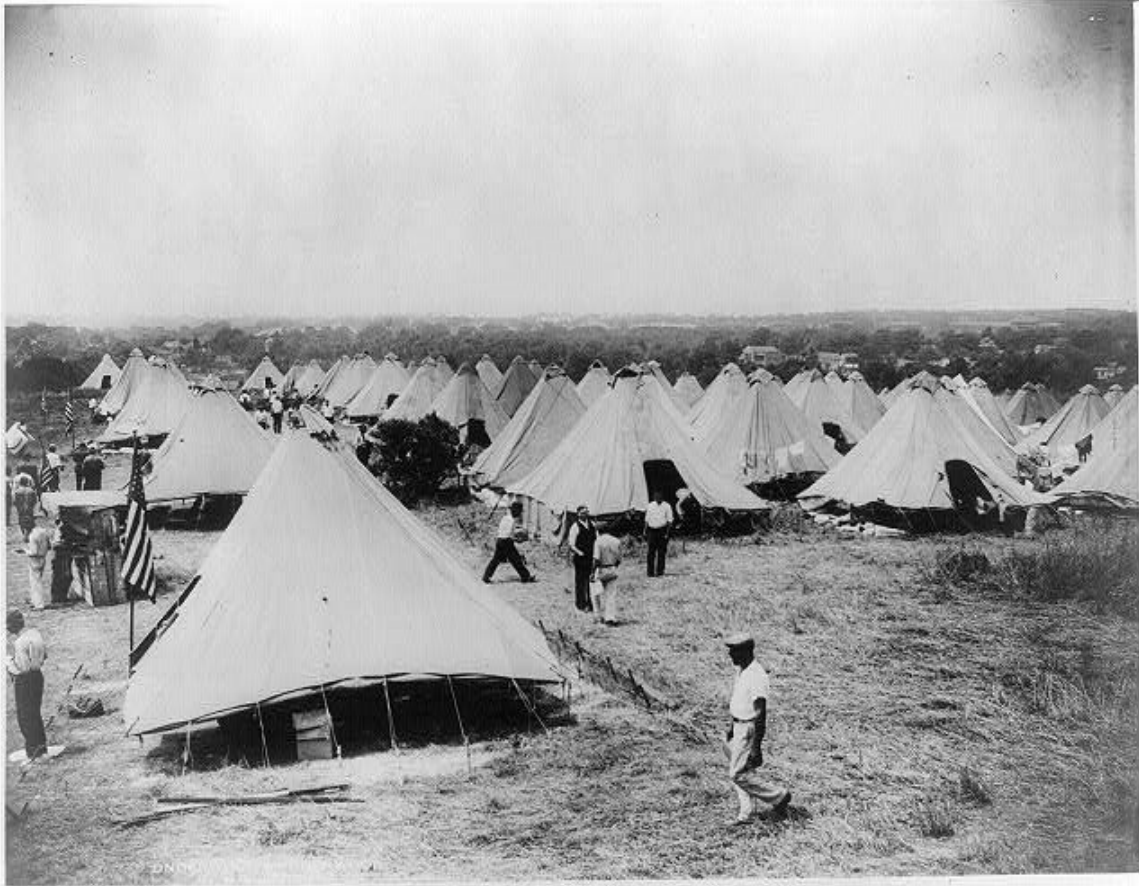


Figure 7 Tent City, Camp Bartlett (Anacostia Flats). Library of Congress Prints and Photographs Division. <https://www.loc.gov/pictures/item/2017648544/>.

poverty-stricken veterans to keep their issues in front of Congress and the President for longer than a day, while the symbolic location increased the visual impact of the protest.

Though the Bonus Army was not successful in its specific demand, their protest ultimately expanded the scope of claims that citizens could make on the federal government. Using their status as veterans, they helped legitimize the demand for federal relief in an economic disaster. After replacing Hoover in 1933, President Franklin Delano Roosevelt enacted a sweeping series of programs and public works projects known as the New Deal to provide work and economic relief to ordinary citizens. The New Deal stood in stark contrast to the government's relative inaction in the Panic of 1893 and other economic depressions. Among the New Deal programs, the Civilian Conservation Corps set aside 25,000 positions for veterans. And although Roosevelt opposed the ongoing efforts to issue bonuses to veterans, a newly elected Congress passed the Bonus Bill over the president's veto. Never before had the federal government taken such an active role in alleviating the suffering of the poor. Taking a lesson

from the Bonus Army, others would follow, using the rubric of the camp to place the struggles of the poor before those in power.

Poor People’s Campaign – Resurrection City (1968)

In his testimony about the Occupy D.C. encampments in 2012, NPS Director Jonathan Jarvis discussed the precedents set by the Poor People’s Campaign in 1968. Though the strategy was not new, Resurrection City was the first major protest encampment on national park lands since the National Park Service gained jurisdiction of the National Capital Parks in 1933. From that point forward, the National Park Service would play a significant role in protests of all kinds from that date forward, and the Poor People’s Campaign framed many of the legal battles over camping that would follow.

The Poor People’s Campaign had been envisioned by Martin Luther King, Jr., in the months before his assassination. Arguing that civil rights alone could not bring about racial and social justice, King envisioned an interracial coalition of poor people gathered in the nation’s capital to demand jobs and a basic income for all. Organized by the Southern Christian Leadership Coalition (SCLC) and allies from various representative groups, three thousand poor people would travel in caravans to the nation’s capital from rural areas and cities across the nation and set up a camp right at the doorstep of the nation’s government, where they would remain until Congress and the president passed meaningful legislation guaranteeing jobs and an income. The organizers of the Poor People’s Campaign consciously modeled their efforts on the Bonus Army, with the objective of making the poor visible, both to the Congressmen in Washington and to the rest of the nation, who watched the movement unfold in the newspapers and on television.

Upon the announcement of the campaign, Resurrection City faced immediate opposition from the National Park Service, the Johnson administration, and several members of Congress. In the weeks leading up to and during the campaign, several bills were introduced in Congress to oppose Resurrection City and protest the Park Service’s decision to allow the demonstration. The original plan for Resurrection City had called for an unpermitted and illegal occupation of the National Mall. After King’s death, Ralph Abernathy and the SCLC chose to pursue cooperation with the administration and the National Park Service. NPS had initially resisted permitting the protest, encouraging would-be campers to utilize the camping facilities at Greenbelt Park, but eventually relented to allow the encampment in West Potomac Park.¹⁹ In fact, the Poor People’s

¹⁹ “Fact Sheet: Camping While Visiting Washington, D.C.,” June 1968, Poor People’s Campaign, NPS History Collection, Harpers Ferry Center for Media Services, Harpers Ferry, WV.

Campaign had considered many locations for its encampment—including Rock Creek Park and the National Airport—only settling upon its location in West Potomac Park about three days before Rev. Abernathy drove a ceremonial first stake into the ground to commence the construction of the city on May 13, 1968.²⁰ Although the site was chosen largely for its symbolic significance, spatially, it was isolated from the central viewshed of the National Mall and disconnected from the daily life of the city. “In that respect,” observes Tali Hatuka, “it was less disruptive to the city’s routine and economy and could be seen as a constrained island of dissent.”²¹ For the Poor People’s Campaign, the symbolic significance of the location and the



Figure 8 Aerial view of Resurrection City located to the south of the reflecting pool (left side of image). Note the location of the encampment leaves the viewshed of the National Mall unobstructed. Source: National Park Service, [NP Gallery](#).

²⁰ John Wiebenson, “Planning and Using Resurrection City,” *Journal of the American Institute of Planners* 35, no. 6 (November 1969): 407.

²¹ Hatuka, “The Challenge of Distance in Designing Civil Protest,” 260.

practical application of the camp as a staging ground for actions throughout the city were the primary considerations in selecting a location.

The encampment itself was designed by a team of architects and planners to be a well-organized, fully functioning city, with clearly defined avenues and orderly rows. The shelter units were simple A-frame designs composed of plywood and plastic membranes. Like the earlier encampments of the GAR and the Bonus Army, the orderly arrangement lent the camp an air of discipline and respectability, which served the organizers' objectives of challenging elected leaders to see impoverished Americans as worthy of federal assistance.

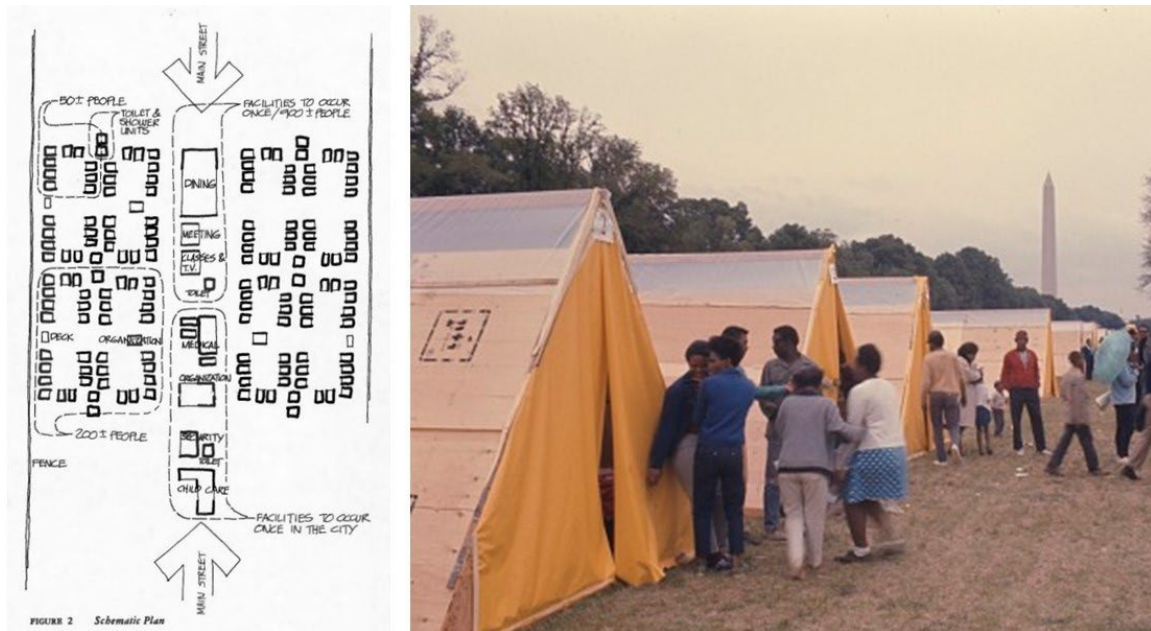


Figure 9 Left: Schematic plan for Resurrection City as designed by architect John Wiebenson. Wiebenson, "Planning and Using Resurrection City," 408. Right: Row of A-frame structures in the Resurrection City Encampment. Collection of the Smithsonian National Museum of African American History and Culture.

During the forty-three days the encampment stood, many supporters from Congress and the general public visited Resurrection City, realizing the Poor People's Campaign's objective of making the poor visible to the rest of the nation. But opposition to the campaign was continuous, from conservatives in Congress and from members of the public, who protested the decision to allow the encampment in letters and telegrams addressed to President Johnson. In addition to the familiar claim that the encampment was a crime-ridden haven for communists, some complained that the parks and memorials belonged to "ALL Americans," and that in claiming the space on the National Mall, the Poor People's Campaign violated the rights and property of Americans. In another example cited by Young, a letter writer called the encampment a "desecration" of "hallowed ground in memoriam to great Americans" and likened the campers to a "hoard of

locusts.” “For these writers,” observes Young, “camping did not engender a sense of shared citizenship, but instead pitted Americans against a dehumanized and swarming poor.”²² For the critics of the Poor People’s Campaign, an encampment demanding federal action to alleviate persistent poverty did not constitute a legitimate use of public lands.

Despite the complaints, the National Park Service granted a renewal of the permit for Resurrection City from its original expiration date of June 15 to 8:00 p.m. on June 23. Not wishing to repeat the mistakes of the Hoover administration in its treatment of the Bonus Army, the Johnson administration had encouraged the extension. Through the months of May and June, residents of Resurrection City made numerous visits to federal agencies, Capitol Hill, and the Supreme Court to testify and to protest on behalf of poor Americans. The high point of the campaign was the Solidarity Day rally. Held on June 19, the event drew more than 50,000 participants, who lined up along the Reflecting Pool to hear rousing speeches from Ralph Abernathy, Coretta Scott King, Native American activist Martha Grass (Ponca), and others. Within days, however, the campaign unraveled. On June 23, police responded to reports of violence in Resurrection City by shooting tear gas into the camp. Though many residents left ahead of the expiration of the permit on June 23, others defied orders to leave when the permit expired. Instead, they were peacefully arrested on June 24, bringing the campaign to a dramatic close.²³

The Poor People’s Campaign left behind a mixed legacy, which is explored in greater depth in a later section. In terms of protest encampments, however, Resurrection City loomed large over decisions about how to manage protest in park lands. In particular, damage caused by the encampment seemed to justify NPS’s regulations against camping in the National Capital Parks. A persistent, driving rain that lasted through much of the campaign turned the camp into mud, causing thousands of dollars in damage to the turf. In the aftermath of the campaign, the National Park Service sued the SCLC the cost of repair of the damages incurred but received only partial compensation. Subsequent requests seeking to use the Poor People’s Campaign as precedent to build their own protest encampments were met with the response that allowing Resurrection City had been a costly mistake. Opponents of the campaign also pointed to supposed

²² As quoted in Young, *Camping Grounds*, 251.

²³ Daniel M. Cobb, *Native Activism in Cold War America: The Struggle for Sovereignty* (Lawrence: University Press of Kansas, 2008), 192.

crime in the camp. But whether damage to park resources should justify prohibiting camping as a form of speech remained to be worked out in the courts of law and public opinion.

The Poor People’s Campaign marked a watershed moment in the history of protest in the capital. Though not unprecedented, the encampment forced the National Park Service, the city, and the federal government to come to terms with a shifting landscape of protest, characterized by larger and more frequent protests and unconventional protest tactics. The full implications of the Poor People’s Campaign—and particularly the claims the movement made on the federal government—would only become apparent as subsequent protests attempted to build on the precedents of Resurrection City.

Dewey Canyon III: The Vietnam Veterans Against the War (1971 and 1974)

In the spring of 1971, the Vietnam Veterans against the War (VVAW) planned a five-day demonstration against the war in Vietnam, beginning April 19 and culminating with a rally at the Capitol on April 23. Dubbed Dewey Canyon III after two US military invasions of Laos, the demonstration was meant to draw national attention and support to the antiwar movement in what the organizers called a “limited incursion” on Washington, D.C., using the military terminology of “invasion” and “occupation” to describe their nonviolent protest.²⁴ For the duration of the demonstration, participants planned to camp on the eastern end of the Mall, directly in front of the Capitol building. Like Resurrection City, the camp was to serve as both a symbol—in this case, representing the war—and as a staging ground for testifying at hearings and holding public demonstrations. But when the VVAW applied for a permit for their encampment, they were denied, touching off a legal battle that revealed how politics and public perception could impact decisions about First Amendment demonstrations on public lands.

In its initial effort to obtain a permit for Dewey Canyon III, the VVAW cited Resurrection City as legal precedent, but this strategy backfired. The Nixon administration, then struggling to shore up support for the war, sought to avoid the kind of publicity generated by the Poor People’s Campaign and resisted the VVAW’s efforts to establish a similar camp. DOI attorney Mitchell Melich dismissed the First Amendment claims of the veterans’ group, declaring that the proposed encampment stood in opposition to the “basic...responsibility to protect and conserve” Mall grounds “for the primary purposes to which they are dedicated,” namely, tourism,

²⁴ Barber, *Marching on Washington*, 190. See also Young, *Camping Grounds*, 253-260, for a detailed account of the legal struggles over Dewey Canyon III.

recreation, and memorialization.²⁵ On April 16, just three days before the event was to begin, the Justice Department sought an injunction in the District Court to prevent the encampment. Judge Hart, who was then in the midst of arbitrating the *Quaker Action* cases (discussed in the previous section), rejected the VVAW's argument that camping constituted freedom of speech and granted the injunction.²⁶ On appeal, the veterans argued that "the campground should not be 'viewed in isolation,'" but as part of their broader demonstration, "crucial to their 'continued presence before the Congress of the United States—a bearing of witness to the...idea that the war in Vietnam must end.'"²⁷ The veterans won their appeal on April 19, the day the demonstration began, but the government immediately brought the issue to the Supreme Court, where, the following day, April 20, Chief Justice Warren Burger issued a summary order upholding the ban on camping. The original injunction prohibiting the encampment was reinstated "with full force and effect."²⁸ Outside the courtroom, however, the camp was already in its second day.

While the courts deliberated over the veterans' right to camp as a form of First Amendment expression, the battle simultaneously played out in the court of public opinion. The VVAW encouraged its members to come to Washington for Dewey Canyon III and camp in defiance of the regulations, confident that Americans would support their demonstration. As Jack Mallory, a spokesman for the VVAW stated, "I can't believe they'll try to throw us off the Mall. Politically, there's too much at stake."²⁹ He was right. The press was overwhelmingly sympathetic to the veterans, making note of the sacrifices they made and the ongoing struggles they faced as they reintegrated into civilian life.³⁰ One reporter drew a contrast to the Poor People's Campaign that was favorable to the veterans, writing, "They are seeking permits to bivouac on the Mall. This will invoke nervous memories of 'Resurrection City,' but the veterans point out they are not asking for money, only justice and an immediate end to the war they fought in."³¹ Many people visited the camp to share their support, including a dozen members of the cast of the musical *Hair*, who entertained the demonstrators, and members of Congress. Senator Philip A. Hart of Michigan, who toured the camp with his wife, observed: "We let the Boy Scouts use

²⁵ Paul W. Valentine, "Veterans Denied Camp on Mall," *Washington Post*, April 16, 1971.

²⁶ *Vietnam Veterans Against the War v. Morton* (United States Court of Appeals, District of Columbia Circuit, 1974), fn. 9. Hereafter *VVAW v. Morton*, 1974.

²⁷ Young, *Camping Grounds*, 256.

²⁸ *VVAW v. Morton*, 1974.

²⁹ As quoted in Paul W. Valentine, "Veterans Denied Camp on Mall," *Washington Post*, April 16, 1971.

³⁰ Marquis Childs, "Veterans' Camp: What They Seek," *Washington Post*, April 23, 1971.

³¹ "Veterans plot protest," *Times* (Munster, Indiana), April 1, 1971.

this park. We let the poverty people use this park, and it's ridiculous not to let the veterans use it."³² Even the police were hesitant to enforce the prohibition and refused to take immediate action. As Police Lieutenant William Kinsey told reporters, "We are not going in there at 1 in the morning and pick up some wounded veteran and throw him into the street... We don't treat people like that."³³

Ultimately the police were not obliged to evict the veterans. As Jack Mallory had anticipated, the Nixon administration wished to avoid the poor optics of refusing to allow veterans, many of them visibly marred and permanently disabled from their service, to express their First Amendment rights. At the behest of President Nixon, the Justice Department returned to the District Court to ask the judge to dissolve the injunction it had requested just days earlier. The demonstration continued, part of the growing antiwar protests mobilized across the capital, and the nation, that spring.³⁴

VVAW v. Morton (1974)

The VVAW again came before the District Court in 1974, after the National Park Service denied the organization a permit to establish another symbolic campsite on the Mall from July 1 through 4, 1974. After US combat involvement had ended in 1973, the VVAW focused on gaining amnesty for draft resisters. Once again, the case bounced between courts that disagreed about the kinds of limitations the National Capital Parks could enforce. Although the original injunction in the 1971 demonstration was dissolved, allowing the encampment to continue, the judicial determination underlying the injunction remained in force. In 1971, the U.S. Supreme Court upheld the District Court's decision in *Quaker Action Group v. Morton*, which determined that camping in the National Capital Parks, as regulated by 36 C.F.R. § 50.27, "is not expressive conduct, and thus a total ban on camping on the Mall is not in any sense a prior restraint of First Amendment activity."³⁵ But after hearing the arguments again in 1974, District Court Judge Richey sided with the VVAW and ordered the Superintendent of the National Capital Parks to permit the VVAW's four-day encampment. Judge Richey's ruling held that 36 C.F.R. § 50.27 was "unconstitutionally vague" because it left the Superintendent with an "unfettered discretion

³² "Vets Disobey Court Order, Sleep on Mall," *Washington Post*, April 22, 1971.

³³ "Vets Disobey Court Order, Sleep on Mall," *Washington Post*, April 22, 1971.

³⁴ William L. Claiborne and Sanford J. Ungar, "Judge Lifts Ban on Vets, Scolds U.S.," *Washington Post*, April 23, 1971.

³⁵ *VVAW v. Morton*, 506 F.2d 53, 56 (D.C. Cir.1974)(footnote 10).

to permit favored nocturnal activities by designating them ‘non-camping’ to prohibit disfavored activities by denominating them ‘camping.’”³⁶ The Appeals court disagreed. Citing the legal precedent of the 1971 case, the Appeals judge reversed the District Court’s order just hours after Judge Richey’s ruling and three days before the VVAW protest was set to begin. As the court explained in its ruling,

This is not a case in which this court needs to balance the seminal freedom of political expression against society’s proper concern for public order, personal safety, or security of property. The permit obtained by the VVAW allows its members to propound their views by assembling, speaking, pamphleteering, parading, carrying banners, and erecting whatever structures they deem necessary to effective communication of their message. They are only prohibited from cooking and camping overnight, activities whose unfettered exercise is not crucial to the survival of democracy and which are thus beyond the pale of First Amendment protection.³⁷

After debating whether to violate the prohibition on camping as they had in 1971, an estimated 400 demonstrators laid out bedrolls on the Mall in defiance of the regulations. This time, the U.S. Park Police enforced the rule against camping, sending 175 officers to clear the camp at 3:15 a.m. on July 3. Most left, taking shelter at the nearby Capitol Hill Presbyterian Church and returning to continue their demonstration over the following two days.³⁸

While the National Park Service has an obligation to remain absolutely neutral on First Amendment issues, including the regulation of demonstrations, public opinion and political influence bear significant influence over the outcomes and legacies of protests. The Nixon administration’s about face in its response to the 1971 VVAW encampment reveals how politics and public perception can impact decisions about the use of public lands for protest. The public support for the veterans’ protest—and the government’s willingness to concede to the VVAW—stands in sharp contrast to the outrage many Americans expressed over Resurrection City just three years earlier. Indeed, the core of the veterans’ strategy was invoking their service to shore up their claims, much as the GAR and the Bonus Army had in previous generations. As John Kerry declared on behalf of the veterans in 1971, “All we’re asking for is a hearing. They can’t question our patriotism. I think we’ve proven that.”³⁹ As Phoebe Young observes, “the different outcome from Resurrection City suggested that veterans—even dissenting ones—possessed a

³⁶ *VVAW v. Morton*, 506 F.2d 53, 59 (D.C. Cir.1974).

³⁷ *VVAW v. Morton*, 506 F.2d 53, 57 (D.C. Cir. 1974)(footnotes omitted).

³⁸ Paul W. Valentine and Paul Hodge, “Veterans Evicted, but Return: Veterans Are Evicted,” *Washington Post*, July 4, 1974.

³⁹ As quoted in “Veterans plot protest,” *Times* (Munster, Indiana), April 1, 1971.

special claim on the nation.”⁴⁰ Even so, as US involvement in Vietnam drew down, public interest in the veterans’ protest decreased markedly. In the absence of public outcry on behalf of the veterans in 1974, the Nixon administration exerted no pressure to override the regulations, and the protesters were evicted from their encampment.

Despite the concessions granted to the VVAW by the administration, the ban on camping in National Capital Parks remained, and public perception that camping was an apolitical, recreational act only seemed to solidify in the coming years, as new groups attempted to stage their own camp-ins.

Reaganville (1981-1982)

Through the litigation around major protest movements in the 1960s and 1970s, the courts had established that an encampment could be a protected form of symbolic speech but that actual *camping*, as defined in NPS regulations, had “no more relevance to free speech than say, digging latrines in a public park,” and the “United States Park Service may regulate both.”⁴¹ The *Quaker Action* cases and the VVAW litigation in particular established that although symbolic speech in public parks is protected by the First Amendment, government agencies like NPS could place reasonable time, place, and manner restrictions on the exercise of free speech as long as the restrictions are content neutral. In the case of camping restrictions, for example, the courts ruled that NPS could constitutionally ban the erection of any dwelling structure and thereby preclude the construction of a symbolic tent city. Amid a burgeoning crisis of homelessness, however, activists again challenged the finer points of the prohibition against camping in a demonstration meant to communicate the plight of unhoused Americans.

In 1981 the Community for Creative Non-Violence (CCNV) organized “Reaganville,” a protest meant to call attention to the rising problem of homelessness in America. As Phoebe Young has observed, “the 1980s marked the onset of what has been labeled the ‘new homelessness,’ and a renewal of fears of transience not seen since the 1930s.”⁴² In the decades following World War II, federal investment in housing and social welfare programs had contributed to a sharply declining population of unhoused individuals. But the 1980s reversed these trends, resulting in a spike in the homeless population. Reaganville was meant to dramatize the plight of unhoused people in a demonstration that simultaneously expressed a political

⁴⁰ Young, *Camping Grounds*, 259.

⁴¹ As quoted in *VVAW v. Morton*, 1974.

⁴² Young, *Camping Grounds*, 263.

grievance and provided shelter for people who had none.⁴³ The protest began with a Thanksgiving meal the CCNV served to the homeless, an annual tradition held in different locations throughout Washington since 1978. In 1981, the meal was served at Lafayette Park where, in addition to the meal, the CCNV set up a small tent village that featured the White House as a backdrop and a sign that proclaimed: “Welcome to Reaganville—Population: Growing Daily—Reaganomics at Work.”⁴⁴ The CCNV intended to occupy the park through the winter of 1981-1982, but the following day, U.S. Park Police arrested six demonstrators who had camped overnight. Thus began yet another round of litigation concerning camping regulations and the right to freedom of expression, which would set important precedents in the decades to come.

Taking aim at the courts’ previous reasoning that certain restrictions on speech could be enforced as long as they were content-neutral, the CCNV’s protest emphasized that, for those experiencing homelessness, the symbolic speech could not easily be separated from their lived reality, which involved sleeping outside. The Reaganville legal saga began shortly after the initial arrest of demonstrators on November 26, 1981. The CCNV negotiated with NPS to obtain a seven-day renewable permit that allowed nine “symbolic tents.” In December, the CCNV went to the District Court seeking an injunction against the prohibition on camping, arguing that sleeping was critical to demonstrating the plight of the homeless. The District Court ruled in CCNV’s favor, and the encampment was allowed to continue for fourth months, until the first day of Spring 1982. They planned to repeat the demonstration in the winter of 1982-1983, but in the second installation of Reaganville, NPS explicitly prohibited sleeping. Once again, the CCNV went to court, this time losing in the District Court but winning on appeal. Reaganville II proceeded at locations in Lafayette Park and on the National Mall, but this time, the case continued on to the Supreme Court.

In *Clark v. Community for Creative Nonviolence*, 468 U.S. 288 (1984) the Supreme Court ruled 7-2 that the NPS regulation prohibiting camping outside of designated campgrounds did not violate the First Amendment, even when the act of camping was engaged as a form of symbolic speech. As long as the regulations and their application were content neutral and narrowly tailored to serve a specific government interest, NPS could prohibit camping. The court’s decision affirmed that an encampment could be a protected form of symbolic speech, but

⁴³ Young, *Camping Grounds*, 263.

⁴⁴ Cynthia J. Bogard, *Seasons Such as These: How Homelessness Took Shape in America* (New York: Aldine de Gruyter, 2003), 48.

that camping, as defined in NPS regulations, were subject to reasonable time, place, and manner restrictions. This decision foreclosed future arguments that similar encampments constituted a form of speech, most notably, in the Occupy movements of 2011-2012.

Occupying Space and Building Movements

In the years following the CCNV demonstrations, there were other challenges to NPS camping regulations (discussed below), but the next major test involved the Occupy D.C. movement. Beginning in October 2011, activists staged an occupation of McPherson Square and Freedom Plaza, public park sites administered by the National Park Service, which are frequently engaged for civic demonstrations. Part of a larger national and international movement that began with Occupy Wall Street in New York City's Zuccotti Park a month earlier, demonstrators involved with the Occupy movement assembled in the parks to protest growing economic inequality and the concentration of political power in the hands of the wealthiest Americans. Among the objectives of the demonstrators was a people-powered reclamation of the term "occupy," which was fraught with associations to imperialism, colonization, and violence, "to mean the peaceful liberation of public space," as consented to by the General Assembly at Occupy D.C.⁴⁵

Although the courts had affirmed NPS regulations against camping, NPS initially approached the encampments using the discretion available to the agency. Instead of evicting the demonstration for camping violations, NPS attempted to work with those who demonstrated lawfully. But the prolonged presence of the encampments in the city core drew a great deal of local and national scrutiny. As the only encampments in the nationwide Occupy movement situated on federal property, the Occupy DC encampments became the subject of Congressional inquiry. In January 2012, as the encampment continued, NPS director Jonathan B. Jarvis was called before the House Subcommittee on Health Care in the District of Columbia to account for the Park Service's handling of the demonstrations in McPherson Square. In particular, members of Congress opposed to the demonstrations demanded to know why NPS was allowing camping in apparent violation of the regulations.

In his response, Director Jarvis focused on the role of National Capital Parks as sites of First Amendment demonstrations, drawing comparisons between the Occupy protest and earlier protest encampments, including the Poor People's Campaign of 1968, the 1979 Farmers Vigil,

⁴⁵ "The Declaration of Occupy D.C., Consented to by the General Assembly," November 30, 2011, as quoted in 112th Cong., 1st sess., *Congressional Record* 157, pt. 15: 21310-21311.

and various antiwar demonstrations. While acknowledging that the courts had developed a legal interpretation of camping that was codified in the regulations and affirmed the National Park Service’s prerogative to place reasonable “time, place, and manner” restrictions on First Amendment demonstrations, Jarvis also asserted that the courts had recognized that the NPS had “certain discretion to enforce the rules and regulations in the manner that best fits the situation...as long as the restrictions are content neutral, are narrowly tailored to serve a significant government interest, and leave open, ample, alternative channels for communication of information.”⁴⁶ Jarvis explained NPS’s strategy of managing First Amendment demonstrations as follows:

The NPS’s and USPP’s handling of First Amendment activity begins with the lowest level of enforcement in order to allow demonstrators the opportunity to express their views; enforcement then increases if the situation warrants. This strategy allows our officers to work with demonstrators—if the demonstrators are cooperative—to ensure the health and safety of the demonstrators’ First Amendment rights, but also enforce quality of life regulations. Courts have recognized that this kind of measured, preventive technique of law enforcement helps minimize the potential for disorder.⁴⁷

Jarvis’s statement reflects the degree to which the National Park Service’s position had evolved on the question of first Amendment demonstrations. In the 1960s and 1970s, NPS sought to impose narrow limits on the size and scope of demonstrations in specific park sites. Through extensive legal battles (detailed in the previous section) the courts ruled that NPS was bound to uphold First Amendment rights on the land it manages, and in the decades since there has been a notable shift in the culture around First Amendment demonstrations: not only do park managers accept the use of National Capital Parks for First Amendment expression, most take pride in the role their parks play in American democracy. For Jarvis and the National Park Service, upholding these rights was a key consideration in managing Occupy D.C. For most of the protest, NPS chose to prioritize the rights of those who were lawfully demonstrating over those who violated the prohibition on camping. Notably, neither the Occupiers nor Jarvis attempted to argue that

⁴⁶ “Occupy DC McPherson Square Encampment: Statement of Jonathan B. Jarvis, Director, National Park Service, Department of the Interior, before the Subcommittee on Health Care, District of Columbia, Census and the National Archives of the House Committee on Oversight and Government Reform Concerning Issues surrounding the National Park Service’s (NPS) Handling of Demonstrations at McPherson Square,” January 12, 2012, https://www.doi.gov/ocl/hearings/112/OccupyMcPhersonSquare_012412. Hereafter Jarvis, statement.

⁴⁷ Jarvis, statement.

camping constituted a form of protected speech—the decision in *Clark v. CCNV* had firmly established a definition of camping that distinguished it from the symbolic use of tents.

Those who opposed Occupy D.C., however, reduced the demonstration to unlawful camping. In the Hearings on McPherson Square, Congressman Trey Gowdy of South Carolina pointedly asked Director Jarvis for a clear definition of camping, asking the National Park Service to “explain the difference between camping and a 24-hour vigil, especially when that 24-hour vigil lasts several months.”⁴⁸ In a separate exchange with the NPS Director, Darrell E. Issa of California compared the Occupy demonstration to recreational camping, suggesting that the National Park Service unfairly privileged the demonstrators, stating: “I am an avid camper, both RV and tent over the years and a very old Boy Scout.” Noting that the National Park Service regularly enforced camping restrictions within National Parks across the United States, he demanded to know why an exception was being made in the case of the Occupy demonstration. By collapsing the distinction between demonstrations and recreational camping, Issa’s statement obfuscated the First Amendment issues at hand. At the same time, however, this exchange with Jarvis revealed the complexity of the issues surrounding camping. How do we define camping? Why do encampments elicit such a great deal of controversy? At what point does the Park Service’s responsibility to manage a space and enforce regulations take precedence over an individual’s rights? And how does the unhoused population, for whom camping is neither recreational nor a First Amendment expression, fit into this debate? In more than four decades of litigation, which began in the 1960s, those questions were as fraught as ever in the hearings on Occupy D.C.

Occupy D.C. long outlasted Occupy demonstrations in other cities in large part because of the Park Service’s commitment to upholding the right to demonstrate in the capital. But in response to mounting pressure from Congress, NPS announced on January 31 that it would enforce the regulations prohibiting camping. U.S. Park Police raided the McPherson Square encampment in the early morning hours of February 4, 2012, clearing away tents, bedding, and debris. The crackdown against camping allowed for tents to remain for symbolic purposes, and a small vigil remained until June 12, 2012, making the D.C. encampment the longest lasting of the Occupy demonstrations.⁴⁹ While the movement largely fizzled away when the encampments

⁴⁸ U.S. Congress, Subcommittee on Health Care, District of Columbia, *McPherson Square: Who Made the Decision to Allow Indefinite Camping in the Park?*, 112th Cong., 2nd sess., January 24, 2012.

⁴⁹ Annie Gowen, “Park Police clean up Occupy D.C.’s encampment at McPherson Square,” *Washington Post*, February 5, 2012; Annie Gowen, “Occupy D.C. vacating McPherson Square,” *Washington Post*, June 13, 2012.

ended, the period of sustained engagement in the space claimed by Occupy gave rise to new networks of activists and helped shape the national conversation around growing inequality.

Other Encampments in the Capital

While the History of Protest Encampments in the Nation’s Capital outlined above shows how the legal precedents evolved, it is by no means an exhaustive history of this form of protest. What follows is a brief summary of other notable protests that have claimed space for symbolic and/or practical effect.

The Longest Walk (1978)

In 1978, more than 1,000 Native American activists occupied Greenbelt Park for eight days of demonstrations, protests, religious ceremonies, and educational workshops in Washington, D.C. to raise awareness of threats to tribal sovereignty. The demonstration was the culmination of a five-month, 2,700-mile march called the “Longest Walk,” which started on February 11, 1978, in Sacramento, California and proceeded toward the capital, gathering followers as it progressed eastward. Greenbelt Park served as a staging ground and shelter for the week of demonstrations, while an additional encampment of tipis on the National Mall served symbolic and spiritual purposes, reclaiming—if only temporarily—space that was once Indian territory.



Figure 10 Tipi with sign “American Indian Movement” on the grounds of the Washington Monument, Washington, D.C., during the “Longest Walk.” LOC Prints and Photographs Division. <https://www.loc.gov/pictures/item/2011646498/>.

American Agricultural Movement—Tractorcade (1978 and 1979)

The American Agricultural Movement (AAM) was founded in 1977 to lobby the federal government to pay higher prices for crops. In 1978, they organized the first Tractorcade, in which thousands of farms drove their tractors to Washington, DC, to protest American farm policy. In

1979, roughly 3,000 farmers returned, occupying the National Mall with their tractors for seven weeks to demand higher prices, greater representation in the agricultural policy process, and an end to farm foreclosures. Congress remained unsympathetic toward the farmers, but the AAM continues to lobby for changes in farm policy.

White House Peace Vigil (1981 - Present)

Claiming the distinction of being the longest standing anti-war protest, the White House Peace Vigil has occupied its space in Lafayette Square directly across the street from the White House nearly continuously since 1981. The vigil began when anti-war activist William Thomas stationed himself in the park with a sign. He was soon joined by Concepción “Connie” Picciotto and Ellen Benjamin (who became Ellen Thomas after she married William), and the demonstration grew into a round-the-clock vigil operated in shifts out of a tent. The demonstration has been the subject of lawsuits, including *U.S. v. Thomas*, 864 F.2d 188 (D.C. Cir. 1988), which upheld the Thomases’ convictions for violating the NPS camping regulations. In addition to camping, the vigil has committed other infractions and was briefly taken down in 2013 when the vigil was left unoccupied. Despite the infractions—and the deaths of William Thomas and Connie Picciotto—the vigil continues to this day.

Conclusion

Protest encampments have a long history in the nation’s capital, dating at least as early as the 1890s. Historically, most protest encampments have violated laws and regulations governing the use of public space, and many observers have dismissed such occupations as illegitimate means for expressing grievances or petitioning the government. For many protesters, however, the sustained, long-term occupation of public spaces serves basic logistical needs while simultaneously conveying symbolic messages and bringing visibility to the cause. As political movements scholar Fabian Frenzel has observed of Resurrection City, “by choosing the repertoire of the camp, additional emphasis was given to this marking of space. Camping means marking space over time, and this camp symbolized a higher level of urgency. It escalated the political act of this social movement practice beyond the usual rally or demonstration.” Encampments enable demonstrators to communicate their demands and mark their resolve in a manner that is difficult for those who live or work nearby to ignore, and creates new opportunities for political engagement, to literally and symbolically claim space in the nation.

In the enforcement of park regulations prohibiting encampments, many issues arise to which there is no clear answer. In these cases, it has historically fallen on the National Park

Service, together with the courts, to make the best decisions. Specifically, how does NPS handle conflicts between First Amendment demonstrations and other rights to use public space? And how should the agency deal with mounting economic costs of protest without violating Constitutional rights? Inevitably, the solutions to these issues—like the democratic process itself—will be messy, subject to further challenge and critique. But by being responsive to the underlying issues, and by understanding what is truly at stake in these types of demonstrations, the National Park Service can continue to play a productive role in our democracy through its stewardship of public lands.

Recommending Reading

Books and Articles

Lucy G. Barber, *Marching on Washington: The Forging of an American Political Tradition* (Berkeley: University of California Press, 2002).

Fabian Frenzel, “The Role of Spatial Organization in Resurrection City and Other Protest Camps,” *Contention* 8, no. 1 (2020): 28-48.

Tali Hatuka, “The Challenge of Distance in Designing Civil Protest: The case of Resurrection City in the Washington Mall and The Occupy Movement in Zuccotti Park,” *Planning Perspectives* 31, no. 2 (2016): 253-282.

Phoebe S. K. Young, *Camping Grounds: Public Nature in American Life from the Civil War to the Occupy Movement* (New York: Oxford University Press, 2021).

Monuments, Memorials, and Sacred Spaces

Chapter Summary

This chapter explores the nation's commemorative landscape through a study of monuments and memorials in National Capital Parks. It explores the significance of monuments and memorials in reflecting national history and identity as well as the ways people have challenged these narratives. Finally, it considers the question of what should be done with "troublesome" monuments, which seem to be inconsistent with the values that the National Park Service today, and suggests possibilities for how the NPS can best address them.

We understand that the more durable monuments do not best represent American history but are instead the result of the most abundant material resources and hegemony in its many forms: racial, ethnic, religious, gender-based. We see that the monuments standing on our streets or in our parks have not stood there for time immemorial. Our built environment is in motion; it always has been in motion.

*National Monument Audit*¹

Introduction: National Mall as Commemorative Landscape

On June 22, 2020, demonstrators in Lafayette Square put chains and ropes around the larger-than-life equestrian statue of Andrew Jackson in an attempt to tear it down. Chanting, "Hey hey, ho ho, Andrew Jackson's got to go," scores of protesters had gathered around the statue in the park before police outfitted in riot gear and wielding batons and pepper spray cleared the park. By the end of the evening, Lafayette Square was closed to the public, as it would remain for nearly a year. Andrew Jackson remained standing.

The protesters' attempt to topple the likeness of the former president from its pedestal unfolded amid a nationwide reckoning with racial injustice that led to calls to remove statues of slaveholders and Confederate leaders. The murder of George Floyd by a Minneapolis police officer on May 25, 2020, sparked massive protests of police brutality and systemic racism, reinvigorating the Black Lives Matter (BLM) movement across the country. A few weeks prior to the effort to bring down Jackson, on June 1, police officers from various agencies had forcibly cleared a group of mostly peaceful protesters from Lafayette Square as they took part in these demonstrations, further inflaming tensions between demonstrators and law enforcement. As demonstrations over the police killing of Floyd spread across the country, protesters began

¹ Elizabeth Alexander, et al., *National Monument Audit*, Monument Lab (2021), 2, <https://monumentlab.com/monumentlab-nationalmonumentaudit.pdf>.



Figure 11 Before Lafayette Square was closed to the public in 2020, NPS installed a protective fence around the equestrian statue of Andrew Jackson, pictured here on June 19, 2020.. Protesters affixed posters to the fence surrounding the statue. On June 22, 2020, protesters pulled this fence down and attempted to topple the equestrian statue. Photograph from the Anacostia Community Museum, [Black Lives Matter Protests Photograph Collection](#). Michael R. Barnes, photographer.

targeting monuments and statues of people connected with America’s history of indigenous dispossession, enslavement, and racial injustice. Just days before the failed attempt on the equestrian statue in Lafayette Square, amid a day of Juneteenth celebrations and continuing demonstrations, protesters pulled down and burned a statue of Confederate General Albert Pike that stood in Judiciary Square. Confederate monuments fueled division outside of D.C. as well, with some people arguing the statues honored history and heritage and others arguing they were symbols of America’s legacy of slavery and racism.

In the wake of the growing unrest, some city and state governments removed the monuments; others passed additional laws to protect them.² On June 26, 2020, President Donald

² Rachel Sadon and Christian Zapata, “Protesters Topple, Burn Statue of Confederate General Albert Pike in Judiciary Square,” *DCist*, June 20, 2020, <https://dcist.com/story/20/06/20/protesters-confederate-general-statue-albert-pike-in-dc/>; Margaret Barthel and Hannah Schuster, “Protesters Try to Tear Down D.C. Andrew Jackson Statue Amid Clash with Law Enforcement,” *NPR*, June 23, 2020, <https://www.npr.org/local/305/2020/06/23/882053615/protesters-try-to-tear-down-d-c-andrew-jackson-statue-amid-clash-with-law-enforcement>.

Trump issued an Executive Order for the protection of American monuments, memorials and statues, citing “Anarchists and left-wing extremists” seeking to “advance a fringe ideology that paints the United States of America as fundamentally unjust” in their efforts to tear down public monuments and memorials.³ The order, which promised to prosecute anyone who damages a monument and threatened to withhold federal funds from local and state governments that fail to protect monuments, said of those who defaced monuments that “Their selection of targets reveals a deep ignorance of our history.”⁴ But the reasons people have given for protesting monuments suggest otherwise.

Located at the epicenter of the 2020 BLM demonstrations in Washington, D.C., the equestrian statue of Andrew Jackson became a major flashpoint in this national reckoning. During Jackson’s tenure in office, he signed the Indian Removal Act (1830), forcing the removal of tens of thousands of Cherokee, Chickasaw, and Choctaw Indians from their ancestral homelands in the American southeast to clear the land for white settlers. Known as the Trail of Tears, the forced relocation resulted in the deaths of thousands of Native Americans from disease, starvation, and exposure. The nineteenth century president had built his fortune on the labor of enslaved African Americans, some of whom he brought to work in the White House. For many, Jackson’s statue was emblematic of the United States’ legacy of racial injustice. As James Washington, a protester who took part in the demonstration, reflected, “I feel like, given the unrecognized genocide, having a picture of Andrew Jackson up in front of like the big house, the White House, in the midst of all this, adjacent to Black Lives Matter Plaza, right? Symbolic politics are important.”⁵

Washington’s statement captured the impulse behind the surge in calls to remove monuments. For Washington and others seeking the removal of Jackson’s statue, the racial injustice of the present was a direct legacy of the man honored on a pedestal before the seat of executive power. To the protesters who object to the statues of slaveholders and Confederates—and to the statues’ defenders—these monuments are not cold, lifeless casts of metal or stone, but an assertion of our values and our history as a nation. In their efforts to remove monuments, protesters contest the narratives reflected therein. During an earlier effort to have the Pike statue in Judiciary Square removed, activist Eugene Puryear called attention to the fact that many

³ “Executive Order 13933 of June 26, 2020, Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence,” *Code of Federal Regulations*, 85 (2020): 40081-40084, <https://www.federalregister.gov/documents/2020/07/02/2020-14509/protecting-american-monuments-memorials-and-statues-and-combating-recent-criminal-violence>. Revoked by EO 14029, May 14, 2021.

⁴ EO 13933.

⁵ Barthel, et al., “Protesters Try to Tear Down D.C. Andrew Jackson Statue.”

Confederate monuments were established in the late 1800s and early 1900s amid a backlash to Reconstruction that included racial segregation and racial terrorism targeting African American communities. As Confederate statues rose across the South, lynch mobs murdered thousands of African Americans, and the perpetrators were rarely charged with crimes and even more seldom ever brought to justice.⁶ Speaking in the wake of renewed racist violence in 2017, Puryear argued that contrary to the claim that Confederate statues merely represented history or heritage, these monuments were assertions of white supremacy: “These are not monuments for remembrance. They are statements, almost gloating statements, of the repression of black participation and the rise of segregation and the re-rise of white terrorism against the black community.”⁷ Despite multiple efforts to remove the Pike statue, dating back to at least 1992, it remained in place until protesters took matters into their own hands in 2020. But, while many monuments to Confederates, slaveholders, and colonizers have been removed in recent years, others have remained, often becoming the subject of vigorous public debate. Critics of the monuments focus on the devastating legacies of the people or institutions that have been memorialized, while defenders appeal to history, heritage, and the contributions of an individual or movement to the nation.

Telling All Americans’ Stories: Monuments in National Parks

Whose narratives do we privilege in public spaces, and why?

“At the most basic level,” writes historian Erika Doss, “memorials are designed to recognize and preserve memories.”⁸ However, the issue becomes far more complicated when we begin to ask whose memories should we preserve? And which narratives should be recognized and prioritized in our public spaces? For instance, Doss observes, in the decades following the Civil War, Confederate monuments were constructed across the South, commemorating and celebrating Confederate heroes and common soldiers, and ignoring entirely the issue of slavery as the cause of the war. Doss asks, “Do these memorials to the secessionist South obscure the history and meaning of the Civil War?”⁹ Do they embody heritage and tradition, or do they

⁶ Equal Justice Initiative, *Lynching in America* 3rd ed., (2017) 4-5, <https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-110121.pdf>.

⁷ Rachel Sadon, “Mayor, D.C. Councilmembers Want Statue of Confederate General on Federal Land Removed,” *DCist*, August 15, 2017, <https://dcist.com/story/17/08/15/confederate-statue-councilmember/>.

⁸ Erika Doss, *Memorial Mania: Public Feeling in America* (Chicago: University of Chicago Press, 2012), 7.

⁹ Doss, *Memorial Mania*, 11.

legitimate racism? Other commentators have observed that one of the reasons monuments carry so much weight is in their power to normalize even the most troublesome aspects of our past, literally writing these values into the landscape.¹⁰ It should come as no surprise, then, that this moment of racial reckoning in the United States has included renewed attention to the monuments in our public spaces.

As a steward of public spaces tasked with duty of preserving the historical and cultural resources within them—and as one of the leading federal agencies for preserving U.S. history—the National Park Service has a significant role in the debates over monuments. The National Capital Region is of particular concern in evaluating the commemorative landscape because of its symbolic and material importance as the seat of national government. In the context of this study of protest, moreover, monuments and memorials are of interest because the commemorative landscape of Washington, D.C. is largely what makes the city a landscape of protest.

As a federal agency, the National Park Service has an obligation to remain neutral on political issues. But when it comes to some of our most controversial monuments, true objectivity is an elusive goal, particularly in a political environment as polarized as the United States of recent years. The controversy over the equestrian statue of Andrew Jackson in Lafayette Square is a case in point. Many Americans continue to revere Andrew Jackson for his role as a founding father of the United States. But to many, like those who gathered in Lafayette Square in the 2020 demonstrations, Jackson’s legacy as enslaver and the architect of Native American genocide overshadows his accomplishments as a statesman. Nothing about the response from park managers and Park Police to the efforts to tear down the equestrian statue indicates that their actions were politically motivated. However, when the sitting president interjected on this controversial issue, it undoubtedly shaped the public’s perception of the events and the NPS role in them. For most of the public witnessing the civil unrest in Lafayette Square, there was no obvious distinction between the priorities and motivations of the National Park Service in protecting park resources and the actions the administration took. In particular, it was widely reported that Park Police and other law enforcement agencies cleared Lafayette Square specifically for President Trump’s infamous June 1, 2020 photo opportunity in front of St. John’s church to promote his message of law and order.¹¹ A report later released by the Inspector

¹⁰ Tyler Stiem, “Statue wars: what should we do with troublesome monuments?” *Guardian*, September 26, 2018, <https://www.theguardian.com/cities/2018/sep/26/statue-wars-what-should-we-do-with-troublesome-monuments>.

¹¹ Peter Baker, et al., “How Trump’s Idea for a Photo Op Led to Havoc in a Park,” *New York Times*, June 2, 2020, <https://www.nytimes.com/2020/06/02/us/politics/trump-walk-lafayette-square.html>.

General revealed that plans to clear the park and erect a protective barrier had begun two days earlier and were therefore not orchestrated for the purpose of creating a platform for the president. But the way the administration seized upon this action to align its narrative of law and order with the Park Service's interest in protecting park resources caused much of the public to question NPS neutrality.¹²

As this chapter will demonstrate, monuments and the values they communicate are never neutral to begin with, but rather are shaped by hegemonic forces and powerful individuals intent on preserving a particular version of our nation's past and its present values. In many cases, the people who constructed the monuments in our public spaces valued an America that upheld white supremacy, the conquest of Indigenous peoples, patriarchal gender norms, and the erasure of workers, people of color, disabled people, and anyone identifying as LGBTQ+. The Park Service inherited this troublesome past and is tasked with the preservation and interpretation of the material resources it left behind, regardless of the symbolic meaning or intent behind a monument's establishment. Further complicating the matter is the fact that Americans do not all agree on the interpretations or symbolic significance of many monuments. Many Americans, for example, do not interpret monuments to the Confederacy as antithetical to American values, while for others, they represent a direct affront to an inclusive, multiracial democracy.

The question, then, is how the Park Service of today should respond to calls for the removal, protection, or reinterpretation of monuments. What do we do with troublesome monuments? At stake in these debates over monuments is the question of whose narratives we privilege in public spaces and why. Monuments, like the various forms of protest discussed in the previous chapters, are a way of claiming space, literally and conceptually. To simply remain neutral in debates over monuments is to concede our public spaces to past architects of our public spaces, many of whom held a vision of America that is antithetical to the values that the National Park Service professes today.

Fighting for Past and Future: Monuments as Subject and Setting of Protest

This chapter provides context to the debates underlying the recent efforts to remove—or protect—monuments in the nation's capital to inform NPS practices of preservation and interpretation. Drawing on recent scholarship, it discusses the significance of monuments in

¹² Tom Jackman and Carol D. Leaning, "Report: Park Police didn't clear Lafayette Square protesters for Trump visit," *Washington Post*, June 9, 2021, <https://www.washingtonpost.com/nation/2021/06/09/park-police-lafayette-square/>.

shaping perceptions about who we are as a nation. It demonstrates how monuments frame and often distort historical narratives by privileging certain interpretations and subjects over others, erasing the contributions of key individuals and groups, or omitting significant contexts. It considers the history of the monumental core as well as the histories of several significant monuments and the debates and protests they have engendered. Throughout, this chapter considers the role of monuments in protests—both as subjects of protest and as symbols for communicating a specific message. It explores the various ways protesters engage with monuments and the narratives they promote, either to lay claim to the history and values represented in the monuments or to contest them, frequently inscribing them with meanings and significance that are contrary to the monument builder’s original intent. Ultimately, this chapter finds that monuments are important for the ways they allow people to create meaning in public spaces. This consideration should stand at the forefront of National Park Service efforts around interpretation and preservation.

A note on the scope of this chapter: Although it incorporates research from across the capital, much of the discussion here focuses on the National Mall. There are two reasons for this. First, the National Mall is central to the commemorative landscape of the national capital. Additionally, because the National Mall was originally envisioned and designed as a commemorative landscape, it provides unparalleled insight into the logics and practices of monument-building. Nevertheless, much of what has been observed on the National Mall can be applied to monuments across the National Capital Region and the nation.

What is a Monument?

This chapter is, broadly, about monuments, including memorials and other physical artifacts installed in public landscapes for the purpose of reflection or symbolic representation. In some cases, the monument might be written into the landscape itself, as is often the case with battlefield monuments and cemeteries designed to inspire quiet contemplation. In the National Capital Parks, many monuments take the form of statues or memorials meant to honor past leaders, call to mind the sacrifices made by soldiers and citizens of the past, reflect on a historical moment, or evoke the principles of American democracy. Monuments have historic value for the person or historic period they represent, for the artistic or historic value of the monument itself, or some combination of these factors. But what, precisely, is a monument?

Monument Lab—a nonprofit collective of artists, curators, researchers, educators, and students—defines a monument as “a statement of power and presence in public.” In 2020,

Monument Lab began a nationwide audit of monuments in which it evaluated, cataloged, and mapped 50,000 monuments across the United States to understand the dynamics and trends that shape the nation’s monumental landscape. The most comprehensive study of monuments in the United States to date, the findings of the audit were published in 2021 as the *National Monument Audit*, a valuable resource that is referenced throughout this chapter. As Monument Lab researchers have observed, there is no single agreed upon definition of a monument in the United States:

When one calls attention to monuments, one could be referring to statues atop pedestals installed in public spaces with the authority of a government agency or civic institution; designated land formations, historical markers, or architectural sites serving as traces of the past; or transformative declarations rendered through art, poetry, projection, or protest that shift the ways we see our surroundings and ourselves. The unstable nature of the term *monument* is a reminder that the power to convey stories of the past cannot be expressed through any single art form, outlet, or voice.¹³

This chapter uses the broad definition of monuments as a “statement of power and presence in public” to discuss the statues, memorials, and commemorative landscapes that have served as both the subject matter and sites of protest activity in the National Capital Parks. These can include, but are not limited to, specifically designated national monuments or national historic sites, many of which are managed by the National Park Service.

Monuments and the Creation of the Nation

Monuments and memorials are objects through which the nation is created. Social theorist Benedict Anderson defined nations as “imagined communities” in which the members share a common national consciousness or sense of belonging, despite the fact that they will never know the majority of the other members of the nation. Anderson’s theory of nations focuses in particular on the ways print media fostered the emergence of a national consciousness by enabling people to imagine a common mythic history—an invented past—and a common destiny as members of a nation.¹⁴ In a discussion of war memorials on the Mall, historian Kristin Ann Hass has observed, “Invented pasts, in this formulation, are so potent that they produce nations

¹³ *National Monument Audit*, 3.

¹⁴ In contrast to communities on the scale of “primordial villages of face-to-face contact,” wherein the members of the community experience their bonds through everyday contact, the community of the nation is imagined, meaning that although individual members of the nation will never know the majority of the other members, they nevertheless share an understanding of communion and shared destiny with the other members of the nation. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised ed. (London: Verso, 2006), 6-7.

for which millions willingly die.”¹⁵ Monuments and memorials serve a similar function, standing as a physical “text” written onto the landscape that speaks to the existence of a nation, its history, and its future. In some ways, monuments extend the nationalistic logic of the text; as historian Kirk Savage observes, “the public monument speaks to a deep need for attachment that can be met only in a real place, where the imagined community actually materializes and the existence of the nation is confirmed in a simple but powerful way.”¹⁶ The monumental core, writes Savage, today serves as a sort of pilgrimage site, a national sacred space, to which Americans come to participate in the imagined community of the nation through an experience that transcends the everyday. For example, by identifying the place where Martin Luther King Jr. delivered his “I Have a Dream” speech, a marker etched into the steps of the Lincoln Memorial connects Americans to a physical representation of the past, enabling visitors to place themselves in King’s footsteps at a location that evokes the higher principles supposed to unite the nation.



Figure 12 A marker installed on the steps of the Lincoln Memorial in 2003 reads:

*I HAVE A DREAM
MARTIN LUTHER KING, JR.
THE MARCH ON WASHINGTON
FOR JOBS AND FREEDOM
AUGUST 28, 1968*

Image from [National Mall and Memorial Parks](#), National Park Service

¹⁵ Kristin Hass, *Sacrificing Soldiers on the National Mall*, (Berkeley: University of California Press, 2013), 4.

¹⁶ Kirk Savage, *Monument Wars: Washington, D.C., The National Mall, and the Transformation of the Memorial Landscape* (Berkeley: University of California Press, 2009), 4.

Monuments purport to reflect our history and values as a nation, giving material form to the widely held belief that the principles set forth in the founding documents—a dedication to life, liberty, and the pursuit of happiness—are timeless, essential, and unchanging, even if the nation did not always live up to these lofty ideals. The statues and memorials that surround the National Mall remind us of the nation’s founding and subsequent struggles, with triumphant statues of figures like Ulysses S. Grant, who fought to preserve the nation, and sobering memorials to those who lost their lives defending it. The unifying framework of the Mall, embedded at the focal point of the city’s axial design, lends the monumental core an air of permanence and stability that, in turn, suggests a kind of authority, as if the monuments installed upon the landscape represented the definitive history of the nation. Public monuments, especially those within the monumental core of the nation’s capital, give the intangible ideals and ideologies of the American nation a tangible presence. In giving these ideals a material presence, writes communications scholar Roger Aden, “the commemorative landscape also imbues them—and the Mall—with a sense of historical continuity.” Though the Mall as we know it today is a relatively new construction, he continues, “the classical architecture and historical subject matter of its most prominent installations suggests a timeless landscape,” somehow removed from the politics of the day to represent a higher historical truth.¹⁷

In fact, there is nothing timeless or essential about our monuments and memorials or the version of history they promote. Rather, they are the product of struggles over who we are as a nation, and those struggles determine what parts of our history are emphasized, rewritten, or erased from our commemorative landscape. In general, states the *National Monument Audit*, “monuments across locations have been shaped by those with the time, money, and officially sanctioned power to craft and elevate the past in their own image.”¹⁸ The aesthetic quality of timelessness that characterizes the commemorative landscape obscures—not transcends—the politics inherent in its creation, producing the illusion of truth. The motive behind public commemoration, as observed in the discussion of Confederate monuments below, is driven by the desire not only to remember the past, but, critically, to remember a particular version or interpretation of the past. Public commemoration, writes Aden, seeks to impose discipline upon historical memory by fixing a specific historical interpretation upon the material landscape: “The

¹⁷ Roger C. Aden, “Haunting, Public Memories, and the National Mall,” in *Rhetorics Haunting the National Mall: Displaced and Ephemeral Public Memories*, ed. by Roger C. Aden (Lanham: Lexington Books, 2018), 3-4.

¹⁸ *National Monument Audit*, 4.

use of places of public memory as a strategy to *contain* a preferred understanding of the past.”¹⁹ Put another way, writes Hass, “the memorial does not actually remember a discrete object, but invents a version of the past to be remembered for the purposes of the present and so doing creates nationalism for its moment.”²⁰ As discussed below, the proliferation of monuments sympathetic to the Confederacy in the late-nineteenth and early-twentieth centuries was an effort to fix a preferred narrative of the Civil War and Reconstruction in public memory, one which obscured the role of slavery in the war and minimized the contributions of African Americans throughout U.S. history.

In calling to mind a common mythic past, the imagined community of the nation conjured up by the commemorative landscape is as much about excluding those who do not belong as defining those who do. Thus, what is excluded, erased, or distorted reflects what those in power believe constitutes national belonging. The lack of women, African Americans, and other marginalized groups represented in the commemorative landscape, particularly early on, is revealing. For much of American history, those who occupied the halls of power understood the “nation” as consisting of white, male, and property-owning citizens. That those displaced from the National Mall under the McMillan Commission’s redesign were overwhelmingly communities of color (see “A Social History of Protest in the National Capital”) has both material and symbolic significance in the erasure of people from American history and identity.

For all the efforts to contain historical narratives within the commemorative landscape, however, Americans have repeatedly inscribed their own narratives on monuments, endowing them with meaning and significance beyond anything the monument builders had ever imagined. The Lincoln Memorial, for example, is a frequent site of civil rights protests, despite the fact that memorial’s original design elides Abraham Lincoln’s role as the “Great Emancipator.” But protesters in the African American Civil Rights movement reinscribed the memorial with their own meaning, elevating precisely that part of Lincoln’s legacy to reframe his significance in terms of the freedom struggles of African Americans. Today, many protesters stage their demonstrations at this location specifically to invoke the black freedom struggle, often to situate their own causes as an extension of a history defined as much, if not more, by Martin Luther King

¹⁹ Aden, “Haunting, Public Memories, and the National Mall,” 5.

²⁰ Hass, “Haunting, Public Memories, and the National Mall,” 4.

Jr. as Abraham Lincoln. Monuments thus serve as a sort of shorthand to communicate a longer history or set of principles that demonstrators lay claim to.

Monuments have also served as sites of contestation, focal points that enable people to “speak back” to these exclusionary historical narratives, reframe them, and assert their place in the nation. It is for this reason that monuments frequently serve as rallying points for protests and demonstrations. This is frequently seen in protests surrounding Confederate monuments and memorials. African Americans have vocally contested the installation of such monuments since they first began appearing shortly after the Civil War, noting the gross historical distortions they effected. In another example, disability rights activists protested the proposed design of a memorial to Franklin Delano Roosevelt, which omitted reference to his disability. Notably, this protest succeeded in changing the design and interpretation of memorial to reflect this aspect of history. Therefore, while monuments can be defined as “statements of power,” those statements are constantly remade, reinterpreted, and contested—and they always have been. As the authors of the *National Monument Audit* have observed, “This moment of monumental reckoning and reimagining is profound but not new. The evolution of our monument landscape is as old as the nation itself.”²¹ The challenge before the National Park Service is in being responsive to these contestations over the commemorative landscape.

A Brief History of the Monumental Core

Historian Kirk Savage begins his history of Washington, D.C.’s monumental core with the declaration of North Carolina congressman Nathaniel Macon that, “Since the invention of types [printing], monuments are good for nothing.”²² Voicing his opposition to the construction of a lavish memorial to George Washington before the House of Representatives in 1800, he insisted that such “pernicious acts of ostentation” had no place in a modern enlightened nation.²³ Resistance to monuments, Savage explains, was widespread in early-nineteenth-century America, fueled by “the Revolutionary critique of the monarchy, the Puritan hostility toward graven images, and the Renaissance belief, seemingly verified by the ruins of antiquity, that words always outlived the grandest handiworks of sculpture and architecture.”²⁴ Although Congress had

²¹ *National Monument Audit*, 3.

²² Savage, *Monument Wars*, 1.

²³ *Ibid.*

²⁴ *Ibid.*

resolved to establish a monument in honor of George Washington as early as 1783—then proposed to be an equestrian statue of the founding father—and Pierre L’Enfant had included the monument in his 1791 design of the city, construction of the Washington Monument would not begin until 1848, after a group of private citizens raised funds and solicited designs for the memorial. The reluctance to build the Congressionally authorized monument honoring George Washington had nothing to do with any reservations about the man himself; indeed, Washington was widely admired among nineteenth-century leaders. Rather, a lack of enthusiasm, if not outright disdain, for monuments, together with growing political divisions, stalled the creation of a Washington monument for more than half a century.

Antipathy toward public monuments was reversed by the end of the nineteenth century, and within the space of a few decades, America’s once-barren commemorative landscape grew crowded. At the turn of the twentieth century, the Senate Park Commission Plan of 1901 (McMillan Plan) ushered in a new era of development that, over the course of the twentieth century, transformed the landscape itself into a monument to American democracy. The process of that transformation is covered in greater depth in previous chapters, “Designing a Capital City,” and “A Social History of Protest in the National Capital.” What follows is a brief discussion of the emergence of the commemorative landscape of Washington, D.C., and its evolution into a landscape of protest, focusing in particular on the development of the central city across three major time periods: 1791 to the Civil War, Reconstruction through the 1920s, and the 1920s through the 1970s.

1791 to the Civil War: A Growing Sectional Divide

In his original 1791 plan for the city, Pierre Charles L’Enfant envisioned the capital city as a memorial landscape from which both national symbolism and real power flowed. According to L’Enfant’s design, statues, columns, and obelisks honoring the nation’s great men and founding principles would culminate the grand vistas of the central mall and punctuate the radial axes that joined the city’s grand avenues. The centerpiece of the commemorative landscape was to be a great monument to George Washington, originally conceived as an equestrian statue of the first president located at the intersection of the east-west axis and the north-south axis directly south of the President’s house. But budget constraints overlain with politicized disputes about whether monuments were appropriate in an enlightened, democratic nation left most of

L'Enfant's monumental ambitions unrealized until the twentieth century.²⁵ The one exception was the Capitol building and its grounds, which featured the capital's first statuary monument, the Tripoli Memorial, installed in 1831. The Capitol grounds would remain the de facto commemorative core of the capital through the nineteenth century.²⁶ The deepening sectional crisis between North and South hindered the development of a memorial to Washington for more than four decades after his death in 1799.

Halting progress toward a Washington monument continued after the 1841 installment of Horatio Greenough's statue of George Washington in the Capitol Rotunda. Modeled on the figure of Jupiter, Greenough's statue was widely ridiculed for its depiction of Washington as a half-naked demigod and removed from the Rotunda after only two years. Still, observes Kirk Savage, "despite its misfires, it was the earliest statue monument to deal with the complex question of national expansion." Anticipating the notion of "manifest destiny" (a term that was coined four years after the statue's installation), "The work aimed to build a bridge between Washington's classical republican character and the modern nation that had already replaced the world from which he came."²⁷ It was also the first Congressionally authorized monument installed in the nation's capital (the Tripoli Memorial had been privately financed).

The project to establish the Washington National Monument—today's Washington Monument that dominates the skyline of the National Mall—marks a revival of L'Enfant's vision of Washington as a commemorative landscape (however, the Washington National Monument Society passed over L'Enfant's proposed equestrian statue in favor of an obelisk design; an equestrian statue of the General and Commander-in-Chief would be installed in 1860 at the less prominent reservation at 23rd Street and Pennsylvania Avenue NW, today's Washington Circle).²⁸ The privately funded effort, organized by the Washington National Monument Society, featured an enormous obelisk that transformed the vista and invited a reimagining of the capital landscape that would project the power and ambitions of the nation then in the midst of vigorous

²⁵ Savage, *Monument Wars*, 35-37.

²⁶ The Tripoli Memorial was relocated to Annapolis, MD, in 1860. Savage, *Monument Wars*, 52.

²⁷ Savage, *Monument Wars*, 50-51.

²⁸ National Mall and Memorial Parks, "George Washington," accessed August 8, 2022, <https://home.nps.gov/nama/planyourvisit/washingtonsquare.htm>.



Figure 13 Horatio Greenough's statue of George Washington, installed in the Capitol Rotunda in 1841, was the first Congressionally authorized monument in Washington, D.C. It currently resides on the second floor of the Smithsonian's National Museum of American History. Photo from the [Smithsonian National Museum of American History](#).

westward expansion. But by the time the cornerstone for the monument was laid in 1848, the sectional crisis threatened to undermine the very legacy it was meant to commemorate.

Overall, the decades leading up to the Civil War were marked by an ambivalence about large, publicly funded monuments and federally managed landscapes. What public memorials that did exist were largely private or local efforts focused on the American Revolution that were motivated by growing class, ethnic, and regional tensions.²⁹ Rising immigration in the 1840s and 1850s altered the ethnic and cultural makeup of the United States, while conflict over the expansion of slavery threatened to tear the nation apart. It was against this backdrop that historic preservationists like Ann Pamela Cunningham pursued projects like the restoration of Mount

²⁹ John Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton: Princeton University Press, 1992), 26.

Vernon, another privately funded effort, in a bid to unify the sharply divided nation. Historian Denise Meringolo argues that in the years leading up to the Civil War, “Cunningham had hoped restoring Mount Vernon as a symbol of national unity might stave off secession.”³⁰ By the time the Mount Vernon Ladies’ Association assumed control of Mount Vernon in 1860, civil war was imminent. But in the years that followed the war, civic societies and historic preservationists would similarly attempt to harness the power of public memory to assert a national identity through the building of monuments.

Reconstruction through the 1920s: The Lost Cause Narrative Takes Hold

Whereas the beginning of the nineteenth century was marked by a reluctance to establish public monuments, by the end of the century, monuments had begun to proliferate across the national capital and other American cities in what one observer has termed “monument fever.”³¹ The spread of monuments, according to Kirk Savage, was due in part to the fact that the cost of producing monuments had fallen with advent of new mass production methods.³² But the driving force behind memorialization in the half century following the Civil War was the rapid pace of social change. The post-Civil War years were characterized by major social and economic changes, including a vast increase in the number of immigrants, particularly from southern and eastern Europe and Asia, as well as urbanization, industrialization, and the perceived social ills that came along with them. Critically, it was in the aftermath of the Civil War that citizenship and civil rights were extended to African Americans, enshrined into the U.S. Constitution, and, until Reconstruction ended, protected by federal troops across the South. Amid growing anxieties about the speed and direction of social change, reformers and politicians alike expressed a renewed interest in monuments as expressions of civic virtue, American history, and national identity. But, as the monument builders understood, monuments do not simply reflect narratives about American national identity; they create those narratives.

Underlying the spread of monuments in the late-nineteenth and early twentieth century were a battle over the legacy of the Civil War and Reconstruction and anxieties over the influences of immigration and industrialization. Women’s voluntary associations played a leading

³⁰ Denise Meringolo, *Museums, Monuments, and National Parks: Toward a New Genealogy of Public History* (Amherst: University of Massachusetts Press, 2012), 30.

³¹ Jeff Nilsson, “How the Lost Cause Myth Led to Confederate ‘Monument Fever,’” *Saturday Evening Post*, June 24, 2020, <https://www.saturdayeveningpost.com/2020/06/how-the-lost-cause-myth-led-to-confederate-monument-fever/>.

³² Savage, *Monument Wars*, 2.

role in historical preservation and the expansion of the commemorative landscape. Typically composed of elite, white women, these voluntary associations sought to protect local traditions from the vast social change unfolding around them. Fearing the demise of American values and tradition, writes Denise Meringolo, preservationists and historical associations like the Daughters of the American Revolution and the Colonial Dames of America “promoted the study of American history as an antidote to the danger posed by new immigrants,” and erected monuments to promote national unity and teach patriotism to the masses.³³ But, the version of American history and national identity they asserted through their commemorative efforts overwhelmingly reflected the perspective of white, U.S.-born, and wealthy Americans at a time when society at large was becoming increasingly segregated by race and class.

In the South, preservationists were particularly instrumental in advancing the “Lost Cause” myth, which asserted that the cause of the Confederacy in seceding from the Union and bringing about the Civil War was just and heroic, while simultaneously downplaying or ignoring altogether slavery as the cause of the war.³⁴ This myth, increasingly written into the public landscape of the South with the veneration of Robert E. Lee and fallen Confederate soldiers, glorified a mythic Southern past that framed slavery as a benign—even benevolent—institution. Commemorations of the Lost Cause of the Confederacy began appearing shortly after the war, with benevolent associations providing suitable graves for fallen soldiers and establishing monuments in cemeteries.³⁵ But in the 1890s, the number of Confederate monuments began to grow rapidly, with particularly large numbers of monuments established during the first two decades of the twentieth century. Not only were there more monuments established during this period, observes historian Karen L. Cox, but notably, the monuments began to assume a markedly different tone and objective. According to Cox, beginning around the 1890s, organizations like the United Daughters of the Confederacy (founded in 1894) increasingly set out “not just to honor their veteran ancestors but to vindicate them as well.” Funding monuments and memorials, writes Cox, was a critical aspect of this work, as monument builders “sought to ensure that future generations of white Southerners would also hold up their Confederate ancestors as heroes and

³³ Meringolo, *Museums, Monuments, and National Parks*, 31.

³⁴ Meringolo, *Museums, Monuments, and National Parks*, 30.

³⁵ Karen L. Cox, *No Common Ground: Confederate Monuments and the Ongoing Fight for Racial Justice* (Chapel Hill: University of North Carolina Press, 2021), 40.

would themselves become defenders of the same principles for which their ancestors fought and died, including a staunch defense of states' rights."³⁶

Although there have been few monuments to Confederates in National Capital Parks, Confederate monuments have shaped the discussion around monuments and the contested histories embedded within them. Fundamentally, Confederate monuments were efforts by white southerners to control the narrative about the Civil War and Reconstruction in order to advance their own social vision in a rapidly changing nation. It is no mere coincidence that the proliferation of Confederate monuments occurred simultaneously to a violent backlash against Reconstruction. Adherents of the Lost Cause doctrine had long attributed the social ills supposedly plaguing the nation to the extension of civil rights to African Americans during Reconstruction.³⁷ The end of Reconstruction brought the reversal of African American civil rights through both legal and extra-legal means. Southern legislatures passed laws that reversed voting rights for African Americans, and white men used racial violence, including lynching, to intimidate African American communities. Racial segregation also took hold across the South and, indeed, across American society, through laws and social practices designed to uphold white supremacy. Monuments to the Confederacy established during this period established a narrative of the past intended to shore up the white supremacist regime of the present. As Karen Cox argues:

That the majority of these monuments were built some thirty to fifty years after the Civil War and that so many were placed on sites of local and state government indicate that these statues were not simply works of public art or about honoring the dead; their larger purpose was to signal that white men were firmly in control of the southern legal system, the same system that disfranchised black voters and enforced Jim Crow legislation. And regardless of their artistic significance, monuments were intentional because white southerners regarded them as object lessons for future generations about the Confederate past and also about racial superiority.³⁸

By the turn of the century, the Lost Cause narrative was widely embraced by white Northerners who proved all too willing to sacrifice racial equality for national reconciliation. The Confederacy may have lost the war, but it won the memory. The appeal to tradition and values, moreover, melded with nativist anxieties across the nation during a period of unprecedented immigration and social and economic changes. As segregation took hold across society, including in federal employment, Progressive reformers sought to impose their own values through education, social

³⁶ Cox, *No Common Ground*, 47-48.

³⁷ Cox, *No Common Ground*, 16-18.

³⁸ Cox, *No Common Ground*, 48.

reform, and limits on immigration, including the exclusion of most non-white immigrants, achieved through the Johnson-Reed Act of 1924.

This social context shaped the historical narratives written into the American commemorative landscape as we know it today. Through silences, erasures, and historical distortions, monuments of this period minimized or passed over slavery as the cause of the war and obscured the role of African Americans in their own emancipation and in all other aspects of United States history.

Recent calls to remove or reconsider monuments ask us to reckon with this history, but protests of these monuments are not new. Indeed, African Americans have protested commemorative works that distort the cause of the war since they first made their appearance on the landscape. In 1876, Frederick Douglass objected to the narrative suggested by the Emancipation Statue in Lincoln Park. In the *National Republican* newspaper, he opined, “Admirable as is the monument by Mr. Ball in Lincoln Park, it does not, as it seems to me, tell the whole truth... The negro here,” he continued, “though rising, is still on his knees and nude. What I want to see before I die is a monument representing the negro, not couchant on his knees like a four-footed animal, but erect on his feet like a man.”³⁹ As the Lost Cause narrative continued to take hold and manifest in the increase of Confederate monuments toward the end of the century, Douglass remained outspoken in his critique of these “monuments of folly.”⁴⁰ Though many African Americans were reluctant to speak openly against Confederate monuments amid increasing racialized



Figure 14 The Emancipation Statue was installed in Lincoln Park in 1876. Amid the civil unrest of 2020, protesters attempted to have the statue removed, taking issue with what many felt was a degrading depiction of an African American. Frederick Douglass had made a similar critique of the statue when it was first installed. Image from [Capitol Hill Parks](#), National Park Service.

³⁹ As quoted in Jonathan W. White and Scott Sandage, “What Frederick Douglass Had to Say About Monuments,” *Smithsonian Magazine*, June 30, 2020, <https://www.smithsonianmag.com/history/what-frederick-douglass-had-say-about-monuments-180975225/>.

⁴⁰ Cox, *No Common Ground*, 60.

violence in the Jim Crow South, black communities across the nation crafted their own counternarratives to the Lost Cause, for example, by connecting Independence Day with emancipation and creating their own commemorative traditions and practices.⁴¹

1920s-1970s: Commemorative Landscape to Landscape of Protest

Public monuments are an inherently conservative art form. They obey the logic of the last word, the logic of closure. Inscriptions are fixed forever; statues do not move and change. Traditionally, this means that monuments strip the hero or event of historical complexities and condense the subject's significance to a few patriotic lessons frozen for all time. Washington's monuments, in this conception, promise to immerse visitors in the "essential" America, the "soul of the nation." Clustered together in one place, these monuments to heroes of all different time periods create a memorial landscape that evokes an abiding sense of national identity.

Kirk Savage, *Monument Wars*⁴²

Under the Senate Park Commission Plan of 1901 (McMillan Plan), the National Mall transformed from a patchwork of gardens, industrial buildings, and railroad tracks into an orderly park system. By the late-1930s a clearly defined monumental core had emerged around the National Mall, framed by statues and memorials and extending outward from L'Enfant's original design and beyond. The transformation of the National Mall and its surrounding environment under the Park Commission Plan effected more than an aesthetic shift, however. It remade the city's core into a commemorative landscape that altered the ways Americans engaged with the space and, by extension, with the national government. It was during this period that the National Mall fully emerged as a landscape of protest

Key to this transformation was the spatial organization of the monumental core under the Park Commission Plan. Anchored by the massive memorials to Lincoln and Grant at opposite ends of the Mall, both dedicated in 1922, the redesign of the Mall in the early twentieth century, writes Kirk Savage, "drew visitors into a psychologically complex encounter with their collective past." Neither L'Enfant nor the McMillan Senate Park Commission had set out to construct a landscape of protest. However, Savage continues, "Although it was conceived in 1901 as a majestic representation of national reunion and harmony, the Mall turned into a highly charged space of collective introspection, political strife, and yearning for change."⁴³ By the 1930s, the

⁴¹ Meringolo, *Museums, Monuments, and National Parks*, 31.

⁴² Savage, *Monument Wars*, 10.

⁴³ Savage, *Monument Wars*, 20.

Mall had become a space for Americans to critically reflect on the nation's history and ideals and to project their hopes and aspirations onto the future by invoking the symbolism of those represented in the monuments.

Though protests on the National Mall were not new in the 1930s, demonstrations after the redesign began centering the Mall in ways that they had not before. Though Coxey's Army had occupied the Mall in 1894, the objective was the Capitol. The same was true of the Bonus Army demonstrations three decades later. However, with the Mall's recreation as a commemorative space consciously designed to evoke the highest principles of government, demonstrators increasingly made the Mall their destination. Recognizing the Mall was more than a geographically convenient space from which to lobby Congress or the Executive branch, they began to consciously utilize the symbolic power of the Mall. Shortly after the Lincoln Memorial's dedication African Americans began appropriating the symbolism of the monument to celebrate Memorial Day.⁴⁴ But the formative moment of engaging national monuments in demonstrations was the 1939 Easter Sunday performance of African American contralto singer Marian Anderson. After the Daughters of the American Revolution refused to allow Anderson to perform at Constitution Hall, the NAACP secured permission from the Secretary of the Interior Harold L. Ickes to hold the performance at the Lincoln Memorial. NAACP secretary Walter White intentionally orchestrated the concert to maximize the symbolism of the event with the selection of patriotic songs and the sponsorship of members of the cabinet, Congress, and the Supreme Court. White also provided radio commentators with a script that read, "It is both fitting and symbolic that [Anderson] should be singing on Easter Sunday on the steps of the Memorial to the Great Emancipator who struck the shackles of slavery from her people seventy-six years ago."⁴⁵

Marian Anderson's 1939 Lincoln Memorial concert recast the meaning of the monument from symbol of national unity to herald of racial justice. Originally dedicated to honor Lincoln as the savior Union, as the epigraph above the statue of Lincoln suggests, African American civil rights activists attached a new narrative to the shrine. Whereas the inscriptions selected for the Lincoln Memorial intentionally obscured the issue of slavery and focused instead on Lincoln's role in unifying the nation, civil rights activists invoked Lincoln's role as the emancipator of enslaved people, thereby claiming Lincoln's legacy and linking it to their ongoing struggle for

⁴⁴ Savage, *Monument Wars*, 256.

⁴⁵ As quoted in Scott A. Sandage, "A Marble House Divided: The Lincoln Memorial, the Civil Rights Movement, and the Politics of Memory, 1939-1963," *Journal of American History* 80, no. 1 (1993): 145.



Figure 15 Marian Anderson sings before an integrated crowd at the Lincoln Memorial on Easter Sunday, 1939. Photograph from the National Mall and Memorial Parks, National Park Service.

freedom. Historian Scott Sandage argues that this concert marked the emergence of a new strategy in the civil rights movement, in which activists invoked national symbolism in mass protests to appeal to the nation's moral conscience and make race a national issue. Writes Sandage, "The Easter recital seemed a tactical epiphany to black activists because it suggested a site and format for injecting the civil rights cause into the mainstream of debates about national values and the American Way."⁴⁶ Imbued with a narrative as powerful as national unification after the Civil War, events like Marian Anderson's concert drew attention to the contradictions inherent in the segregation, political disfranchisement, and social and economic discrimination of African Americans.

The Marian Anderson concert established the National Mall, and the Lincoln Memorial in particular, as the premier site of civil rights demonstrations. From A. Philip Randolph's 1941 March on Washington Movement (which was canceled when President Roosevelt capitulated to the movement's demand to desegregate the defense industry), to the 1957 Prayer Pilgrimage, and the iconic 1963 March on Washington for Jobs and Freedom, the National Mall and the Lincoln Memorial came to be closely identified with the Civil Rights Movement. Using the iconography of the commemorative landscape, argues Kirk Savage, civil rights demonstrators redefined the National Mall as a space of moral principle; by using this space, demonstrators laid claim to the

⁴⁶ Sandage, "A Marble House Divided," 145.

highest ideals of the nation in an effort to appeal to the consciences of Americans observing the demonstrations from their homes.⁴⁷

Though many Americans today associate the Lincoln Memorial with the Civil Rights Movement, the National Mall has always been a highly contested space. As it became established as a space of protest in the 1930s, the National Mall emerged as a sort of rhetorical device for demonstrations across the political spectrum. Since the 1930s, the tactic of mobilizing the iconography of the Mall in mass demonstrations has been used again and again by groups as diverse and wide-ranging as the Vietnam Veterans Against the War, the Right to Life Movement, women's rights activists, climate justice advocates, LGBTQ+ activists, and nearly every other interest group with a significant presence, each appealing to ideals of justice and freedom, though they often stand diametrically opposed to one another. Sites like the Lincoln Memorial, the Washington Monument, and the reflecting pool have become so closely identified with specific protests or protest forms that have assumed the quality of memes, endlessly recycled and repeated, implicitly placing current struggles alongside the now-iconic struggles of the 1930s or the 1960s. So deeply engrained is the identification of the Lincoln Memorial with civil rights, for example, that opposing groups will both use the iconography of the memorial to invoke not Abraham Lincoln's legacy, but that of Martin Luther King Jr.

Monuments to Suffering and Loss

"No single work since the Washington Monument has done more to change the direction of the memorial landscape" than the Vietnam Veterans Memorial, asserts Kirk Savage.⁴⁸ Much has been written about Maya Lin's striking monument to the fallen American soldiers who fought in the Vietnam War. Although monuments commemorating war were not new when the Vietnam Memorial was dedicated in 1982—indeed, monuments commemorating war far outnumber any other type of monument in the national capital⁴⁹—this memorial diverged sharply from previous monument frameworks that identified soldiers as heroes who fought to uphold national ideals. Instead, the Vietnam Veterans Memorial introduced what Savage terms a "therapeutic model of memorialization," which seeks to inspire personal reflection and create a space for individuals to grieve and come to terms with profound loss. Even so, observes Savage, the therapeutic model raises new questions about monuments, memorials, and ideas about national belonging: "If we

⁴⁷ Savage, *Monument Wars*, 257-258.

⁴⁸ Savage, *Monument Wars*, 261.

⁴⁹ *National Monument Audit*, 21.

can erect monuments to victims rather than heroes, then whose suffering deserves to be commemorated, and why? Who deserves the therapy of a public monument?"⁵⁰ There were, after all, many victims in the Vietnam War, as in any military engagement. Even a memorial as introspective as the Vietnam Veterans Memorials chooses which victims will be acknowledged and which will not.



Figure 16 The Japanese American Memorial to Patriotism During World War II, located just north of the U.S. Capitol at the intersection of New Jersey Ave. & D. St. NW. Photograph from the National Capital Planning Commission.

Since the installation of the Vietnam Veterans Memorial, several other monuments to suffering and loss have emerged on the capital landscape, including the Holocaust Memorial Museum, opened in 1993, the Japanese American Memorial to Patriotism During World War II, dedicated in the year 2000, the Victims of Communism Memorial, dedicated in 2007, the 9/11 Pentagon Memorial, opened in 2008, and several others. Though focused on grief, suffering, and grappling with loss or hardship, each of these memorials reflect hegemonic ideas about citizenship by their inclusions, exclusions, and the framing of the narrative. The Memorial to Japanese American Patriotism, for instance, acknowledges a wrong perpetrated upon U.S. citizens by the federal government. But the memorial itself fails to recognize the diversity of experiences of Japanese Americans during World War II, emphasizing the loyalty of Japanese

⁵⁰ Savage, *Monument Wars*, 279-280.

Americans who actively participated in the American war effort. The monument does little to recognize those who resisted the unjust incarceration of Japanese Americans or fought in court for redress. The memorial thus simultaneously “admits a wrong” and limits the extent of American wrongdoing, reflecting prevailing ideas about citizenship and loyalty.⁵¹ Indeed, few monuments or memorials will be found that honor those who have questioned or resisted the past actions of the federal government, narrowing the scope of the histories reflected within them. As agencies like the National Park Service reflect upon whose suffering deserves to be commemorated, and why, it is critical to reflect on how ideas about citizenship inform this question and shape the overall narratives reflected in the commemorative landscape.

Contested Legacies

Notwithstanding significant shifts and new priorities in monument-building over the past fifty years—including key additions to the National Mall like the National Museum of the American Indian and the Martin Luther King Jr. Memorial, among others—the nation’s commemorative landscape fails to reflect the true diversity of those who have contributed to the United States across the nation’s history. This is, perhaps, unsurprising if we consider that monuments tend to reflect the political contexts in which they were created, and that women and people of color were excluded from full citizenship for much of American history. Among the key findings of the *National Monument Audit* was that the monument landscape is overwhelmingly white and male. Of the fifty individuals most commemorated in monuments, according to the *Audit*, half enslaved other people, only five were Black or Indigenous, and only three were women. Forty-three of the top fifty are white men. Women are so grossly underrepresented in American monuments that, according to the *Audit’s* findings, “there are more recorded monuments depicting mermaids (22) than there are monuments to U.S. congresswomen (just two: Barbara Jordan of Texas and Millicent Fenwick of New Jersey).”⁵² Landowners and persons born to wealth and privilege are also overrepresented in American monuments, challenging the notion that monuments represent who we are as a nation.

The most common subject in the American commemorative landscape, according to the *National Monument Audit*, is war and conquest. Civil rights, education, and labor activism are all far less common as subjects of monuments. As the *Audit’s* authors observe, “This dynamic and

⁵¹ For a discussion of the Japanese American Memorial, see Savage, *Monument Wars*, 289-291.

⁵² *National Monument Audit*, 18.

discrepancy reflect broader investments and values we hold beyond our monument pedestals.”⁵³ The contributions of those who toiled in the fields and factories to build the nation—often sacrificing life and limb—receive short shrift compared to celebrated generals or fallen soldiers. Furthermore, the *Audit* reports, the content and form of war monuments and memorials “obscure the violence of combat and conquest,” minimizing the grave social and environmental costs of warfare for veterans and their communities, particularly for people of color.⁵⁴

Monuments as Sites of Erasure

*...this is what monuments do: they normalize the past, for better or worse.
They make injustices easier to defend and, more insidiously, harder to see.*

*Tyler Stiem*⁵⁵

By prioritizing some historical narratives and figures over others, monuments are, simultaneously, sites of historical memory and sites of erasure. Though much of the focus here is on the symbolic and narrative erasures, the creation of the monumental core in the early twentieth century began with the erasure of actual communities from the landscape. As discussed in the chapter “A Social History of Protest,” the McMillan Park Commission’s redesign of the city involved the removal of slums and alleys surrounding the Mall, resulting in the eviction and displacement of an estimated 1,500 residents, most of whom were poor Irish and African Americans. That displacement is of both material and symbolic significance in the erasure of people from American history and identity as reflected in the commemorative landscape. By removing communities that were incongruous to their vision of America, the Park Commission naturalized the historical fiction represented in the monuments and memorials of the commemorative landscape, which, for much of its history, has erased the contributions of marginalized populations through omission and the selective narration of history.

The *National Monument Audit*’s data on the lack of women, people of color, and labor, suggest the historical erasure of these populations by the simple act of omission. More subtly, erasure entails the selective inclusive of certain facets of history that ensures a specific version of history is written on the landscape. The memorialization of Martin Luther King Jr. on the

⁵³ *National Monument Audit*, 21.

⁵⁴ *National Monument Audit*, 22.

⁵⁵ Stiem, “Statue wars.”

National Mall is instructive on this matter. Communications scholar Michael Vicaro has discussed how quickly Congress acted to install a marker on the steps of the Lincoln Memorial, which identified and commemorated the site from which King delivered his famous “I Have a Dream” speech. After visiting the memorial in 1997 a visitor from Kentucky wrote to her Representative complaining of the lack of any mention of King’s iconic speech at the site. Less than two years later, Congress quickly passed Public Law 106-365 authorizing the installation of a marker commemorating the speech. Notably, many politically conservative members of Congress supported the law, including the former segregationist senator Strom Thurmond of South Carolina, who had ardently opposed civil rights legislation earlier in his career. Without dismissing the significance of the speech in the Civil Rights Movement, however, Vicaro argues that the ease with which the marker was installed has helped to contain the historical meaning of King, stripping his work of all its radical implications and advancing a “narrow set of contemporary political interests.” Instead of the controversial civil rights leader who openly criticized the federal government, linking poverty in the African American community to U.S. involvement in the Vietnam War, for example, Vicaro asserts that:

The memorial canonizes King as a peaceful dreamer and a herald of post-racial America, it helps cast the “Dream” as his highest and final statement about justice, and it strategically deemphasizes other aspects of his life and work more directly critical of capitalism, structural racism, and U.S. cultural and military imperialism.⁵⁶

The commemoration of “I Have a Dream” on the Lincoln Memorial steps reduces and depoliticizes King’s message, ultimately refiguring the speech as “the culmination point of an inevitable chronology-linear progression of American civic virtue from Independence to Emancipation to liberation and ‘postracial’ colorblindness.”⁵⁷ This narrative ultimately served to reclaim the historical memory of King in the service of present-day political concerns and erase his more radical critiques of structural racism.

Reinscribing and Removing Monuments

Monuments are built with ideas of permanence and timelessness—material artifacts meant to project values and a version of the past into the future by etching them in stone (or metal, or in the form of a building, a garden, a landscape). And yet, for all the energy that goes into crafting a monument so that it promotes a particular version of the past, people have

⁵⁶ Michael P. Vicaro, “Haunting Dreams: Time and Affect in the Neoliberal Commemoration of ‘I Have a Dream,’” in *Rhetorics Haunting the National Mall*, 96.

⁵⁷ Vicaro, “Haunting Dreams,” 97.

repeatedly appropriated monuments for their own purposes, speaking back to them and reinscribing them with their own meanings. The Washington Monument, the Lincoln Memorial, the Emancipation Statue in Lincoln Park, and others have all been transformed—on a symbolic, if not material level—by the people who engage with them. On a material level, monuments have always been subject to alterations large and small, including the addition of plaques, markers, interpretive waysides, and full-scale renovations of buildings and landscapes. The argument that we must preserve monuments simply because they are already there runs contrary to the goal of fostering the meaningful engagement with history that monuments are supposed to promote.

Though monuments are, in theory, fixed in place, they are constantly changed by the ever-shifting ways people engage with them. As several commentators have observed, for instance, although the designers of the Lincoln Memorial downplayed Lincoln’s role in abolishing slavery, because of the ways people have used the space, it has become nearly synonymous with civil rights protest and the black freedom movement. In another example, the complicated history of the Emancipation Statue has lent itself to multiple conflicting meanings over time; for commentators like Frederick Douglass in the nineteenth century and many protesters of recent years, the statue demeans African Americans. But for the generation that participated in the civil rights struggles of the 1950s and 1960s, the statue is emblematic of their efforts.

Far from timeless or essential, then, the commemorative landscape of Washington, D.C. has been constantly transformed and reinterpreted no less by those who engage the monuments as visitors than by those who design and install the structures. Once built, observes Kirk Savage, public monuments “leave the orbit of their planners and designers and acquire a life and direction of their own.”⁵⁸ How then, should the National Park Service respond to calls to remove monuments? And what are the Park Service’s interpretive and preservationist responsibilities for monuments that do not align with NPS values? There are no simple answers to these questions, as any action is likely to elicit controversy. Regardless, it is critical that the National Park Service grapple with the history of the monument itself, alongside that which the monument is meant to represent.

With the social unrest of 2020 came an increase in calls to remove monuments. While many who advocated the removal of monuments like the Andrew Jackson equestrian statue in Lafayette Square were, no doubt, inspired by the movement unfolding around them, there is nothing new about the destruction of monuments as an act of protest. Americans have protested

⁵⁸ Savage, *Monument Wars*, 11.

monuments for various reasons throughout U.S. history. The practice of defacing and destroying statues stretches back literally thousands of years. As art historian Erin L Thompson has observed, “destruction is the norm and preservation is the rare exception. We have as humans been making monuments to glorify people and ideas since we started making art, and since we started making statues, other people have started tearing them down.”⁵⁹ This is not to suggest that we begin destroying all those monuments we deem problematic—if we could ever agree on what that meant in the first place. Rather, it is an argument that we consider the narratives and ideologies that are perpetuated by monuments and whether they align with the values the National Park Service professes.

Conclusion

What, then, should we do with troublesome monuments? For the National Park Service, this answer is limited by a park’s founding documents and enabling legislation. And yet, there is much more that the National Park Service could do in the way of historical interpretation to provide critical context for the public’s engagement with the past. As the Organization of American Historians found in its study of historical interpretation at National Parks, “History at many sites seems to be understood as having ended at the park’s creation and stopped at its boundaries, its interpretation fixed in time based on language of often decades-old legislation.”⁶⁰ But as this chapter has shown, monuments themselves are constantly changing. Rather than containing a fixed meaning, they are dynamic connections between the past and the present. This presents profound opportunities in the interpretation of monuments that reflects the contingency and contestation that is at the heart of the discipline of history. In this way, monuments become not just a reflection of the past, but a way to actively engage with it.

This report does not advocate the removal of statues. However, the National Park Service must take seriously the issues and concerns raised by those who demand the removal of statues. Critically, NPS must find a way to be more responsive to the needs and concerns of the American population. This means critically evaluating monuments installed at moments in U.S. history where very different values predominated. Without context, for instance, a monument to the Confederacy reflects the values of those who placed it. Interpretive efforts can help to provide the

⁵⁹ Jonah Engel Bromwich, “What Does it Mean to Tear Down a Statue?” *New York Times*, June 11, 2020, <https://www.nytimes.com/2020/06/11/style/confederate-statue-columbus-analysis.html>.

⁶⁰ Anne Mitchell Whisnant, et. al., *Imperiled Promise: The State of History in the National Park Service*, Organization of American Historians, National Park Service (2011), 100.

necessary context that facilitates a more critical engagement with the past. Alongside interpretation, the alteration of monuments—whether by the removal of specific elements or the addition of others, such as commemorative plaques, explanatory waysides, or competing monuments—can help bring monuments up to date and bring them into alignment with a history that more fully grapples with the complexity of American history.

The monuments and memorials that mark our commemorative landscape today will reflect to future generations the values that we hold. The question that remains is what values does the National Park Service of today wish to communicate to Americans of tomorrow?

Recommended Reading

Books

Roger C. Aden, ed., *Rhetorics Haunting the National Mall: Displaced and Ephemeral Memories* (Lanham: Lexington Books, 2018).

Karen L. Cox, *No Common Ground: Confederate Monuments and the Ongoing Fight for Racial Justice* (Chapel Hill: University of North Carolina Press, 2021).

Kristin Ann Hass, *Sacrificing Soldiers on the National Mall* (Berkeley: University of California Press).

Kirk Savage, *Monument Wars: Washington, D.C., The National Mall, and the Transformation of the Memorial Landscape* (Berkeley: University of California Press, 2009).

Articles and Miscellaneous

Monument Lab, *National Monument Audit*, 2021, <https://monumentlab.com/monumentlab-nationalmonumentaudit.pdf>.

Jonah Engel Bromwich, “What Does it Mean to Tear Down a Statue?” *New York Times*, June 11, 2020, <https://www.nytimes.com/2020/06/11/style/confederate-statue-columbus-analysis.html>.

Tyler Stiem, “Statue wars: what should we do with troublesome monuments?” *Guardian*, September 26, 2018, <https://www.theguardian.com/cities/2018/sep/26/statue-wars-what-should-we-do-with-troublesome-monuments>.

Appendix

36 Code of Federal Regulations (CFR) § 7.96 National Capital Region¹

Excerpted section pertaining to First Amendment protest and camping.

[§ 7.96 National Capital Region.](#)

...

(g) *Demonstrations and special events* -

(1) *Definitions.*

(i) The term “demonstration” includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.

(ii) The term “special events” includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under [paragraph \(g\)\(1\)\(i\)](#) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(iii) The term “national celebration events” means the annually recurring special events regularly scheduled by the National Capital Region, which are listed in [paragraph \(g\)\(4\)\(i\)](#) of this section.

(iv) The term “White House area” means all park areas, including sidewalks adjacent thereto, within these bounds; on the south, Constitution Avenue NW.; on the north, H Street NW.; on the east, 15th Street, NW.; and on the west, 17th Street NW.

(v) The term “White House sidewalk” means the south sidewalk of Pennsylvania Avenue NW., between East and West Executive Avenues NW.

(vi) The term “Lafayette Park” means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue NW.; on the north, H Street NW.; on the east, Madison Place NW.; and on the west, Jackson Place NW.

(vii) The term “Ellipse” means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue NW.; on the north, E Street, NW.; on the west, 17th Street NW.; and on the east, 15th Street NW.

(viii) The term “Regional Director” means the official in charge of the National Capital Region, National Park Service, U.S. Department of the Interior, or an authorized representative thereof.

(ix) The term “other park areas” includes all areas, including sidewalks adjacent thereto, other than the

¹ *Source:* Code of Federal Regulations, Title 36, Chapter I, Part 7, § 7.96; up to date as of 4/27/2022 (last update 4/15/2022) <https://www.ecfr.gov/current/title-36/chapter-I/part-7/section-7.96> (accessed 4/29/2022).

White House area, administered by the National Capital Region.

(x) The term “Vietnam Veterans Memorial” means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(2) **Permit requirements.** Demonstrations and special events may be held only pursuant to a permit issued in accordance with the provisions of this section except:

(i) Demonstrations involving 25 persons or fewer may be held without a permit *provided* that the other conditions required for the issuance of a permit are met and *provided further* that the group is not merely an extension of another group already availing itself of the 25-person maximum under this provision or will not unreasonably interfere with other demonstrations or special events.

(ii) Demonstrations may be held in the following park areas without a permit *provided* that the conduct of such demonstrations is reasonably consistent with the protection and use of the indicated park area and the other requirements of this section. The numerical limitations listed below are applicable only for demonstrations conducted without a permit in such areas. Larger demonstrations may take place in these areas pursuant to a permit.

(A) **Franklin Park.** Thirteenth Street, between I and K Streets NW., for no more than 500 persons.

(B) **McPherson Square.** Fifteenth Street, between I and K Streets NW., for no more than 500 persons.

(C) **U.S. Reservation No. 31.** West of 18th Street and south of H Street NW., for no more than 100 persons.

(D) **Rock Creek and Potomac Parkway.** West of 23rd Street, south of P Street NW., for no more than 1,000 persons.

(E) **U.S. Reservation No. 46.** North side of Pennsylvania Avenue, west of Eighth Street and south of D Street, SE., for no more than 25 persons and south of D Street SE., for no more than 25 persons.

(3) **Permit applications.** Permit applications may be obtained at the Division of Permits Management, National Mall and Memorial Parks, 900 Ohio Drive SW., Washington DC 20024. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at the Division of Permits Management at least 48 hours in advance of any proposed demonstration or special event. This 48-hour period will be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The Regional Director shall accept permit applications only during the hours of 8 a.m.-4 p.m., Monday through Friday, holidays excepted. All demonstration applications, except those seeking waiver of the numerical limitations applicable to Lafayette Park ([paragraph \(g\)\(5\)\(ii\)](#) of this section), are deemed granted, subject to all limitations and restrictions applicable to said park area, unless denied within 24 hours of receipt. However, where a permit has been granted, or is deemed to have been granted pursuant to this subsection, the Regional Director may revoke that permit pursuant to [paragraph \(g\)\(6\)](#) of this section.

(i) **White House area.** No permit may be issued authorizing demonstrations in the White House area, except for the White House sidewalk, Lafayette Park and the Ellipse. No permit may be issued authorizing special events, except for the Ellipse, and except for annual commemorative wreath-laying ceremonies relating to the statutes in Lafayette Park.

(ii) **Other park areas.** Demonstrations and special events are not allowed in the following other park areas:

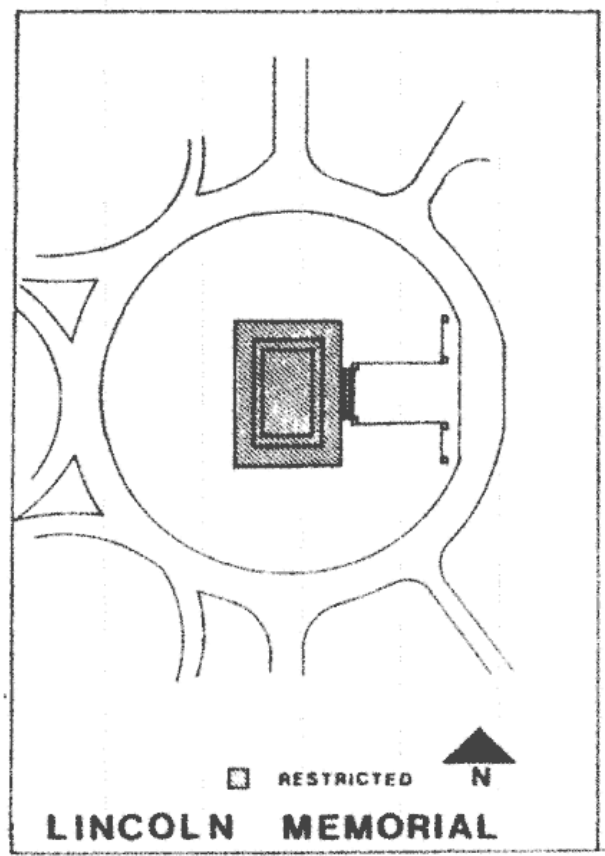
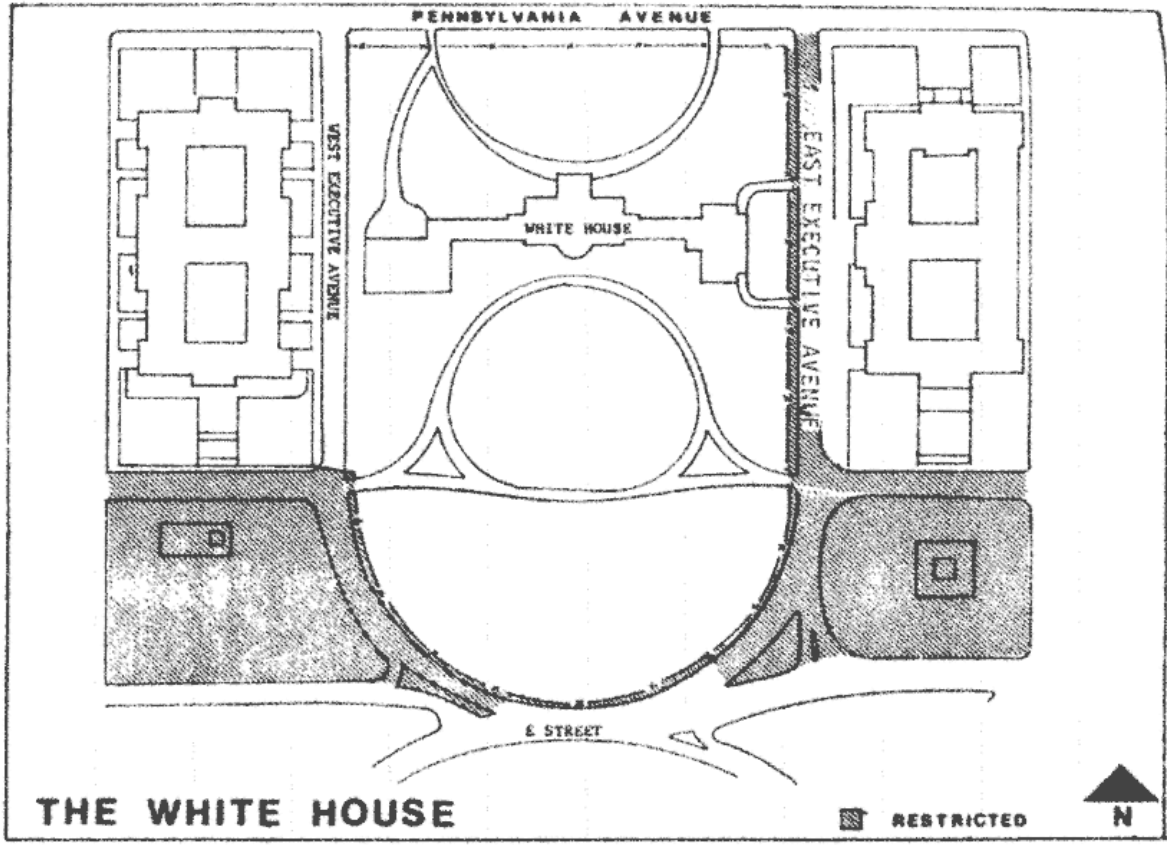
(A) The Washington Monument, which means the area enclosed within the inner circle that surrounds the Monument's base, except for the official annual commemorative Washington birthday ceremony.

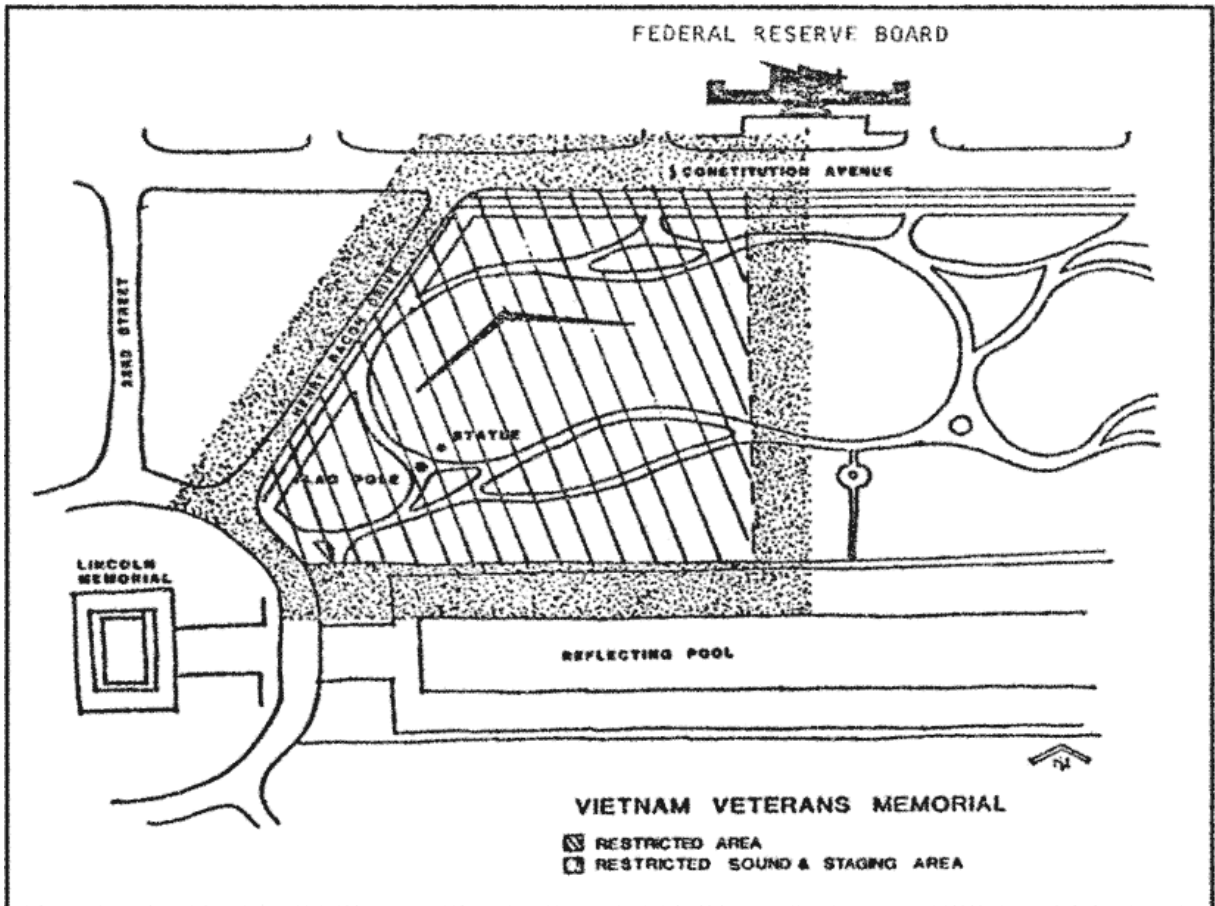
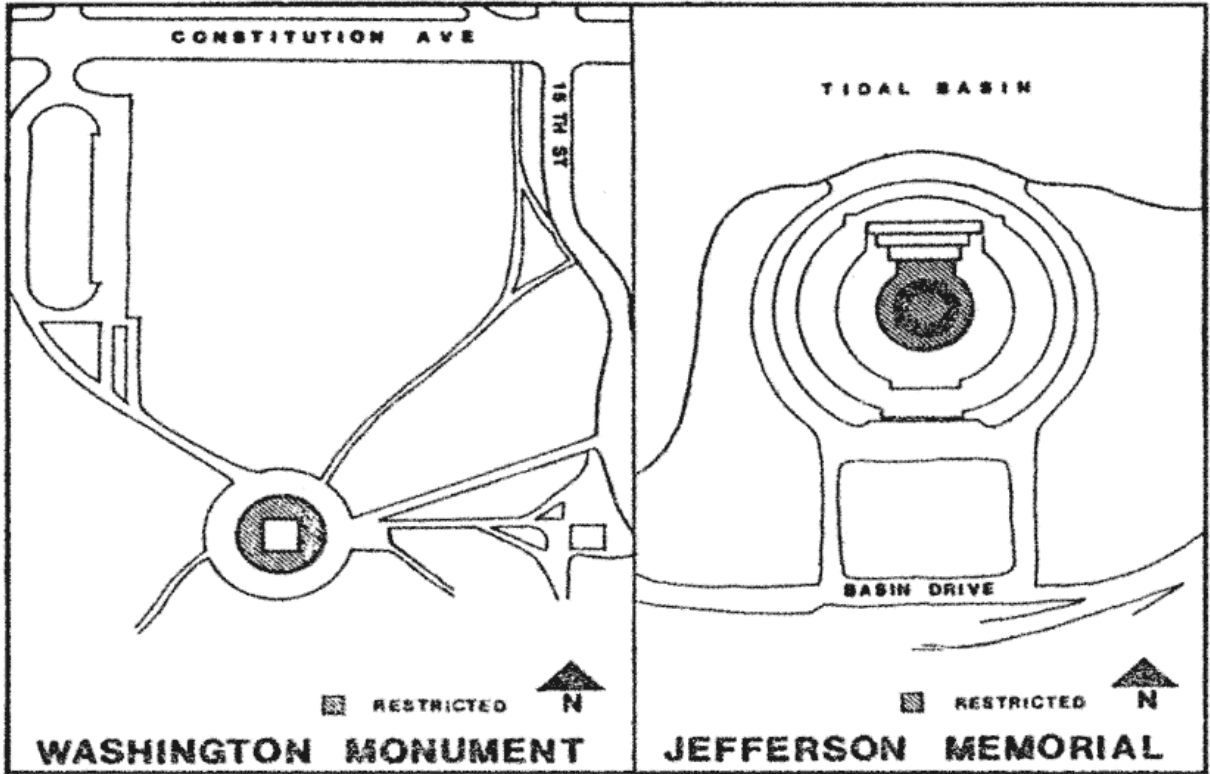
(B) The Lincoln Memorial, which means that portion of the park area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level, except for the official annual commemorative Lincoln birthday ceremony.

(C) The Jefferson Memorial, which means the circular portion of the Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns, except for the official annual commemorative Jefferson birthday ceremony.

(D) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies.

(E) Maps of the park areas designated in this paragraph are as follows. The darkened portions of the diagrams show the areas where demonstrations or special events are prohibited.





(4) Permit processing.

(i) NPS processes permit applications for demonstrations and special events in order of receipt. NPS will not accept applications more than one year in advance of a proposed continuous event (including set-up time, if any). Use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations in this section.

(ii) Specific national celebration events have priority use of particular park areas as shown in the following table:

The following event...	Has priority use of the following area...	At the following time...
(A) Lighting of the National Christmas Tree and Christmas Pathway of Peace	Northern half of the oval portion of the Ellipse	The last four weeks in December as well as necessary set-up and take-down between October 1 through February 1.
(B) Cherry Blossom Festival	Park areas adjacent to the Tidal Basin and the sidewalk areas adjacent to Constitution Avenue, between 15th & 17th Streets NW	Two weeks usually in late March or early April as well as the an additional two weeks for the necessary set-up and take-down.
(C) Fourth of July Celebration	Washington Monument Grounds and the Lincoln Memorial Reflecting Pool area	Time required for necessary staging and fireworks set-up and take-down, totaling three weeks in late June and early July.
(D) Smithsonian Folklife Festival	The area bounded on the south by Jefferson Drive NW; on the north by Madison Drive, NW; on the east by 7th Street, NW; on the west by 14th Street, NW	For a two-week period in approximately late June and early July and an additional eight weeks for the necessary set-up and take-down.
(E) Columbus Day Commemorative Wreath-Laying	At the Columbus statue on the Union Plaza	On Columbus Day.
(F) Presidential Inaugural Ceremonies	See paragraph (g)(4)(iii) of this section	See paragraph (g)(4)(iii) of this section.

(iii) In connection with Presidential Inaugural Ceremonies the following areas are reserved for priority use as set forth in this paragraph.

(A) The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant for the exclusive use of the Presidential Inaugural Committee on Inaugural Day.

(B) Portions of Pennsylvania Avenue, National Historic Park and Sherman Park, as designated in the maps included in [paragraph \(g\)\(4\)\(iii\)\(E\)](#) of this section, for the exclusive use of the Presidential Inaugural Committee on Inaugural Day for:

(1) Ticketed bleachers viewing and access areas, except that members of the public may use a ticketed bleacher seat that has not been claimed by the ticket holder 10 minutes before the Inaugural Parade is scheduled to pass the bleacher's block;

(2) Portable toilets, except that they will be available to the public;

(3) Television and radio media and Armed Forces Inaugural Committee parade support structures;

(4) The area in front of the John A. Wilson Building for the District of Columbia reviewing stand;

(5) Viewing areas designated for individuals with disabilities, except that they will be available to any

disabled persons.

(C) The area of the National Mall between 14th and 1st Streets, for the exclusive use of the Armed Forces Inaugural Committee on Inaugural Day for the assembly, staging, security and weather protection of the pre-Inaugural parade components and floats on Inaugural Day, except for:

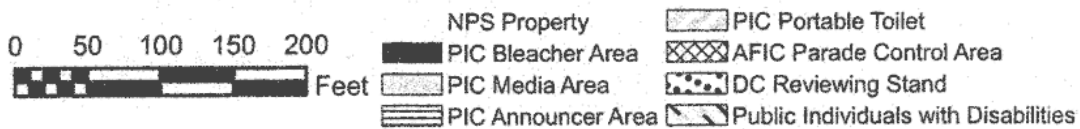
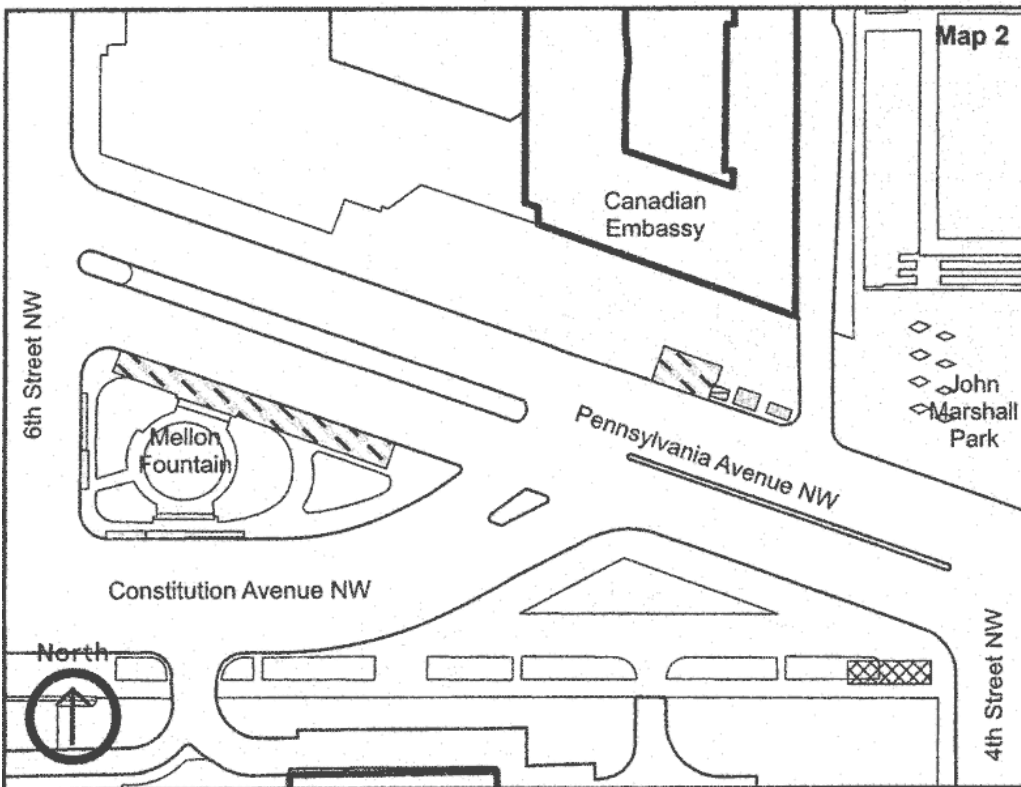
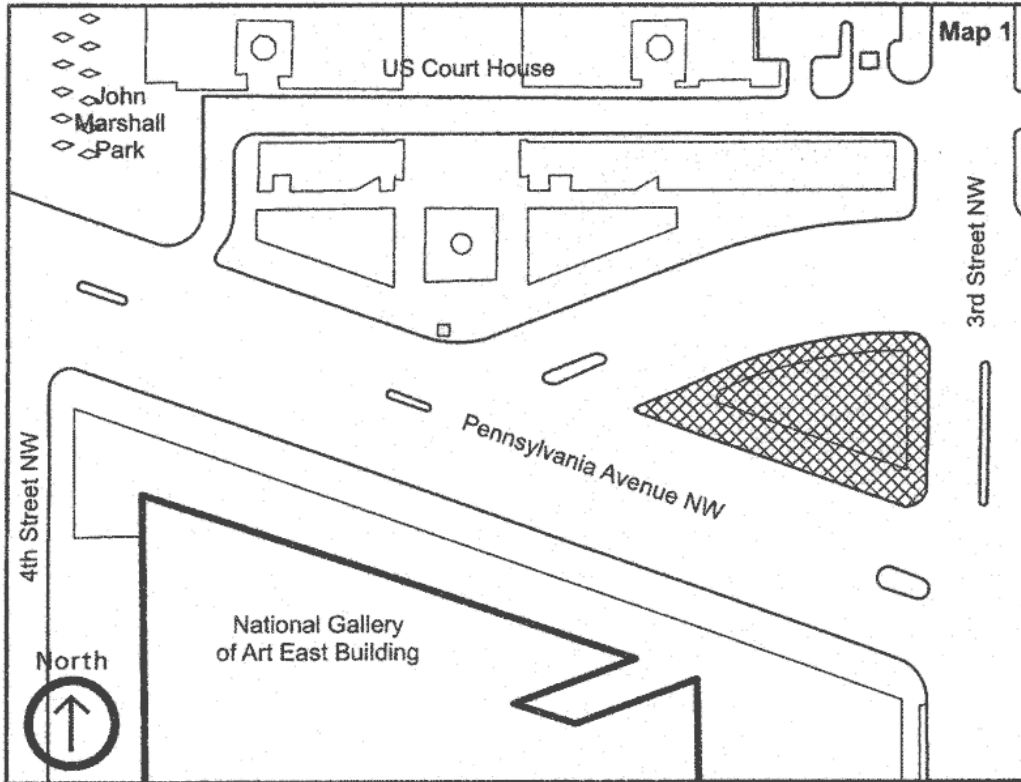
(1) The placement of jumbotrons and sound towers by the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies so that the Inaugural ceremony may be observed by the Joint Congressional Committee's ticketed standing room ticket holders between 4th and 1st Streets and the general public between 7th and 4th Streets; and

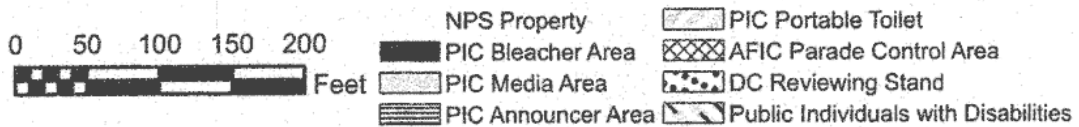
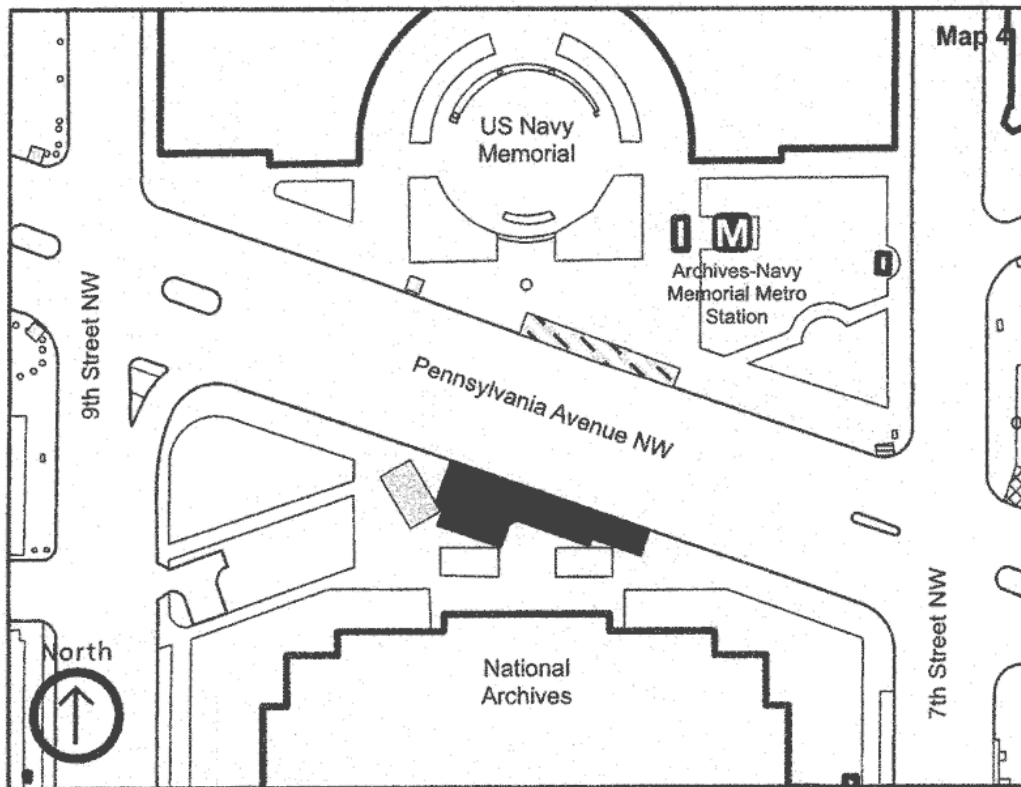
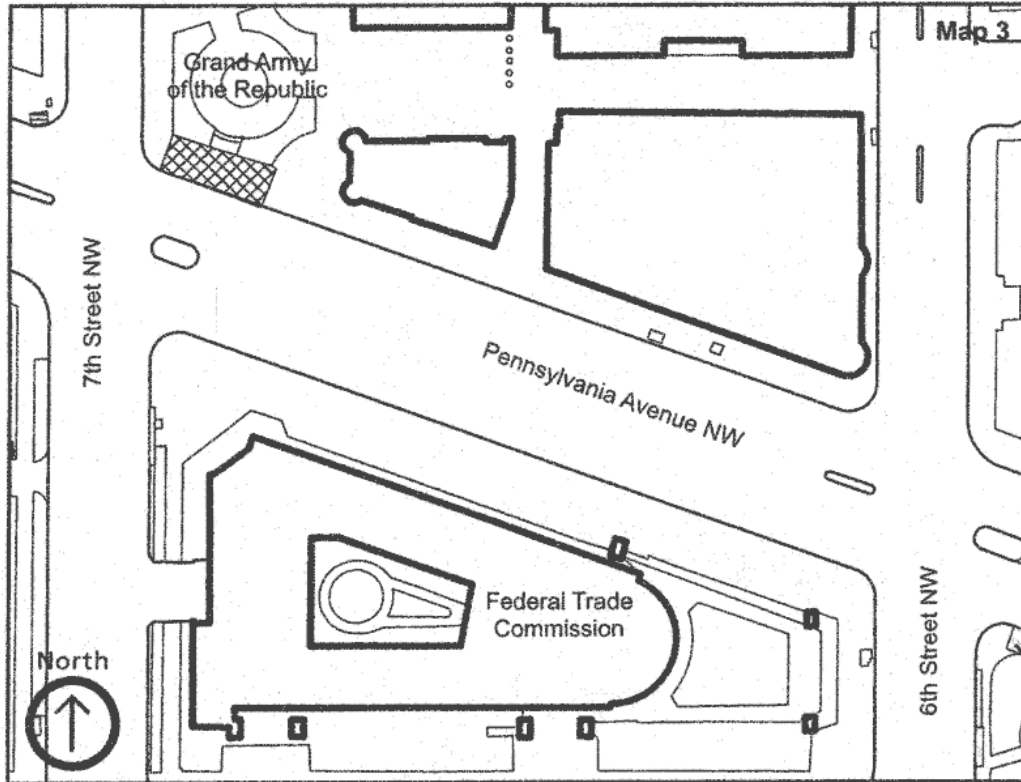
(2) A 150-foot-by-200-foot area on the National Mall just east of 7th Street, for the exclusive use of the Presidential Inaugural Committee for television and radio media broadcasts on Inaugural Day.

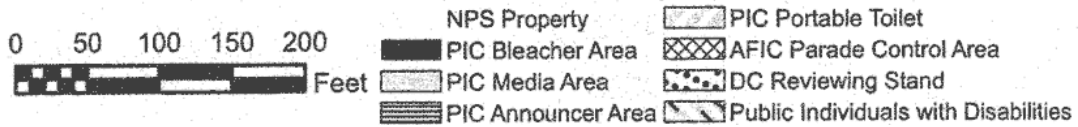
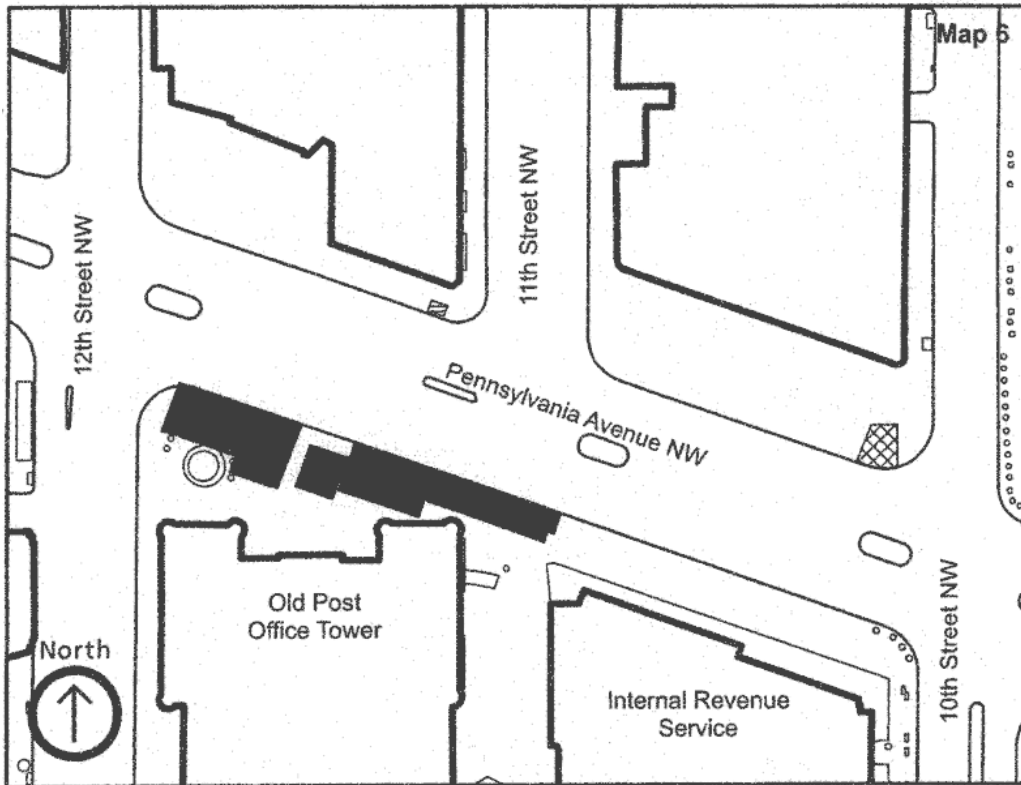
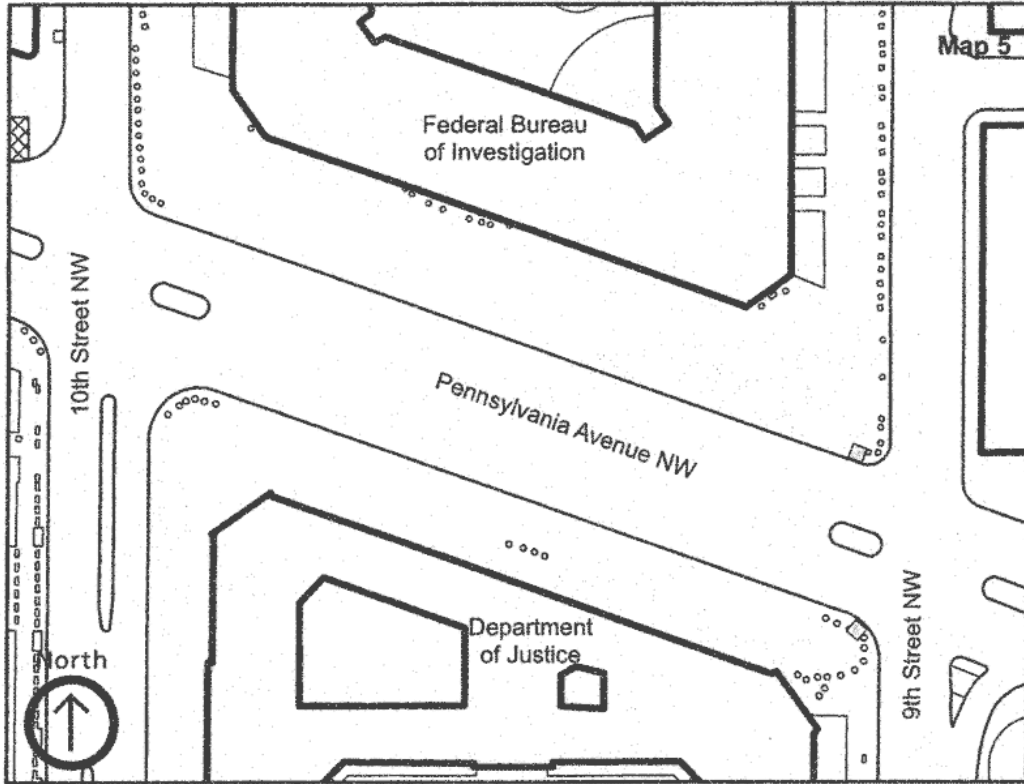
(D) The Presidential Inaugural Committee may also use portions of its designated areas reasonably necessary for setting up and taking down stands, bleachers, media and parade support structures as shown in the following table:

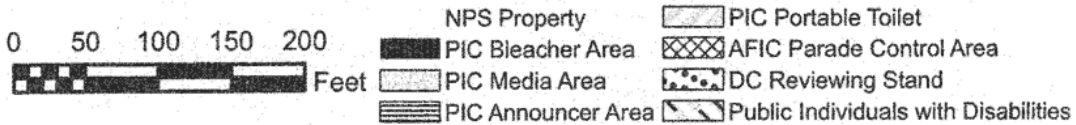
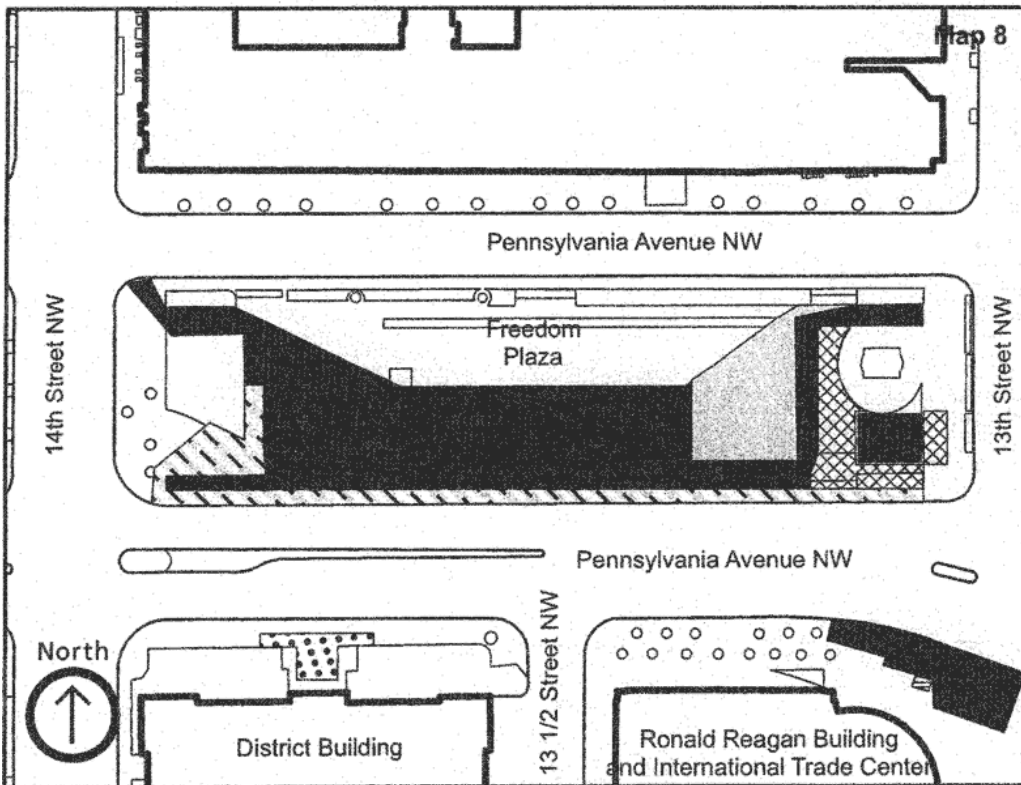
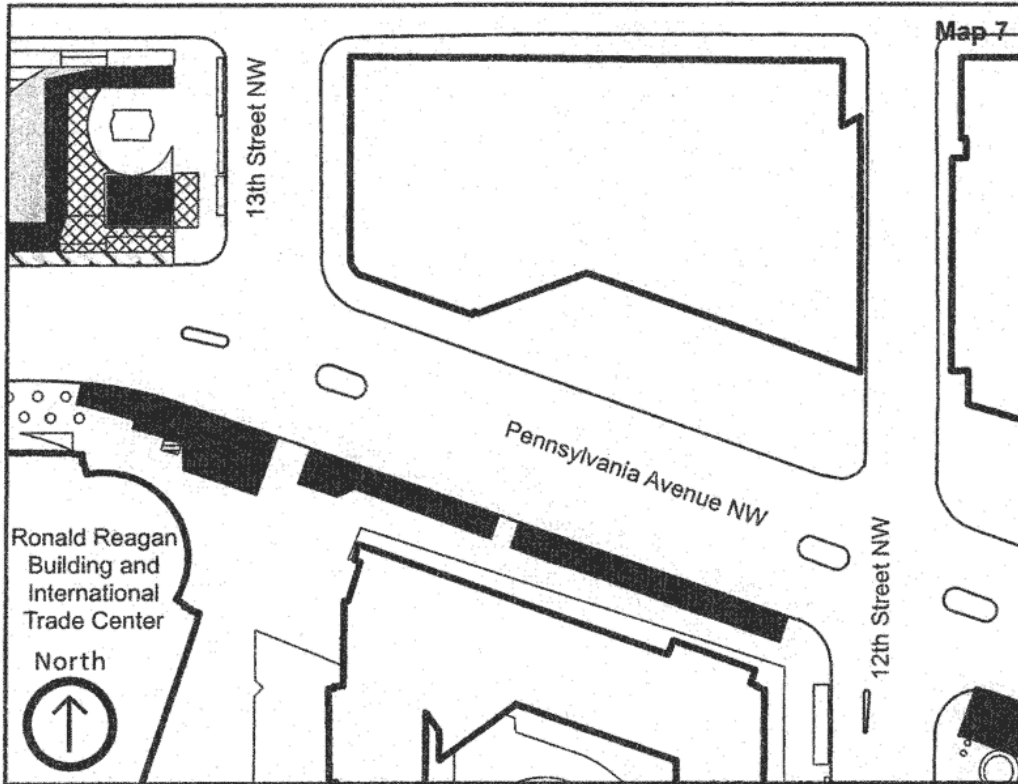
The Presidential Inaugural Committee may use the following area...	During the following period...
(1) The White House sidewalk and Lafayette Park	November 1 through March 1.
(2) Pennsylvania Avenue, National Historic Park and Sherman Park	December 7 through February 10.
(3) The National Mall between 14th and 1st Streets	January 6 through January 30.

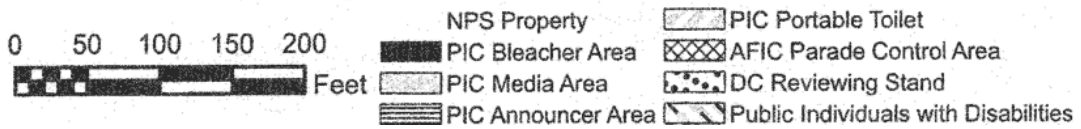
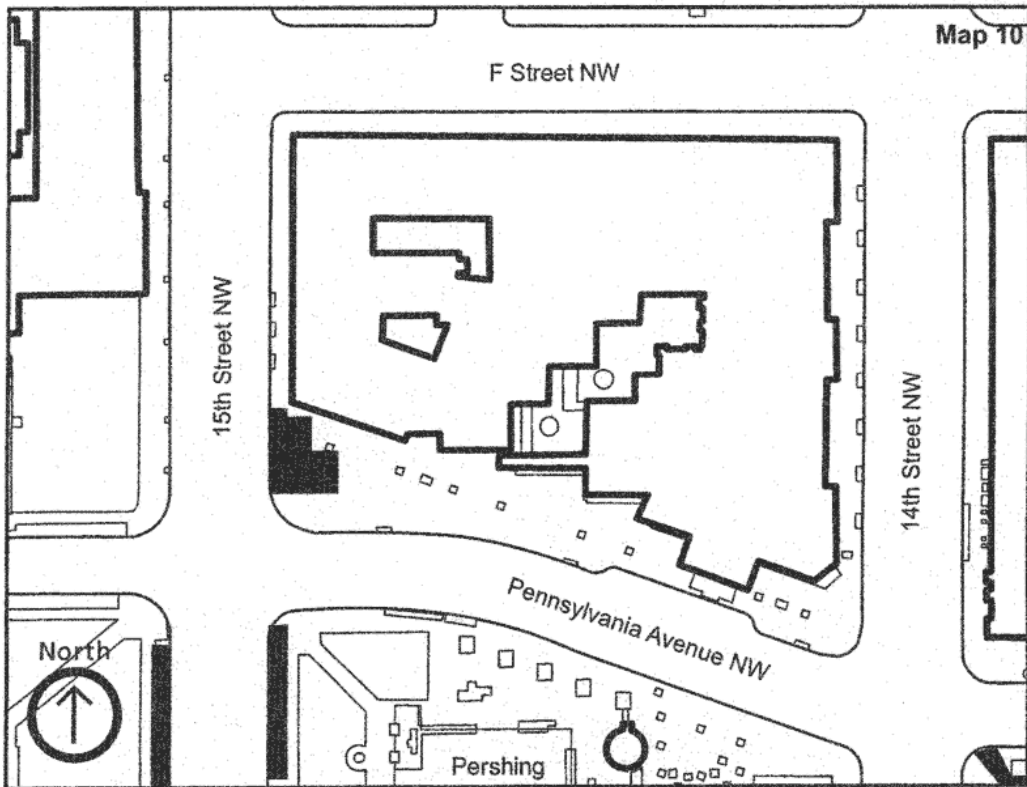
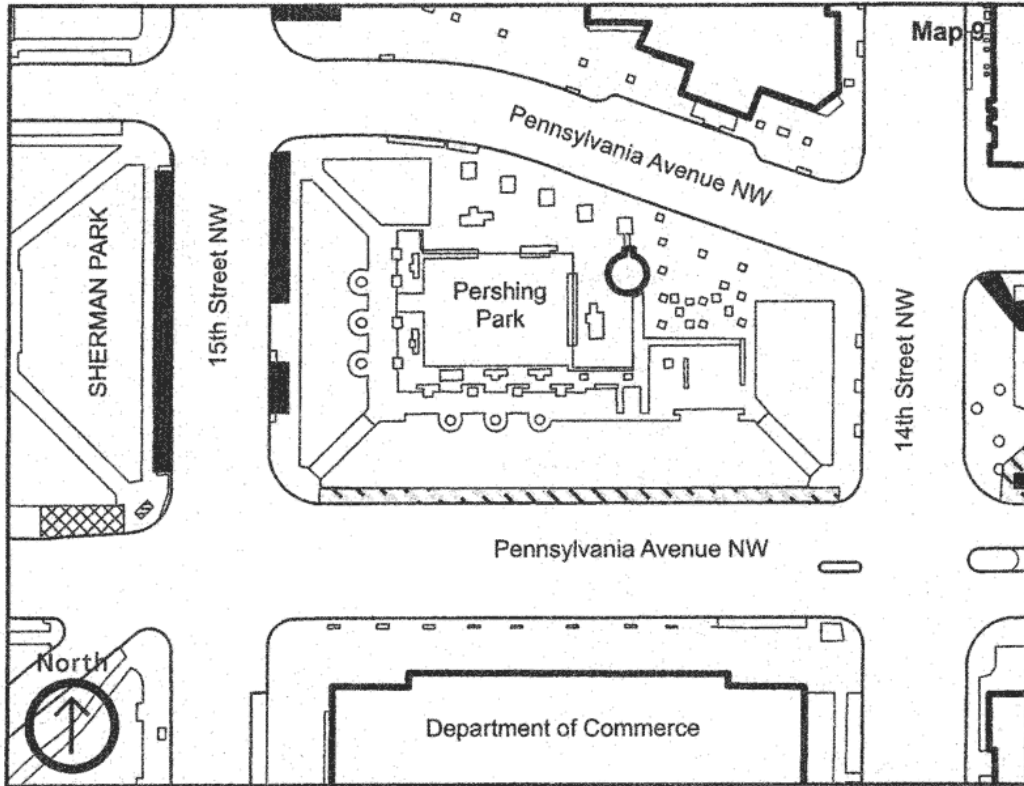
(E) Maps of designated portions of Pennsylvania Avenue, National Historic Park and Sherman Park referred to in [paragraph \(g\)\(4\)\(iii\)\(B\)](#) of this section are as follows:











(iv) Other demonstrations or special events are permitted in park areas under permit for the National Celebration Events listed in [paragraph \(g\)\(4\)\(ii\)](#) of this section to the extent that they do not significantly interfere with the National Celebration Events. Except for Inaugural ceremony activities, no activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(v) NPS will issue a permit for a demonstration on the White House sidewalk and in Lafayette Park at the same time only if the requirements of this paragraph are met. The organization, group, or other sponsor of the demonstration must undertake in good faith all reasonable action, including the provision of sufficient marshals, to ensure that the sponsor:

(A) Maintains good order and self-discipline in conducting the demonstration and any necessary movement of persons; and

(B) Observes the numerical limitations and waiver provisions described in [paragraphs \(g\)\(5\)\(i\)](#) and [\(ii\)](#) of this section.

(vi) NPS will issue permits authorizing demonstrations or special events for the periods shown in the following table. NPS may extend these periods for demonstrations only, unless another application requests use of the particular area and that application precludes double occupancy.

Park area	Permit validity period	Permit validity period for inaugural activities
(A) White House area, except the Ellipse	7 days	Between October 24 through April 1 for reasonable and necessary set-up and take-down activities for the White House Sidewalk and Lafayette Park.
(B) The Ellipse and all other park areas	4 months	Between December 7 through February 10 for reasonable and necessary set-up and take-down activities for Pennsylvania Avenue, National Historic Park and Sherman Park.

(vii) A permit may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, will be proposed by the Regional Director to the applicant.

(B) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(C) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, the Regional Director shall propose an alternate site to the applicant, if available for the activity; in this connection, the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(D) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

(5) **Permit limitations.** Issuance of a permit is subject to the following limitations:

(i) No more than 750 persons are permitted to conduct a demonstration on the White House sidewalk at any one time.

(ii) No more than 3,000 persons are permitted to conduct a demonstration in Lafayette Park at any one time.

(A) The Regional Director may waive the 3,000 person limitation for Lafayette Park and/or the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence.

(B) In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in [paragraph \(g\)\(3\)](#) of this section.

(iii) No permit will be issued for a demonstration on the White House Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration undertakes in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in [paragraphs \(g\)\(5\) \(i\)](#) and [\(ii\)](#) of this section are observed.

(iv) The Regional Director may restrict demonstrations and special events weekdays (except holidays) between the hours of 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(v) Special events are not permitted unless approved by the Regional Director. In determining whether to approve a proposed special event, the Regional Director shall consider and base the determination upon the following criteria:

(A) Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.

(B) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(C) Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.

(D) Whether the proposed event is duplicative of events previously offered in National Capital Region or elsewhere in or about Washington, DC.

(E) Whether the activities contemplated for the proposed special event are in conformity with all applicable laws and regulations.

(vi) In connection with permitted demonstrations or special events, temporary structures may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for electrical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Regional Director, except that:

(A) Structures are not permitted on the White House sidewalk.

(B) All such temporary structures shall be erected in such a manner so as not to harm park resources unreasonably and shall be removed as soon as practicable after the conclusion of the permitted demonstration or special event.

(C) The Regional Director may impose reasonable restrictions upon the use of temporary structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.

(D) Any structures utilized in a demonstration extending in duration beyond the time limitations specified in [paragraphs \(g\)\(5\)\(iv\) \(A\)](#) and [\(B\)](#) of this section shall be capable of being removed upon 24 hours notice and the site restored, or, the structure shall be secured in such a fashion so as not to interfere unreasonably with use of the park area by other permittees authorized under this section.

(E) Individuals or groups of 25 persons or fewer demonstrating under the small group permit exemption of [paragraph \(g\)\(2\)\(i\)](#) of this section are not allowed to erect temporary structures other than small lecterns or speakers' platforms. This provision does not restrict the use of portable signs or banners.

(vii) No signs or placards shall be permitted on the White House sidewalk except those made of cardboard, posterboard or cloth having dimensions no greater than three feet in width, twenty feet in length, and one-quarter inch in thickness. No supports shall be permitted for signs or placards except those made of wood having cross-sectional dimensions no greater than three-quarter of an inch by three-quarter of an inch. Stationary signs or placards shall be no closer than three feet from the White House sidewalk fence. All signs and placards shall be attended at all times that they remain on the White House sidewalk. Signs or placards shall be considered to be attended only when they are in physical contact with a person. No signs or placards shall be tied, fastened, or otherwise attached to or leaned against the White House fence, lamp posts or other structures on the White House sidewalk. No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however*, that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

(viii) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue NW., between Pennsylvania Avenue NW., and E Street NW., or on the north sidewalk of E Street NW., between East and West Executive Avenues NW.; *Provided, however*, that such property, except structures, may be momentarily placed or set down in the immediate presence of the owner on those sidewalks.

(ix) The following are prohibited in Lafayette Park:

(A) The erection, placement or use of structures of any kind except for the following:

(1) Structures that are being hand-carried are allowed.

(2) When one hundred (100) or more persons are participating in a demonstration in the Park, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to [paragraph \(g\)](#) of this section.

(3) When less than one hundred (100) persons are participating in a demonstration in the Park, a temporary "soapbox" speaker's platform is allowed as long as such platform is being erected, dismantled or used, *providing that* only one speaker's platform is allowed per demonstrating group, and *provided further that* the speaker's platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to [paragraph \(g\)](#) of this section.

(4) For the purpose of this section, the term "structure" includes props and displays, such as coffins, crates, crosses, theaters, cages, and statues; furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns; shelters, such as tents, boxes and other enclosures; wagons and carts; and all other similar types of property which might tend to harm park resources including aesthetic interests. *Provided however* that the term "structure" does not include signs; bicycles, baby carriages and baby strollers lawfully in the Park that are temporarily placed in, or are being moved across, the Park, and that are attended at all times while in the Park (the term "attended" is defined as an individual being within

three (3) feet of his or her bicycle, baby carriage or baby stroller); and wheelchairs and other devices for the handicapped in use by handicapped persons.

(B) The use of signs except for the following:

(1) Hand-carried signs are allowed regardless of size.

(2) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter (1/4) inch in thickness (exclusive of braces that are reasonably required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, *provided that* no individual may have more than two (2) such signs in the Park at any one time, and *provided further that* such signs must be attended at all times (the term "attended" is defined as an individual being within three (3) feet of his or her sign(s)), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-feet by four-feet signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or otherwise placed together so as to form an enclosure of two or more sides, etc.

(x) Stages and sound amplification may not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

(xi) Sound amplification equipment is allowed in connection with permitted demonstrations or special events, provided prior notice has been given to the Regional Director, except that:

(A) Sound amplification equipment may not be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Regional Director determines is necessary for crowd-control purposes.

(B) The Regional Director reserves the right to limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

(xii) A permit may contain additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources, the use of nearby areas by other persons, and other legitimate park value concerns.

(xiii) A permit issued under this section does not authorize activities outside of areas under administration by the National Capital Region. Applicants may also be required to obtain a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in other than park areas.

(6) **Permit revocation.** A permit issued for a demonstration is revocable only upon a ground for which an application therefor would be subject to denial under [paragraphs \(g\) \(4\) or \(5\)](#) of this section. Any such revocation, prior to the conduct of the demonstration, shall be in writing and shall be approved by the Regional Director. During the conduct of a demonstration, a permit may be revoked by the ranking U.S. Park Police supervisory official in charge if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. A permit issued for a special event is revocable, at any time, in the reasonable discretion of the Regional Director.

(7) Further information on administering these regulations can be found in policy statements published at [47 FR 24299](#), June 4, 1982, and at [47 FR 24302](#), June 4, 1982. Copies of the policy statements may be obtained from the Regional Director.

(h) **Soliciting.**

(1) The in-person soliciting or demanding of money or funds for donation on Federal park land is

prohibited, unless it occurs as part of a permit issued for a demonstration or special event.

(2) Persons permitted to solicit must not:

(i) Give false or misleading information regarding their purposes or affiliations;

(ii) Give false or misleading information as to whether any item is available without donation.

(i) **Camping.**

(1) Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground. Upon the posting of such limitations in the campground, no person shall camp for a period longer than that specified for the particular campground.

(2) Further information on administering these regulations can be found in policy statements published at [47 FR 24302](#) (June 4, 1982). Copies of the policy statements may be obtained from the Regional Director.

(j)

(1) In Lafayette Park the storage of construction material, tools, lumber, paint, tarps, bedding, luggage, pillows, sleeping bags, food, clothing, literature, papers and all other similar property is prohibited.

(2) Notwithstanding (j)(1) of this section, a person in Lafayette Park may have literature, papers, food, clothing, blankets and a reasonable cover to protect such property, occupying up to three

(3) cubic feet of space, so long as such property is attended at all times while in the Park (the term "attended" is defined as a person being within three (3) feet of his or her property).

(k) **Sales.**

(1) No sales shall be made nor admission fee charged and no article may be exposed for sale without a permit except as noted in the following paragraphs.

(2) No merchandise may be sold during the conduct of special events or demonstrations except for books, newspapers, leaflets, pamphlets, buttons and bumper stickers. A permit is required for the sale or distribution of permitted merchandise when done with the aid of a stand or structure. Such stand or structure may consist of one table per site, which may be no larger than 2 1/2 feet by 8 feet or 4 feet by 4 feet. The dimensions of a sales site may not exceed 6 feet wide by 15 feet long by 6 feet high. With or without a permit, such sale or distribution is prohibited in the following areas:

(i) Lincoln Memorial area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level.

(ii) Jefferson Memorial area enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns.

(iii) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

(iv) The interior of all park buildings, including, but not limited to, those portions of Ford's Theatre administered by the National Park Service.

(v) The White House Park area bounded on the north by H Street, NW; on the south by Constitution

Avenue, NW; on the west by 17th Street, NW; and on the east by 15th Street, NW; except for Lafayette Park, the White House sidewalk (the south Pennsylvania Avenue, NW sidewalk between East and West Executive Avenues) and the Ellipse; *Provided, however*, that the free distribution of literature conducted without the aid of stands or structures, is permitted on East Executive Avenue.

(vi) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway); *Provided, however*, that the free distribution of literature conducted without the aid of stands or structures, is permitted on the Constitution Avenue and Henry Bacon Drive sidewalks adjacent to the Vietnam Veterans Memorial.

(3) Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

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