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# REGULATORY REVIEW

## PRESIDENTIAL CONTROL THROUGH SELECTIVE COMMUNICATION AND INSTITUTIONAL CONFLICT

*David Lazer*

The range and quantity of government activity has grown exponentially over the course of this century. In response, an "institutional Presidency" has developed. Today's President is at the locus of a network of relationships designed to increase his capacity to influence the flow of events.

This paper examines a small sample of those relationships: His relationship with the Office of Information and Regulatory Affairs (OIRA), a division of the Office of Management and Budget (OMB) that reviews regulations. OIRA was one of the key instruments used by the Ronald Reagan and George H.W. Bush Administrations to limit regulation. The operational question of this paper is: What happened to the OIRA-White House relationship when there was a change in party and policy preferences in the White House in 1993? That is, how does a relatively pro-regulatory White House use OIRA?

To answer this question, this paper examines panel data on the policy preferences and social interaction patterns of OIRA members, time series data on the disposition of reviewed regulations, and structured interviews with members of OIRA. Analysis of these data indicates that the review process institutionalizes conflict between the OMB and agencies, resulting in appeals to the President when actors believe that the President will support their views. Thus, the George H.W. Bush and Bill Clinton Administrations economized on their limited ability to monitor the Executive Branch by focusing their attention and political support on members of OIRA with compatible viewpoints.

Section 180.1159 (of the May 23, 1997 version) of the *Federal Register* is revised to read as follows:

> *...Pelargonic acid is exempt from the requirement of a tolerance on tree fruits provided it is used as a blossom thinner only and is in a dilution of 100 gallons of water applied to blooms at a rate not to exceed 4.2 lbs./acre with the maximum number of applications not exceeding two per year (28,364).*

The range and quantity of government activity has grown exponentially over the course of this century. For example, the *Federal Register* averaged a little over 10,000 pages per year in the 1950s and now averages close to 70,000 pages each year. As the above excerpt regarding pelargonic acid highlights, most of this policy is highly technical. From a perusal of the text, it is not clear what President Bill Clinton's position on the rule should have been. This raises a key question: Given that the President should have some influence over the policy produced within the Executive Branch, how can he affect the content of this enormous flow of technical policy?[1] This is particularly problematical because agencies likely have their own policy objectives; thus, the President confronts an informational problem *vis-à-vis* agencies. They may or may not behave as the President wishes; and he has inadequate resources to monitor all agencies all of the time.

This paper proposes that, at a general level, a key condition to presidential influence over the bureaucracy is the inherent conflict among agencies. Thus, while agencies might have preferences that are autonomous from the President's—as principal-agent models assume—these agencies are not in monolithic opposition to the President (*e.g.*, Maranto, 1993). The trick for the President, then, is to take advantage of the divisions within and among agencies. This paper proposes that a key mechanism of control for the President is to *institutionalize competition among agencies in the production of policy*. Specifically, there are two conditions to a "competitive agent" model of control: (1) The involvement of multiple agents with institutionally opposed viewpoints in the production of policy, where (2) the potential loser in that process may appeal to the President if the loser anticipates political support. This competition increases the President's power regardless of his policy orientation.

This paper is an exploratory study of a competitive agent model of control, focusing on the President's control over the production of regulations. Specifically, it finds that the regulatory review process, created by Ronald Reagan in 1981 and modified by Bill Clinton in 1993, creates a competitive process between the anti-regulatory Office of Information and Regulatory Affairs (OIRA), a division of the Office of Management and Budget (OMB), and activist regulatory agencies (such as the Environmental Protection Agency and the Occupational Safety & Health Administration). Presidential influence is gained through the institutionalization of conflict and competition between OIRA and executive agencies, with the President directing attention and support toward individuals with viewpoints compatible with his own.

This paper's methodological approach is to study the impact on OIRA of the change in party in the White House in 1992-93. OIRA was one of the key instruments used by the Reagan and George H.W. Bush Administrations to limit regulation. Its creation marked a significant expansion of executive power, and, despite its association with Republican policies, Bill Clinton retained OIRA and the regulatory review process. The operational question of this paper is: What happened to the OIRA-White House relationship when there was a change in party and policy orientations in the White House in 1993? That is, how does a relatively *pro-regulatory* White House use an agency that was designed to act as a *brake* on regulation?

In order to answer these questions, this paper examines:

1. a unique panel data set on the policy orientations of OIRA members, their communication patterns with the White House, and the political support received from the G.H.W. Bush and Clinton Administrations;
2. structured interviews of members of OIRA; and
3. time series data on the disposition of regulations reviewed by OIRA. The panel contains two rounds: The first round covers the end of the G.H.W. Bush Administration, and the second round covers two years into the Clinton Administration. The time series runs from OIRA's inception in 1981 until 2001.

These data suggest that the Clinton Administration radically redistributed White House attention and political support toward OIRA members with compatible viewpoints. This economized White House attention, while allowing the President to achieve his policy goals.

This paper is divided into four parts. The first briefly discusses the President's informational disadvantage in dealing with the bureaucracy and the process through which the OMB provides him with information. The second describes the data and research design. The third presents the results. And the conclusion considers the broader implications for presidential control.

**"How does the President get the bureaucracy to do his bidding when he is not watching?"**

## THE PRESIDENT'S INFORMATIONAL DISADVANTAGE

Given the vast expanse of government activity, how can the President have any impact on policy with his penlight worth of attention—especially if agencies pursue agendas that run counter to his own? This has been the paradigmatic focus of the principal-agent model of presidential control, where, if the President is unable to overcome his severe informational disadvantage relative to agencies, he will potentially have no control over the bureaucracy (Niskanen, 1971). The key theoretical question asked by the principal-agent model, first articulated in the regulatory context by Mitnick (1975; 1980), is the extent to which, given this informational asymmetry, the principal may shape the incentives presented by the agents (classically, through a contract) to further the principal's interests (*e.g.*, Moe, 1984; McCubbins, Noll & Weingast, 1989; Banks & Weingast, 1992). That is, how does the President get the bureaucracy to do his bidding when he is not watching? This challenge is accentuated by the fact that the President competes with Congress for control of the bureaucracy, thereby increasing the pressure on the President to find mechanisms to control the bureaucracy.

Empirically, the central issue has been the responsiveness of particular agents to the preferences of particular principals. The most prominent research paradigm has been to study the time series of the agency's output and to examine how that output varied as a function of the preferences of particular principals. For example, Wood & Waterman (1993) find that the number of referrals for litigation by the Environmental Protection Agency (EPA) varies over time based on stimuli from various principals: The President, the courts, the relevant House and Senate Committees, and the politically-appointed leadership of the EPA. Landmarks in this literature suggest that the President and other principals are often successful at affecting agency policy (*e.g.*, Moe, 1982, 1985; Wood & Waterman, 1991, 1993, 1994; Ringquist, 1995), where important mechanisms include appointment power and budgetary signals (Carpenter, 1996).

## Competitive Organization of Agents

> Not only did [Franklin] Roosevelt keep his organizations overlapping and divide authority among them, but he also tended to put men of clashing temperaments, outlooks, ideas, in charge of them. Competitive personalities mixed with competing jurisdictions was Roosevelt's formula for putting pressure on himself, for making his subordinates push up to *him* the choices they could not take for themselves. It also made them advertise their punches; their quarrels provided not only heat but *information* (Neustadt, 1960/1990: 132, emphasis added).

The principal-agent paradigm focuses on the impact of a principal on an agent, and sometimes the competition among multiple principals—for example, the President *vs.* Congress—to control an agent (Figure One).[2] As Waterman & Meier (1998) argue, a purely dyadic view of agency removes the critical organizational context. The organizational nexus might, in fact, eliminate the informational asymmetry at the core of principal-agent models: "In those cases where principals do not share the agents' goals, agents would have a clear incentive to leak information to competing principals. The end result would be a breakdown of a pure information asymmetry." It is equally plausible that there might be a competition among *multiple agents*, as the Neustadt excerpt suggests (Figure Two). The problem confronting the principal, then, would be to design an incentive system that takes advantage of this competition, a question that is addressed in the economics literature on agency. Examples include analysis of how a manager may overcome his informational disadvantage by comparing the performance of multiple agents and playing one agent against another (Holmstrom, 1982), and of voters using the "performance" of other states as yardsticks to evaluate incumbents (Besley & Case, 1995).

**FIGURE 1** PRINCIPAL-AGENT RELATIONSHIP

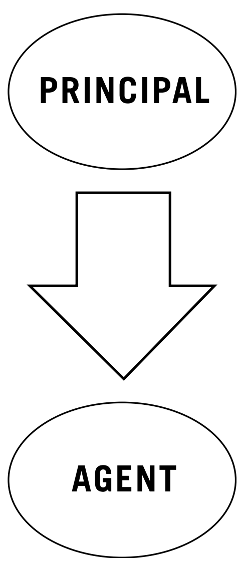
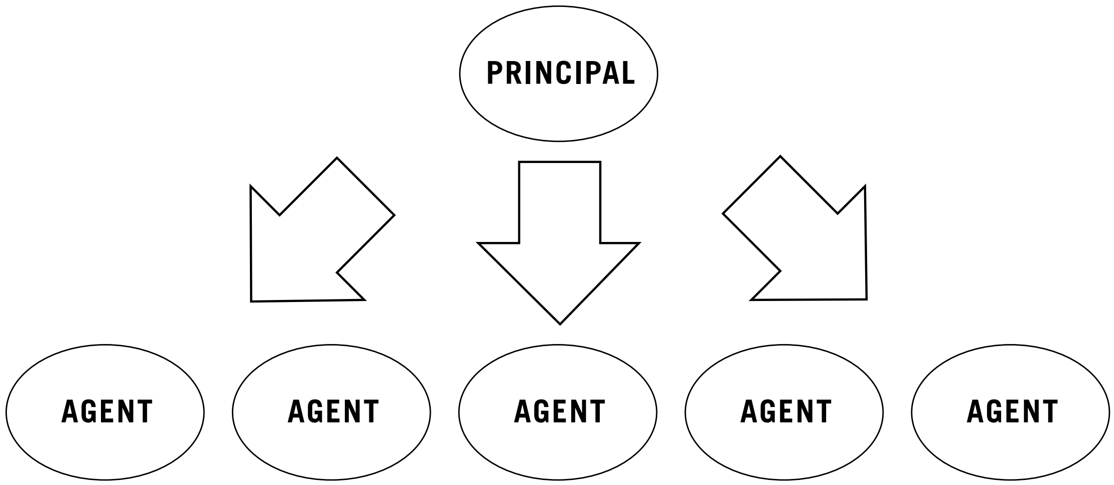


**FIGURE 2** MULTIPLE AGENT PERSPECTIVE




A multiple agent perspective should have special value in the policy setting, because of the public good nature of a public policy. In the classic principal-agent model, principals and agents compete for a private good: Money. The principal is unable to monitor the agent's behavior constantly; therefore, the principal's objective is to design an incentive scheme in which the agent's optimal strategy maximizes the principal's returns. Ultimately, however, principals and agents have *mutually exclusive* objectives. The principal's ideal world is one in which the agent never shirks and receives no income; the agent's ideal world is one in which he always shirks and the principal receives no income.

In the process of policy formation and implementation, principals and agents do not compete for a private good but, rather, for control over policy—a public good in the sense that principals and agents who share the same policy goals can achieve them together. In this case, some agents will have the same ideal world as some principals; for example, *some bureaucrats will share the policy preferences of the President* (Waterman & Meier, 1998).

Franklin Roosevelt, in an *ad hoc* fashion, took advantage of the multiple viewpoints of his subordinates by giving individuals who disagreed with each other shared responsibility for policy. Porter (1980) suggests that there are advantages to *institutionalizing* a process of multiple advocacy within the Executive Branch. He proposes a collegial process of conflict among different points of view regarding major policy initiatives, whereby the President is then informed of the positions that individuals are advocating. Such a process, however, would collapse quickly under the weight of thousands of pages of the *Federal Register* and millions of pages of supporting documents.

Creating and expanding a presidential bureaucracy in response to informational demands can accentuate the President's agency problems, because it multiplies the President's monitoring difficulties (Dickinson, 1997). Indeed, as argued below, the President has a potential agency problem with respect to the OMB. However, an appropriately designed presidential bureaucracy that takes advantage of the conflicts among the various agents will bring to the President's attention precisely those issues that need his attention. Regulatory review is both an example of a broader phenomenon of "competitive agency" and an intrinsically important case. Regulatory review creates competition among multiple agents that allows the President to overcome his informational disadvantages without overwhelming the White House's capacity to handle information. This paper performs a micro-level analysis of OIRA by opening up the black box of the agency and examining how the policy preferences of individual members of OIRA determine their relationship with the White House.

The competitive agent perspective has two key conditions. The first is that agents have policy orientations that are autonomous from the President's. This is consistent with considerable literature on the role of socialization and selection mechanisms in creating enduring and consistent policy orientations within agencies (*e.g.*, Kaufman (1960), Wilson (1989), Ringquist (1995), and Brehm & Gates (1997)). It is this autonomy that creates the President's control problem, which is highlighted by the principal-agent model.

### Proposition One

*The policy orientations of agencies (including OMB) are autonomous from the President's because of "bureaucratic rigidity" and socialization pressures.*

OIRA is truly a bureaucracy. While its Administrator is a political appointee, the rest of the staff is career civil service. Hiring is divorced from politics, and most of the policy staff has advanced degrees (see endnote 4).

Though a bureaucracy, OIRA is also clearly "presidential" (Moe, 1982). Although it has little direct contact with the President, OIRA has almost constant contact with political appointees, the White House, and other members of the Executive Office of the President. Therefore, OIRA is a hard test of Proposition One: The closer bureaucrats are to the President, the more plausible it is that the President will influence their policy orientations. For example, in a repeated set of cross-sections, Aberbach & Rockman (1995) found that senior-level civil servants became systematically more conservative between the Nixon and the G.H.W. Bush Administrations. One possible explanation for this finding is that these individuals became more conservative in response to the Republican domination of the White House during this period. The OMB, because of its institutional and physical proximity to the White House, should be particularly responsive to a change in Presidents.

The second condition to "competitive agency" is the involvement of multiple agents in the production of policy. Agencies fear and revile the OMB because it typically takes a less activist stance. This is certainly true in the budgetary review process, and is also clearly true of the regulatory review process. Furthermore, in creating OIRA and the regulatory review process in 1981, Reagan mandated OIRA's involvement in the production of virtually all significant regulations.

### Proposition Two

*There is a conflict of policy-orientations between OMB and agencies; the regulatory review process institutionalizes the involvement of these opposing policy orientations in producing policy.*

Within casual social settings, individuals learn about one another's orientations through the accidental collisions that constitute daily life (Lazarsfeld & Merton, 1954/1982). Friendship is a "meeting and mating" process: Individuals meet other individuals who are potential friends, and those individuals choose whether to invest further in that relationship (Verbrugge, 1977). Within a political, decision-making context, a "friendship" is determined by mutual, tangible support for policy preferences as well as by the provision of useful information. Specifically, in the competitive agent scenario outlined above, the agents in conflict have the option of appealing to the White House for political support. In the case of such an appeal, the White House, at some expense of time, may evaluate whose side to support. If policy orientations play an important role in determining "friendships," actors who have policy orientations close to the President's should receive the most political support (Proposition Three). Further, such individuals will appeal to the White House relatively frequently (Proposition Four).

### Proposition Three

*Individuals who have policy orientations that are compatible with the President's will receive political support. Therefore, pro-market individuals within OIRA should have received relatively less political support from the Clinton Administration than they did from the G.H.W. Bush Administration.*

### Proposition Four

*Individuals learn to anticipate when they will receive political support and will appeal to the White House only when they anticipate political support. Pro-market individuals within OIRA should, therefore, have communicated relatively less with the White House during the Clinton Administration than they did during the G.H.W. Bush Administration.*

One also would expect Clinton to have changed the review process. There was some speculation that, as a Democrat, he would eliminate the review process; however, such a step would not be in the institutional interest of any president. There are a few steps one would expect a pro-regulatory president to take to weaken the review process *without eliminating the signals regarding regulations that he would want to receive.* First, one would expect the criteria laid out in the Clinton Executive Order governing review to be less strict than the criteria in the Reagan-G.H.W. Bush Executive Order. Second, one would expect the extent to which OIRA was able to act autonomously from the White House to be reduced. Third, one would expect the scope of regulatory review to be reduced on the margins, so that only important rules would be routed through OIRA. Finally, one would expect OIRA to receive less political support to reject regulations from the Clinton Administration than from the Reagan and G.H.W. Bush Administrations.

### Proposition Five

*In the Clinton Administration, the prescribed decisional criteria for approving a regulation will be less strict.*

### Proposition Six

*In the Clinton Administration, the White House will give OIRA less autonomy in its negotiations with agencies over regulations*

### Proposition Seven

*OIRA will review fewer rules in the Clinton Administration than in the preceding Republican Administrations.*

### Proposition Eight

*OIRA will reject fewer rules in the Clinton Administration than in the preceding Republican Administrations.*

If the above propositions hold, the President should be able to exercise substantial influence over policy making—even when he has potential informational problems. The appeals process summarized above can serve as a warning to the President that policies not to his liking may be implemented.[3] Regulatory review embodies such a process of "competitive agency."

## The Process of Regulatory Review

During the 1970s, the number of regulations produced in the Executive Branch increased exponentially. Without notable success, Presidents Nixon, Ford, and Carter each attempted some *ad hoc* measures to gain some control over this flow of policy. Following his election in 1980, Reagan signed Executive Order (E.O.) 12291, placing the responsibility of reviewing all significant regulations in OIRA and requiring, where statute allowed, the application of benefit-cost analysis to regulations.[4]

In practice, the review process has meant that OMB is more sensitive to the costs that programs impose (either regulatory or budgetary) than agencies are (as per Proposition Two). As one long-time member of OIRA stated:

> I think that we're not in the business *per se* of putting a lot of rules on the books....[W]e are interested in making sure as we implement the programs we do it...no more than the statute requires, because if you go [beyond] the statute, you usually impose an additional burden, so that's costly; it's got to show up somewhere. So we are more in the role of being skeptics. The agency's more in the role of promoting its programs. It gets money from the Congress to promote those programs, to put those programs in place, and get regulations in place to implement those programs. And that's really what they should be about. So there's...tension between what they see as their objective function, and what we see as our objective function.

OIRA was a cornerstone in the Republican presidents' efforts to control the Executive Branch in the 1980s. The Reagan Administration used OIRA successfully to cut back on regulatory initiatives by federal agencies. Unsurprisingly, OIRA served as a lightning rod for critics of the Reagan and G.H.W. Bush Administrations' regulatory policies.[5] The 1990 Senate testimony of one consumer advocate captures the tone and substance of these criticisms:

> Over the last decade, OMB has injected political ideology into the regulatory process, displacing the discretionary authority of expert Federal agencies....OMB exercises cradle-to-grave control over the administrative process. OMB has used its power repeatedly to cut back on health, job safety, environmental, consumer, and civil rights regulation, by weakening regulations, delaying their issuance, and in some cases, forbidding an agency to take action.[6]

As discussed below, Clinton replaced E.O. 12291 and the related E.O. 12498 with E.O. 12866. The general structure of regulatory review was maintained, however. The OMB must review all significant agency initiatives. If a desk officer at OMB objects to agency initiatives and encounters agency resistance to modifying proposals, he or she will include the branch chief and perhaps the OIRA Administrator in the negotiation. If the conflict is not resolved at this point, both the agency and OMB will communicate with the White House, attempting to mobilize sympathetic individuals there to advocate their position. Ultimately, the conflict will be resolved in the White House; this process can but rarely does include the President's decisive involvement (unlike in the cases that Neustadt and Porter examine above). In addition to this hierarchical and conflictual appellate process in which issues bubble up from the agencies, the White House will, at times, take the policy initiative and seek out information, either from the OMB or the agencies.

Figure Three summarizes the interactions among the OMB, government agencies, and the President.

**FIGURE 3** THE INTERACTIONS AMONG THE PRESIDENT, OMB, AND AGENCIES

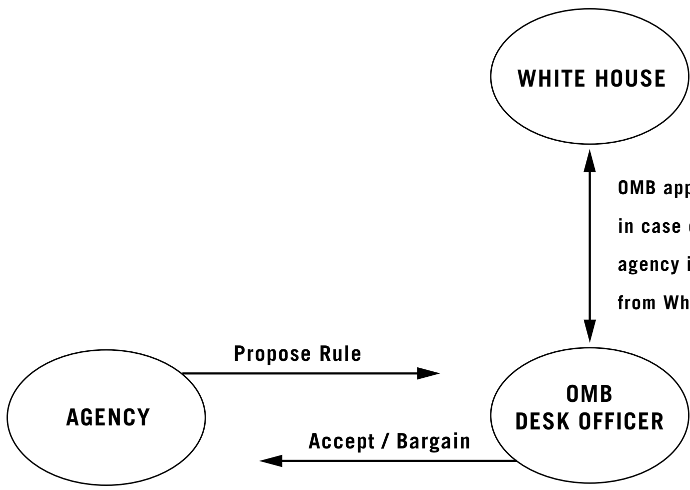



Figure Three also highlights a limitation on the regulatory review process: The review process provides a conduit of useful information to the President regarding agency proposals, allowing the President to modify or stop agency initiatives that run counter to his priorities. The review process does not offer the President a mechanism to spur new agency initiatives. Regulatory review is, therefore, an inherently conservative instrument of control for the President.

## DATA AND RESEARCH DESIGN

Testing the above propositions requires data on the impact on OIRA members of the change in presidential administrations from G.H.W. Bush to Clinton. The propositions suggest that political support and communication with the White House should be mediated by the policy orientations of particular members. Members of OIRA were, therefore, surveyed and interviewed regarding their policy orientations, their communication patterns, and political support in the G.H.W. Bush and Clinton Administrations. In addition, data on the disposition of reviewed regulations were analyzed. The survey, interview, and disposition data are described below.

### The Survey Data

The sample population is the entire substantive policy staff of OIRA. The first questionnaire was distributed to OIRA members in early January 1993. While confidential, the returned questionnaires were not anonymous, because of the social-interaction sections. Thirty-three responses (77%) were returned, out of a population of 43. A response was not received from the Acting Administrator (the head of the agency).

Twenty-four individuals (72%) of the original respondents were still employed at OIRA when the second questionnaire was distributed in February 1995. Of those, 19 (79%) responded to the second questionnaire. Seven questionnaires were also received from the nine previous respondents who had left OIRA before the second round.[7] Those individuals were asked the policy-oriented and political-support questions mentioned above, but they were not given the sociometric questions. They were also given a closed-ended question as to why they left OIRA. Only three of the nine respondents who left OIRA were replaced, and responses from the successors to these individuals were also received.[8] A response was not received from the new Administrator.

The sample, while small, offers particular leverage in analyzing the President's impact on rule-making, because of OIRA's pivotal role in this process. Cumulatively, the questionnaire respondents are involved in *essentially all significant regulatory policy areas*. Therefore, "generalizability" is less of a concern in studying this group than in looking at any one particular regulatory agency.

The questionnaire distributed to OIRA in January 1993 contained 16 substantive policy items, 15 of which were Likert scales. All but one of the substantive questions had a salience item following it up. The questionnaire distributed in February 1995 repeated 13 of these items. The questions were partly based on the author's experiences as a participant-observer for eight months in 1989-90, and partly on interviews he conducted in October 1992 (see next page). Item One is typical:

> 1) On a scale of 1 to 7, where 1 represents strongly agree and 7 represents strongly disagree, where would you place yourself with respect to the following statement?:
>
> "In many areas of significant risk to the individual the government knows far more about the risks than the average individual knows."

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| strongly agree | agree | weakly agree | neutral | weakly disagree | disagree | strongly disagree |

From this set of substantive questions, the author constructed a "market-orientation" scale, which measures an individual's support of government intervention in the economy. This was the first factor extracted in a factor analysis of these items.[9] Individuals with high scores believe that the market works relatively efficiently, and they generally oppose government intervention in the economy.

The questionnaire also contained an item pertaining to the level of political support individuals received from the White House. Specifically, the questionnaire asked how often individuals anticipated White House support in a conflict with an agency:

> In the Bush [or Clinton] Administration, when you have had a potential strong disagreement with an agency, on average, how often would you have expected your position to be supported if the disagreement were elevated to the highest levels?:

| | |
|---|---|
| always | |
| almost always | |
| usually | |
| about half the time | |
| usually not | |
| almost never | |
| never | |
| this scenario does not apply to me | |

Finally, the instrument also measured how often each respondent spoke with other individuals. Each respondent received a list of all OIRA staff members and was asked how often he or she spoke to each individual, on a scale from "never" to "daily," where each point increase in the scale corresponded to a doubling of interactions from the previous point.

> On average, do you have substantive policy discussions with each of the following individuals daily, a couple times a week, once a week, every couple of weeks, every month, every couple of months, a couple times a year, or never?
>
> [Name of branch 1]
>
> John Doe
>
> | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
> |---|---|---|---|---|---|---|---|
> | daily | a couple times a week | once a week | every couple of weeks | every month | every couple of months | a couple times a year | never |
>
> ...Etc.

In the analyses below, the sociometric responses are reordered so that 8 corresponds to the highest frequency of interactions (daily) and 1 corresponds to the lowest frequency of interactions (never).

The study also asked individuals how often they spoke with non-OIRA members within the OMB, non-OMB members in the Executive Office of the President, and members of other agencies.

The final section of the questionnaire asked about individual specific variables, such as age, length of tenure at OIRA, and highest educational degree achieved.

### Interview Data

In addition to analyzing the questionnaire data, the author conducted 13 interviews in October 1992 and an additional 8 interviews in June 1996. These interviews included at least one member of every OIRA branch (there were six branches in 1992 and five in 1996) and at least two individuals at every level of the OIRA hierarchy (desk officer, assistant branch chief, and branch chief), plus the Administrator.

### Time Series Data on Disposition of Regulations

During the Reagan and G.H.W. Bush years, the annual *Regulatory Program of the United States Government* published data pertaining to the quantity and disposition of reviewed regulations. Those data were not published during the Clinton Administration; OIRA has continued to tabulate these data, and they are available on its website.

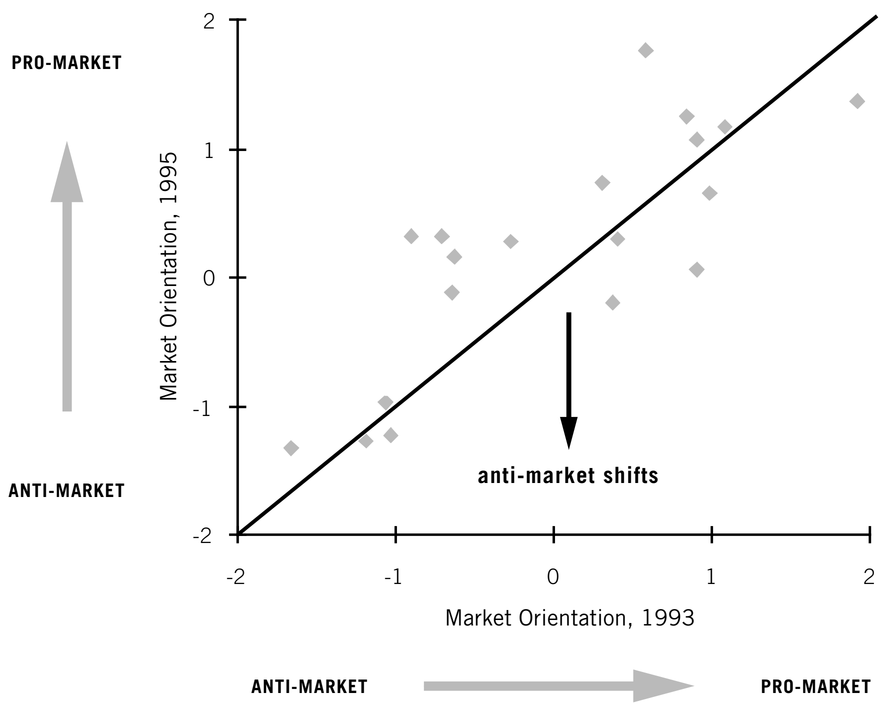
## RESULTS

The thesis of this paper is that a key mechanism of presidential control is the allocation of the President's attention and support among competing agents. The method is to examine whether this allocation differed between two presidents with different policy preferences: Namely, G.H.W. Bush and Clinton. This section presents five findings. First, members of OIRA have enduring and autonomous policy orientations. Second, OIRA and agencies have systematically different policy orientations. Third, the Clinton White House offered more political support to members of OIRA with relatively activist views. Fourth, the Clinton White House communicated more with members of OIRA with relatively activist views. Fifth, this redistribution of attention and support matches a shift in the disposition of the regulations reviewed by OIRA.

### Stability of Policy Orientation of Members of OIRA

Do members of OIRA have stable policy preferences? Figure Four is a scatterplot of the scores of repeat respondents on the market-orientation scale. Constructing this scatterplot, only data provided by people who remained at OIRA between 1993 and 1995 was used. Included in the scatterplot is a 45° line that plots the "expected relationship" had attitudes remained perfectly stable. If individuals shifted toward less pro-market positions, they appear underneath the line; if they shifted toward a more pro-market position, they appear above the line.

**FIGURE 4** MARKET ORIENTATION IN 1995
PLOTTED AGAINST MARKET ORIENTATION IN 1993




The scatterplot does *not* show any pronounced shift away from pro-market positions. In fact, there are more cases in which individuals shifted toward more pro-market positions than vice versa. Table One presents a regression of 1995 market orientation on 1993 market orientation.

**TABLE 1** REGRESSION OF 1995 MARKET ORIENTATION ON 1993 MARKET ORIENTATION

| CONSTANT (SE) | MARKET ORIENTATION, 1993 (SE) |
|---|---|
| 0.22<br>(0.13) | 0.76****<br>(0.13) |
| N=19<br>R2 = .66<br>**** p<.0001, one-tailed test | |

Table One confirms the visual inspection of Figure Four; the constant term, which would capture a shift, is estimated to be positive.[10] That is, on average, individuals shifted to more pro-market positions. While this result is not quite statistically significant, it suggests that, at the very least, it was unlikely that individuals shifted toward *less* pro-market positions. That is, the policy orientations of OIRA members, so institutionally close to the President's, were independent of the President's policy orientation (Proposition 1).

Findings elsewhere examine the factors underlying and delimiting OIRA's autonomy from the President (Lazer, 1996). The key factors underlying this autonomy are: (1) A recruitment procedure divorced from politics; (2) a powerful socialization process to which new members of OIRA are exposed; and (3) low turnover among senior members of OIRA, who are then in a position to preserve organizational values through their disproportionate impact on recruitment and socialization.

The one factor that undermines OIRA's long-run autonomy is the fact that younger members of OIRA who do not receive political support from the White House are more likely to leave, and, as discussed below, political support is determined in part by the compatibility of policy orientation with the incumbent administration. A political party's extended domination of the White House might therefore change the average orientations of OIRA members.[11] However, in the short- and medium-runs, a new administration faces the potential problem of working with an OIRA staff with incompatible policy orientations, raising the principal-agent issues noted above.[12]

### Political Support and Communication

Based on Propositions Three and Four, pro-market individuals at OIRA should have received relatively more political support in the G.H.W. Bush Administration than in the Clinton Administration. Figure Five presents a scatterplot and associated regression lines of the relationship between political support and market orientation in the G.H.W. Bush Administration (diamonds) and in the Clinton Administration (squares). Figure Six plots the relationship between communication with the White House and market orientation.

**FIGURE 5** POLITICAL SUPPORT FROM WHITE HOUSE

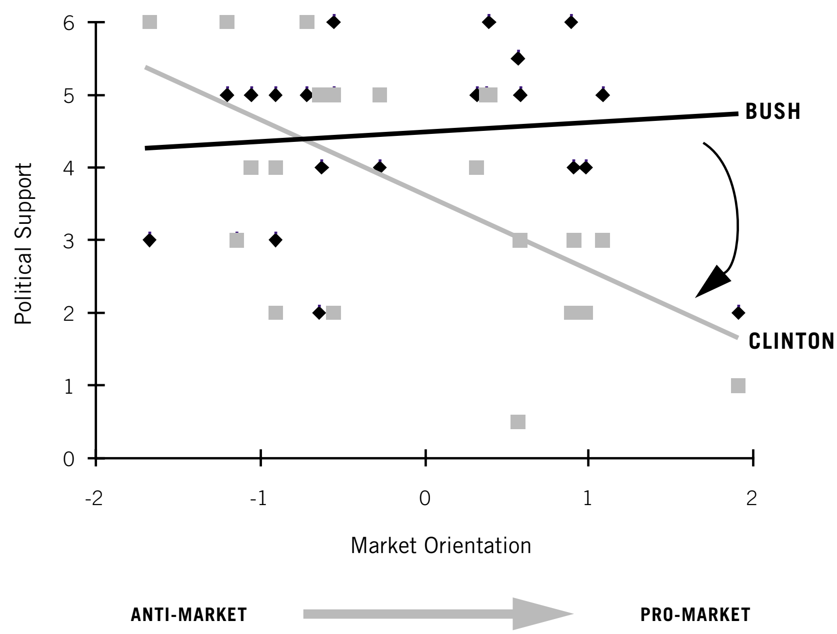
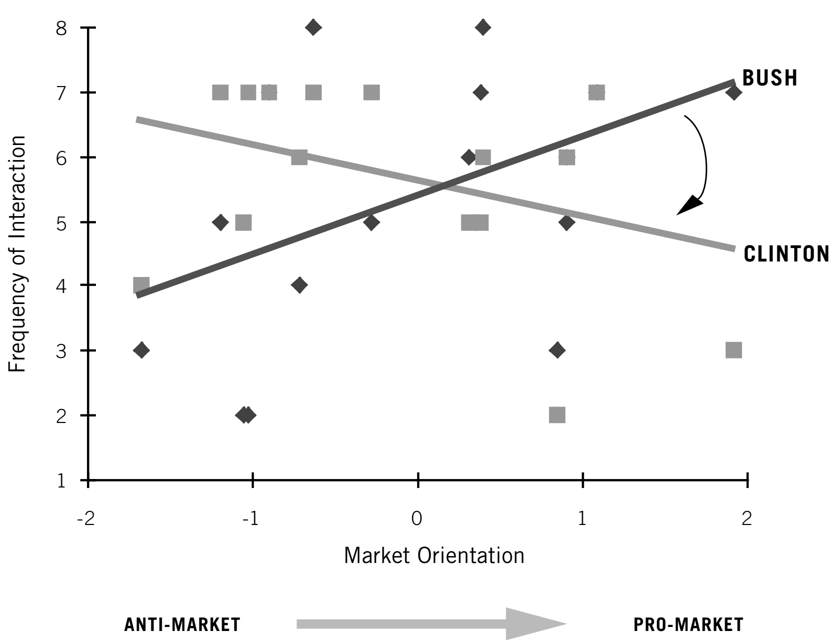



**FIGURE 6** OMB COMMUNICATION WITH WHITE HOUSE




Figures Five and Six illustrate a "pivoting effect" in which the relationship between market orientation and political support from and communication with the White House was positive in the G.H.W. Bush Administration and negative in the Clinton Administration. For example, in the G.H.W. Bush Administration, an individual with a market orientation of 2 would have an expected level of interaction with the rest of the Executive Office of the President (EOP) eight times that of an individual with a market orientation of -2. In the Clinton Administration, that relationship is reversed: The individual with a market orientation of -2 has four times the expected level of interactions with the EOP than the individual with a market orientation of 2.

Table Two presents statistical analyses of the impact of market orientation on the change in political support from and communication with the White House.

**TABLE 2** THE IMPACT OF MARKET ORIENTATION ON POLITICAL SUPPORT FROM AND COMMUNICATION WITH THE WHITE HOUSE

| DEPENDENT VARIABLE | CONSTANT (SE) | MARKET ORIENTATION (SE) | N | $R^2$ |
|---|---|---|---|---|
| Change in political support | -0.84* (0.39) | -1.16** (0.44) | 22 | .29 |
| Change in communication with EOP | 0.24 (0.44) | -1.45** (0.48) | 16 | .46 |

* p<.05, two-tailed test
** p<.02, two-tailed test

Because of the small sample size, standard errors were estimated with MacKinnon-White (1985) estimator.

The statistical analysis strongly supports Propositions Three and Four: As the negative constant term indicates, political support for OIRA declined in general, and individuals who were relatively pro-market experienced a great drop-off in political support from ($p<.02$) and communication with ($p<.01$) the White House. The estimate for the coefficient for market orientation of -1.16 suggests that the most pro-market individuals in the sample (with scores of close to 2) had an expected drop-off in political support of more than 3 points, *e.g.*, from “almost always” to “usually not.” These individuals may be compared to individuals who were in the middle of the scale (with scores of 0), who had an expected drop-off of political support of just 1 point. The change in communication patterns is just as dramatic. For example, individuals with scores of 1 on the market-orientation scale had their expected interactions with the EOP drop by 57% ($= 1 - 2^{-1.21}$). Conversely, individuals with scores of -1 had an expected increase in their interactions with the EOP to over 3 ($2^{1.69} = 3.22$) times their original level.

The interview data corroborates this pattern. In the author’s discussions with members of OIRA, it was clear that levels of support from the Clinton Administration were closely related to market orientation. OIRA members who were relatively less market-oriented generally stated that they had “influence,” “power,” and “impact.” Contrast this to a pro-market individual who stated: “[A downside to the job is] the very political environment and, as a result, the influence of good analysis on decisions is limited.” More generally, interviewees indicated that, while the Republican Administrations were sensitive to business constituents (and thus the cost of regulations), Clinton was more sensitive to labor, environmental, and consumer interests. As one interviewee said:

> If there’s a common theme, it’s that the traditional Democratic constituencies, despite Clinton as a New Democrat, get paid attention to....*Not in terms of what we do in our*

*analysis*, but in terms of issues that get raised to the political level, how they get resolved [emphasis added].

Thus, the Clinton Administration had systematically different criteria than the Reagan and G.H.W. Bush Administrations, but OIRA members continued to do their analysis as they had before. The general consensus at OIRA was that, philosophically, the Clinton Administration was not unsympathetic to market-oriented solutions; politics, however, often points in other directions. As another member of OIRA observed:

> Generally, overall, we are told to be pro-market. That is the position of the Administration. And in some areas of regulatory reform where people work there is no disagreement between being pro-market and [supporting] the Administration. But in other areas, particularly health, safety, and environment, there can be a clash, because of interest groups: The environmentalists and the labor unions. And there we encounter a little more difficulty in accomplishing regulatory reform because it goes directly up against the key interest groups that support this Administration that did not to the same degree the previous Administration.

This political and policy shift is also reflected in political appointments to agencies, where Clinton appointees were relatively activist. This, in turn, affected the agency output. One interviewee's statement reflects the predominant sentiment at OIRA:

> The changes in proposed regulations out of agencies reflect who the Administration has put in charge of programs. They have hired a lot of consumer advocates. So the policies that are coming out of the agencies are a reflection of that.

The net result, when one considers the impact of E.O. 12866 and the political criteria that the Clinton Administration applied, is that, as one interviewee noted of the Clinton Administration, "They're more willing to regulate." The change in the political calculus is then reflected in the network of communications connecting the White House, OMB, and agencies. One desk officer stated:

> It's embarrassing to raise something up and to get knocked down....So people specifically think about that question, and try to anticipate whether they're going to get support or not. And if you don't think you are, you don't waste the person's time a lot of the times.

One observer at OIRA suggested that there was a systematic shift of attention toward the relatively activist agencies:

> The Quayle council, the vice president's staff, wanted to know about economic regs. They would deal directly with the staff [at OIRA]. There's no Quayle council, the staff over there don't care about environmental regs. or if they do, they go straight to the agency, they didn't go to us. So it was partly an institutional pattern change: *[Now] the west wing staff, if they want to talk about regs., go straight to the agency* [emphasis added].

Communication with the White House is thus, in part, "demand driven." The White House actively seeks information, and OIRA, in turn, actively seeks the answer.[13]

The regulatory review process involves multiple institutional players in producing regulations: The regulatory agency and OIRA. This provides the White House with a menu of choice of policy options. The evidence above suggests that the White House systematically communicates more with and offers greater political support to individuals with relatively compatible policy orientations.

### Disposition of Reviewed Regulations

*E.O. 12291* vs. *E.O. 12866: Changes in Decisional Criteria*

Both Executive Orders mandate that agencies pay attention to the benefits and costs of regulation. Both require data in support of regulation and specify that OIRA must review major regulations. However, where E.O. 12291 required that "regulatory action shall not be undertaken unless the potential benefits to society for the regulation *outweigh* the potential costs to society," E.O. 12866 mandates that "each agency assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation *justify* its costs" (in both cases, emphasis added).

These two clauses highlight two notable differences between E.O.s 12291 and 12866. First, the "outweigh" criterion is a clearer, and more stringent, test of a regulation than a "justify" criterion. As one interviewee stated:

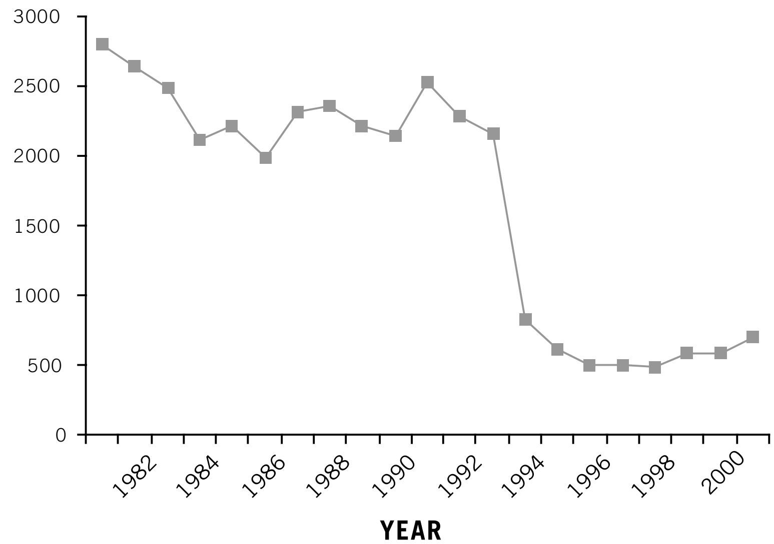
> The decisional criteria are different under 12866. It's benefits justify costs, as opposed to benefits outweigh costs. And that's a major difference....In a justify scenario, the costs could outweigh the benefits by a factor of 10 before political reasons [intervene]...and we would go ahead with the rule. In an outweigh scenario, that presumably wouldn't happen. So that also increases the hand of the agencies, who are generally representing the intended beneficiaries of the rule more than we are.

The second significant difference is E.O. 12866's specification that regulatory impact analyses look at costs and benefits that may not easily be quantified. As one informant stated, this reflects "less emphasis on rigid quantitative analysis on the course of regulatory review." Notably, interviewees maintained that the changes in prescribed decisional criteria did not change their analytically driven conclusions.

*E.O. 12291* vs. *E.O. 12866: Procedural Changes*

E.O. 12866 contains two important procedural changes from E.O. 12291. First, whereas 12291 did not specify a timetable for OIRA to review regulations, E.O. 12866 states that OIRA must complete its review within 90 days. As one interviewee stated, this "put[s] some pressure on us." Put in the terms of this paper, the timetable provided OIRA less autonomy from the White House in its negotiations with agencies. Second, E.O. 12866 restricted OIRA's review to "significant regulatory actions," whereas under E.O. 12291, all rules were routed through OIRA.[14] Figure Eleven plots the number of regulations reviewed by OIRA between 1981 and 2001.[15]

**FIGURE 7** NUMBER OF OIRA REVIEWS, 1981-2001




As Figure Seven highlights, the number of regulations seen by OIRA had a precipitous drop of more than 70%. While this greatly overstates the impact on OIRA (it still reviewed the most important rules), it does, as one informant noted reflect "more trust of agency actions under the Clinton Administration." From the theoretical perspective of this paper, the Clinton Administration cut OIRA out of the loop for minor regulations because agencies had policy orientations that were relatively closer to those of the Administration than was the case in the G.H.W. Bush and Reagan Administrations. Therefore, eliminating regulatory review reduced OIRA's informational and time demands on the President, without a great loss in policy terms for the President.

### The Disappearance of Returned and Suspended Regulations

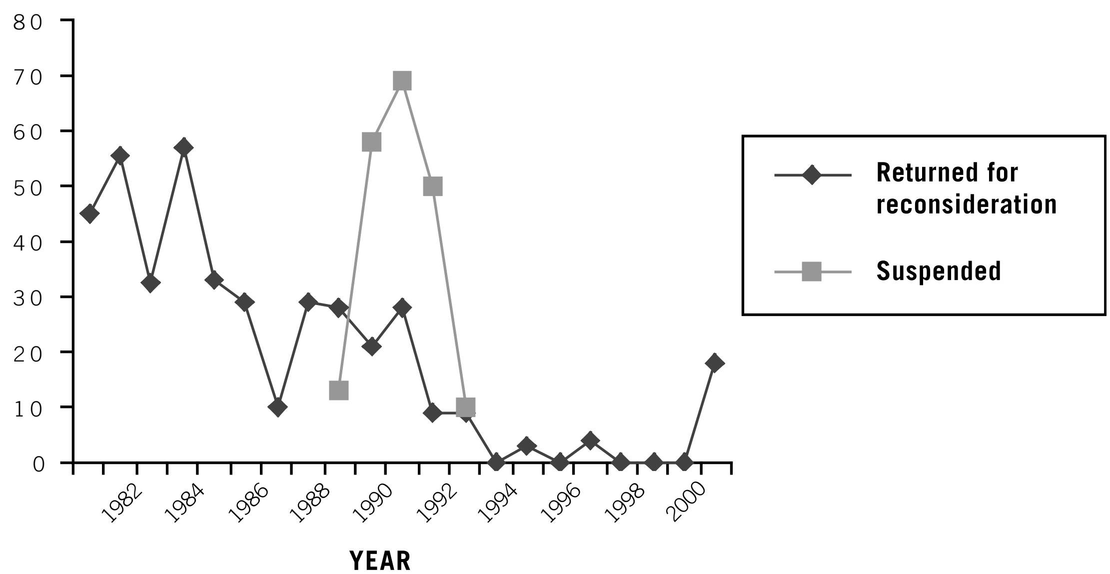
The analysis above has established that the Clinton Administration reduced the scope of regulatory review and advocated somewhat less stringent benefit-cost criteria for regulations. Further, the most market-oriented members of OIRA reported drastically less attention and support from the White House. How has this been reflected in the disposition of reviewed regulations? An analysis of the disposition of reviewed regulations indicates that Clinton's OIRA was far less likely to confront the agencies whose regulations it reviewed.

Reviewed regulations may be disposed of in five ways: Approved without change, to be consistent with the Executive Order (E.O. 12291 in the Reagan/G.H.W. Bush Administration, and E.O. 12866 in the Clinton Administration); approved consistent with change; withdrawn by agency; review suspended; or returned for reconsideration.

Because the number of regulations reviewed by OIRA dropped abruptly, the number of regulations disposed of in each of these categories also substantially decreased.[16] However, the magnitude of the decrease in each of these categories varied greatly.

Returned and suspended regulations are crude measures of how often OIRA successfully rejected agency proposals. Returns are OIRA's most severe rejection of a regulation; essentially, a return indicates that OIRA and the agency could not reach a mutually acceptable accommodation and that OIRA had enough political support to tell the agency to start over. For a period in the G.H.W. Bush Administration, a new category of rule disposition was created: The "suspended rule." OIRA suspended reviews when it had requested that an agency make changes to a proposed regulation but found that the agency was taking too long to process the request.[17] Presumably, many of the suspended regulations included regulations that would have eventually been returned. Figure Eight plots these two categories of rejection from OIRA's inception in 1981 until 2001.

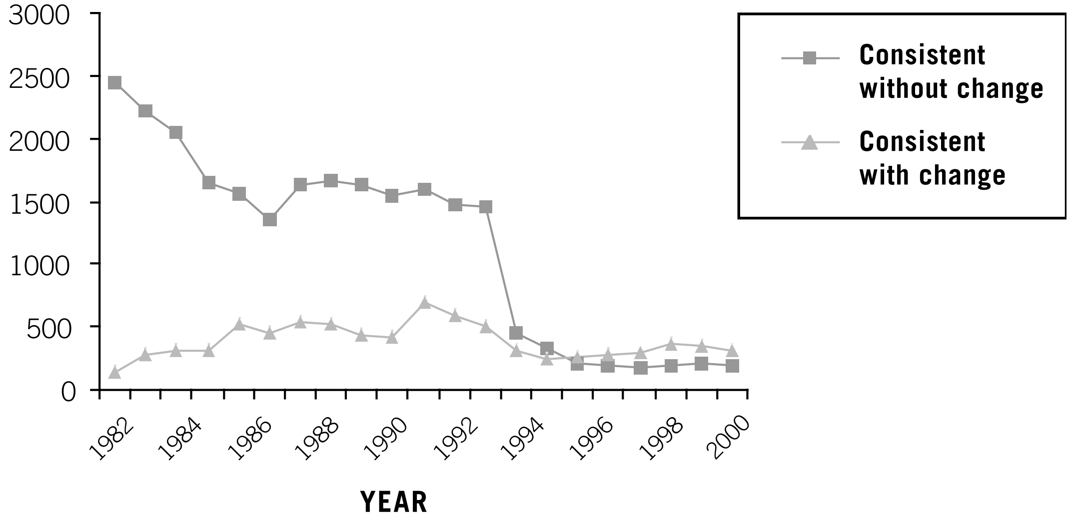
**FIGURE 8** REJECTED REGULATIONS




As Figure Eight illustrates, there was a virtual disappearance of returns and suspensions in the Clinton Administration. The average number of returns per year under Republican Administrations was 31.4; in the Clinton Administration it was 1.[18] The average number of suspended reviews in the Republican Administrations was 47.5; in the Clinton Administration it was 0. Thus, while the number of rules reviewed by OIRA dropped by approximately 70%, the number of rules returned dropped 97%, and the number of rules suspended dropped 100%.

Regulations approved consistent with change suggest that OIRA and an agency have reached some accommodation. Figure Nine plots the number of regulations approved consistent with change, as well as those found consistent with no change.

**FIGURE 9** DISPOSITION OF RULES: CHANGE *VS.* NO CHANGE




The average number of rules approved consistent with change dropped from 432.8 to 300. The number of rules approved consistent without change plummeted from 1735 to 247.

These raw numbers suggest that the Clinton Administration used OIRA quite differently from the preceding Administrations. The Clinton White House was far less inclined to "club" agencies with regulatory review, as seen in the disappearance of returned and suspended regulations. It was willing, however, to push for greater accommodation between OIRA and agencies where compromise was possible. Thus, a far greater proportion of regulations reviewed in the Clinton Administration was approved consistent with change (42%) than in the preceding Republican Administrations (18%). Those data are consistent with the analysis above, which suggests that those members of OIRA least inclined to compromise with agencies were the biggest losers in the Clinton Administration.

## Bush II

A contemporary observer might now ask what has happened with regulatory review in the new Republican Administration? There are only two years of data, but some preliminary observations are worth emphasizing.[19] First, President George W. Bush has retained E.O. 12866. Of course, how the nebulous dicta in E.O. 12866 are implemented depends on who is implementing them. The new OIRA Administrator, John Graham, said that the Administration's position is that E.O. 12866, "though not always enforced in the 1990s, is based on sound principles and procedures."[20] The numbers in Figure Eight support the proposition that the "enforcement" of these principles has changed substantially; the number of returned rules in the first year of the G.W. Bush Administration, *18*, exceeded the total number of rules returned in the two Clinton Administrations. As Graham stated, "We have sent clear signals to agencies that we care about regulatory analysis, *quality* regulatory analysis. We are using both the carrot and the stick. The carrot we have offered is more deferential OMB review of proposals that agencies have voluntarily subjected to independent peer review....The stick has been a revival of the dreaded 'return letter.'"[21]

OIRA's capacity also has increased in the G.W. Bush Administration. The number of substantive policy staff in OIRA, having fallen into the 30s by the end of the Clinton Administration, is now in the 50s.

Notably, the new personnel include engineers and scientists, bringing skills and knowledge that OIRA has never had in its history.

In the G.W. Bush Administration, OIRA is also pushing for an earlier role in the rule-making process. As Graham implies, part of the objective of the threat of the return letter is to open up the process to OIRA involvement earlier: "Although we must occasionally use our ultimate weapon to be effective—I mean the dreaded 'return letter'—we have found that an increasing number of agencies are becoming more receptive to early discussions with OMB, at least on highly significant rulemakings."[22]

**" Conflict at one level offers leaders at higher levels information regarding possible policy options."**

The new OIRA, in short, is playing the same function that it always has—as a foil for agencies. Unsurprisingly and consistent with the preceding discussion, compared to the Clinton Administration, the G.W. Bush Administration has moved to bolster OIRA's capacity, deepen its involvement in the regulatory process, and supported a more aggressive position by OIRA *vis-à-vis* regulatory agencies.

## CONCLUSION

How then does the President maintain some control over the vast expanse of government activity? This paper suggests that one response has been to institutionalize, in the form of the OMB, a well-informed adversary of agencies. If they anticipate political support from the White House, the relevant members of OIRA request presidential attention when they find an agency proposal unacceptable. The data indicate that OIRA members whose policy preferences differed from those of the Clinton Administration experienced a dramatic decrease in political support and attention compared to the G.H.W. Bush Administration. When the agency action is closer to the President's preferences than to those of the OIRA member, the OIRA member does not appeal to the President. On the other hand, the OIRA member with policy preferences similar to those of the President can press an agency, knowing that there is potential Presidential support. Thus, the President often gets his way, even when he is not watching.

The case of regulatory review points to a broader lesson regarding the design of institutions of control: Conflict at one level offers leaders at higher levels information regarding possible policy options. The puzzle for a political leader, in part, moves from being able to process impossible amounts of information to creating policy processes in which multiple views are represented. A political leader must calibrate that institutionalized conflict in order to provide information just when it is most useful.

## APPENDIX

### TABLE 1

The scale included eight 7-point agree/disagree items (1=strongly agree; 7=strongly disagree). Table 1 summarizes the statements with which respondents were presented and their loadings in the scale:

| STATEMENT | LOADING |
|---|---|
| "The government should play an active role in coordinating the private sector so as to enhance U.S. economic competitiveness (*e.g.*, through tax incentives, and through subsidization of capital to certain industries)." | .68 |
| "An important part of my job is to restrain overzealous bureaucrats." | -.26 |
| "Across activities, most individuals make consistent trade-offs between the benefits and costs of the risks that they do and do not take." | -.59 |
| "In many areas of significant risk to the individual the government knows far more about the risks than the average individual knows." | .73 |
| "Producers/employers/etc. often successfully hide from consumers/employees/etc. the risks that they are taking." | .75 |
| "The federal government is incapable of achieving a great consistency in benefits across programs and regulations and the costs of those programs and regulations." | .47 |
| "It is sometimes desirable for the government to reduce the options available to consumers in order to reduce the difficulty of making a choice. For example, standardization of product sizes can make comparison of competing products easier." | .63 |
| "Excluding cases where there are externalities (*i.e.*, where one person's actions affect another), the government should not require companies to incorporate safety devices into their products, because consumers should be allowed to evaluate whether the increased safety is worth the additional cost." | .80 |

## TABLE A1

On four items, respondents were presented with polar positions in which one position was represented by a 1 and the other position represented by a 7. Table A2 summarizes these items and their loading in the scale.

| A "1" REPRESENTS | A "7" REPRESENTS | LOADING |
|---|---|---|
| "Regulatory policy should seek to protect the environment mainly because in principle it is humanity's responsibility to preserve the environment." | "Regulatory policy should seek to protect the environment in order to maximize the flow of economic benefits from the environment over the long run." | .59 |
| "In areas such as consumer protection and worker safety, the government should inform individuals about the risks that they are taking." | "In areas such as consumer protection and worker safety, it is usually unnecessary and sometimes harmful for the government to inform individuals about the risks that they are taking." | .64 |
| "In evaluating a particular government program or regulation, while it is important to evaluate the overall impact of the program or regulation, it is equally important to consider the distribution of the benefits of the program or regulation. That is, for example, a program or regulation that especially helps individuals who are less well off may be more desirable than a program or regulation which has larger net benefits." | "In evaluating a particular government program or regulation, the only thing to consider are the overall net benefits of that program or regulation." | .76 |
| "The government is effective, or at least potentially effective, at objectively analyzing risks in the environment, workplace, etc." | "The government is incapable of objectively analyzing risks in the environment, workplace, etc." | .31 |

## TABLE A2

The final item had a loading of -.73:

On a scale of 1 to 7, where 1 represents very effective, and 7 represents very ineffective, how effective is the marketplace at providing the information that people need to assess risks?

1 —— 2 —— 3 —— 4 —— 5 —— 6 —— 7

very effective (1) · somewhat effective (4) · very ineffective (7)

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## ENDNOTES

1 Exactly how much control the President should have over agencies is open to debate since the agencies' mandate to regulate is granted by Congress. However, it is clear that the President should have some influence over regulatory policy (Bowers, 1993).

2 See Waterman, Rouse & Wright (1998) and Waterman & Rouse (1999) for compelling illustrations of the multiplicity of principals agents face.

3 As Waterman & Meier (1998) point out, agents can go to a principal who agrees with them if stymied by a principal who disagreed with them. One might hypothesize, then, that OIRA could have secretly gone to the Republican Congress during the Clinton Administration and that the existence of such a body of expertise might prove detrimental to a Democratic President. This is particularly plausible, given that many of the Republicans involved in regulatory policy in the Reagan and G.H.W. Bush Administrations, who would have known the OIRA staff, shifted to Capitol Hill. In reality, there is such a powerful norm about "service to the President" in the OMB that this inconceivable.

4 This responsibility is reflected in the educational background of OIRA staff: For example, as of 1989, out of 40 policy staff, 10 had doctorates (mostly in economics), 20 had master's degrees (mostly MPPs and MPAs), and five had law degrees (GAO, 1989: 11). These numbers did not change significantly during the Clinton Administration.

5 For a comprehensive discussion of OIRA and the ups and downs of regulatory review in the Reagan and G.H.W. Bush Administrations, see Friedman (1995). Also see West & Cooper (1985), Benda & Levine (1988), and Bowers (1993) for a discussion of the constitutional authority of the President to review of regulation. See Pfiffner (1991) and Moe (1985) for a discussion that places the development of regulatory review in the greater context of the "politicization" of the OMB.

6 Sherry Ettleson, Hearings Before the Committee on Governmental Affairs, United States Senate (Feb. 21-22, 1990: 45).

7 An additional four individuals from the original sample of 33 left OIRA after February 1995; responses had been received from all four.

8 Responses were also received from two individuals who had declined to respond to the first questionnaire and from one person who succeeded an individual who did not reply to the first questionnaire.

9 The scales were derived using the factor analysis algorithm in SPSS. The scales for the first round are standardized. All 13 items that were in both rounds were used. The scale accounted for 40% of the variance of the items in the first round. The items in the scale and their loading are in this paper's Appendix.

10 The average score on the market-orientation scale of repeat respondents was 0.00 in the first round and 0.23 in the second. Note that the attitudes of individuals who left OIRA were just as stable as those who remained, and attitudinal stability was unrelated to tenure at OIRA.

11 These findings suggest that divergent turnover, rather than political opportunism, explains shifts of senior level civil servants toward conservatism in the 1970s and '80s (Aberbach & Rockman, 1995). This shift could also be due, in part, to a shift in the general social milieu of policy circles during this period (Aberbach & Rockman label this "value concordance"). Over the last 25 years, Washington policy circles have been marked by a general increase in confidence in the efficiency of markets, which may explain the small shift of individuals toward pro-market positions.

12 Because senior (age > 40) members of OIRA are relatively unlikely to leave until they retire, the short-run and medium-run time frames can be decades: For example, four out of the five branch chiefs at OIRA in 1999 started their tenure during the Reagan/G.H.W. Bush years.

13 See Aberbach & Rockman (1990) for an extended discussion of the shift of communication patterns of the upper echelon of the civil service from 1970 to 1986-87.

14 A significant regulatory action is one that may: "(1) Have an annual effect on the economy of $100m or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations ore recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order" (E.O. 12866).

15 In Figures 7, 8 and 9, data from between the years 1981 are 1989 are from the U.S. Government (1990). 1990 data are from U.S. Government (1991), and 1991 is from U.S. Government (1992). The rest of the data have not been officially published but are available at "www.whitehouse.gov/omb."

16 Unfortunately, it is not practical to derive the disposition of the subset of regulations that would have been reviewed under E.O. 12866 procedures during the Reagan-G.H.W. Bush Administrations. This would have allowed for controls for the disposition of major regulations as compared to minor regulations.

17 This was essentially an administrative innovation on the part of the G.H.W. Bush Administration to "speed up" the time it took to review regulations (a point of contention with the Democratic Congress).

18 The first Clinton year is excluded from these averages, since it was transitional and therefore atypical. For example, there was an upward spike in withdrawals so that agencies could rewrite regulations for the new Administration.

19 The author did not receive permission to repeat data collection on political support, so it will not be possible to replicate the preceding analyses for the G.W. Bush Administration.

20 From Remarks Prepared for Delivery to the National Economists Club, Library of Congress, delivered on 07 March 2002.

21 *Ibid*. Emphasis in written text of speech.

22 Remarks Prepared for a Policy Symposium Organized by North Carolina State University, Research Triangle Park, North Carolina, 03 May 2002.

**DAVID LAZER** is Assistant Professor of Public Policy at the John F. Kennedy School of Government at Harvard University, where he teaches courses on management and executive branch politics. He is also Associate Director of the National Center for Digital Government Research and Practice, and Co-chair of the Cambridge Colloquium on Complexity and Social Networks. Currently, he is completing an edited volume entitled *The Technology of Justice: DNA and the Criminal Justice System* and is launching a National Science Foundation-funded project to study how a web-based system might facilitate the sharing of information about this policy area ("www.dnapolicy.net"). Lazer has extensive interests in how connectedness affects political and social phenomena, including teamwork, interest groups, international governance, and presidential power. He holds a Ph.D. in political science from the University of Michigan.