

Regulatory Review:
Presidential Control through Selective Communication
and Institutionalized Conflict

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The range and quantity of government activity has grown exponentially this century. In response, there has developed an “institutional Presidency”— a network of relationships designed to maximize the President’s capacity to influence the flow of events (Moe 1993, p. 340). This paper examines a small sample of those relationships; namely, the President’s relationship with the Office of Information and Regulatory Affairs (OIRA), one of the key instruments used by the Reagan and Bush administrations to limit regulation. The operational question of this paper is: What happened to the OIRA-White House relationship in 1993 when there was a change in party and policy preferences in the White House? That is, how does a relatively pro-regulatory White House use OIRA?

To answer these questions, 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 OIRA members. 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 view. The Bush and Clinton administrations thus economized on their limited ability to monitor the Executive Branch by focusing their attention and political support on OIRA members with compatible viewpoints.

Section 180.1159 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. (Federal Register, May 23 1997, p. 28, 364).

The range and quantity of government activity has grown exponentially this century. For example, the Federal Register averaged a little over 10,000 pages a year in the 1950's, and now averages close to 70,000 a year. As the above excerpt regarding pelargonic acid highlights, most of this policy is highly technical. It is not clear, from a perusal of the text, what Clinton's position on the rule should be. This raises the 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 Agencies likely have their own policy objectives; thus the President confronts an informational problem vis a vis agencies. They may or may not be behaving as the President wishes, yet the President 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 conflict inherent 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 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 they

anticipate political support. This competition increases the power of the President regardless of the policy orientation of that President.

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 Reagan in 1981, and modified by Clinton in 1993, creates a competition 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 (e.g., EPA, OSHA, etc.). Presidential influence is gained through the institutionalization of conflict and competition between OIRA and executive agencies, as the President directs attention and support toward those individuals who share his viewpoints.

The method the paper takes is to study the impact of the turnover in party in the White House in 1992-93 on OIRA. OIRA was one of the key instruments used by the Reagan/Bush administrations to limit regulation. Its creation marked a significant expansion of executive power, and, despite its association with Republican policies, Clinton retained OIRA and the regulatory review process. The operational question of this paper is: What happened to the OIRA-White House relationship in 1993 when there was a change in party and policy orientations in the White House? That is, how does a *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 and their communication patterns with and political support from the White House in the Bush and Clinton administrations; (2) structured interviews with OIRA members; and (3) time series data on the disposition of regulations reviewed by OIRA. The panel contains two rounds: the first at the conclusion of the Bush administration and the second two years into the Clinton administration. The time series runs from OIRA's inception in 1981 to 1996. These data suggest that the Clinton administration radically redistributed White House attention and political support toward those 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.

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 an agenda that runs counter to his? 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, then he will potentially have no control over the bureaucracy (Niskanen 1971). The key theoretical question asked by the principal-agent model is how should the principal shape the incentives presented the agents (classically via a contract) to further the principal's interests given this informational asymmetry (e.g., McCubbins, Noll, and Weingast 1989; Banks and Weingast 1992)?² 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 is competing with Congress for control of the bureaucracy, increasing the pressure on the President to find mechanisms of control over the bureaucracy.

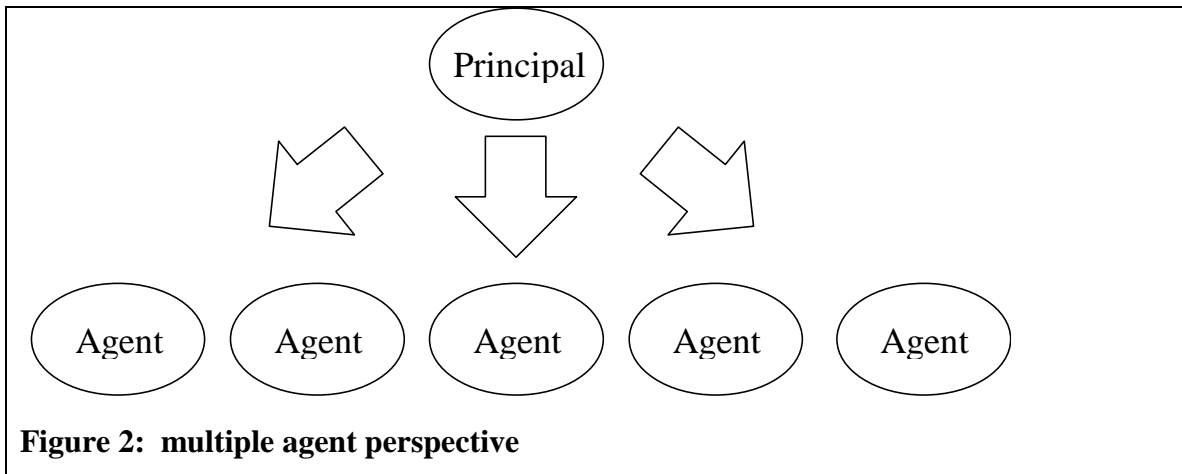
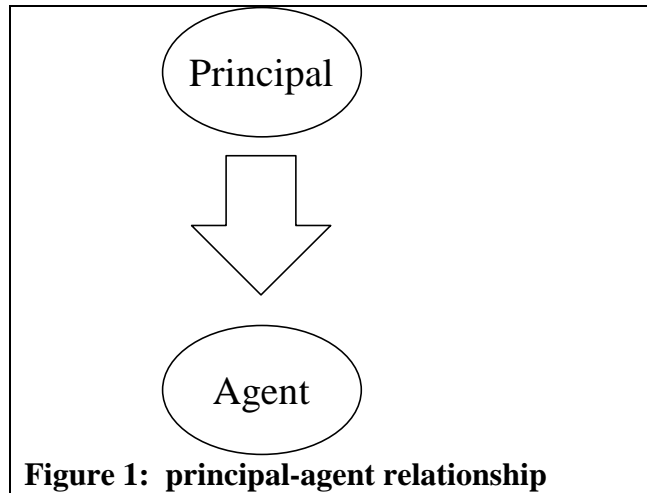
Empirically, the central question has been the responsiveness of particular agents to the preferences of particular principals. The most prominent research paradigm in this vein has been to study the time series of the output of an agency, and to examine how that output varied as a function of the preferences of particular principals. For example, Wood and Waterman (1993) find that the number of referrals for litigation by the EPA varies over time as a function of the 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 is often

successful in influencing agency policy (e.g., Moe 1982, 1985; Wood and Waterman 1991, 1993, 1994; Ringquist 1995), where important mechanisms include appointment power and budgetary signals (Carpenter 1996).

Competitive organization of agents

Not only did 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 1990/1960: p. 132, emphasis mine)

The principal-agent paradigm focuses on the impact of a principal on an agent, and sometimes the competition among multiple principals (e.g., President vs. Congress) to control an agent (figure 1). It is equally plausible that there might be a competition among *multiple agents*, as the Neustadt excerpt suggests (figure 2). The problem confronting the principal would then 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, playing one agent against another (Holmstrom 1982) and of voters using the “performance” of other states as a yardstick to evaluate incumbents (Besley and Case 1995).



A multiple agent perspective should have special value in the policy setting, because of the public nature of a public policy. In the classic principal-agent model, principals and agents are competing for a private good: money. The principal is unable to constantly monitor the agent's behavior, and thus the objective of the principal is to design an incentive scheme where 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 are not competing 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; e.g., *some bureaucrats will share the policy preferences of the President.*

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 in *institutionalizing* a process of multiple advocacy within the executive branch. Porter proposes a collegial process of conflict among different points of view regarding major policy initiatives, where the President is then informed of the positions that individuals are advocating. Such a process, however, would rapidly break down under the weight of the thousands of pages in the Federal Register and its millions of pages of supporting documents.

Creating and expanding a presidential bureaucracy in response to the informational demands potentially accentuates the agency problems of the President, because it multiplies the President's monitoring problem (Dickinson 1997). Indeed, as argued below, the President does have a potential agency problem with respect to the OMB. However, it is argued here that an appropriately designed presidential bureaucracy, by taking advantage of the conflicts among the various agents, will raise 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 a 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 does a micro-level analysis of OIRA-- opening up the black box of the agency-- examining how the policy preferences of individual OIRA members determine their relationship to 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 an enormous 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). This autonomy creates the Presidential control that the principal-agent model highlights.

Proposition 1: The policy orientations of agencies (including OMB) are autonomous from the President, because of "bureaucratic rigidity"/socialization pressures.

OIRA is truly a bureaucracy. While its head is politically appointed, the rest of the staff are career civil service. Hiring is divorced from the political level, and most of the policy staff have advanced graduate degrees (see below).

While clearly a bureaucracy, OIRA is also clearly "Presidential" (Moe 1993). While it has little direct contact with the President, it has near constant contact with political appointees, the White House, and other members of the Executive Office. OIRA is therefore a hard test of proposition 1: the closer bureaucrats are to the President the more plausible that their policy orientations will be swayed by the President. For example, Aberbach and Rockman (1995), in a repeated set of cross-sections, find senior level civil servants became systematically more conservative from the Nixon to the 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, due to 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. The OMB is reviled by agencies because it typically

takes a less activist stance than agencies. This is certainly true in the budgetary review process, and clearly true of the regulatory review process. Further, in creating OIRA and the regulatory review process in 1981, Reagan mandated the involvement of OIRA in the production of virtually all significant regulations.

Proposition 2: 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 and Merton 1954). 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 provision of useful information. Specifically, in the competitive agent scenario outlined above, the agents in conflict have the option to appeal 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," those actors who have policy orientations closest to the President's should receive the most political support (proposition 3). Further, such individuals will appeal to the White House relatively frequently (proposition 4).

Proposition 3: Individuals who have policy orientations that are compatible with the President's will receive political support. Pro-market individuals within OIRA should therefore receive relatively less political support in the Clinton administration than they did in the Bush administration.

Proposition 4: Individuals learn to anticipate when they will receive political support, and appeal to White House only when they anticipate political support. Pro-market individuals within OIRA should therefore communicate relatively less with the White House in the Clinton administration than they did in the Bush administration.

One would also expect Clinton to change the review process, or altogether eliminate it. Such a step, however, 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, the criteria laid out in the Clinton executive order governing review would be less strict than the criteria in the Reagan-Bush executive order. Second, OIRA's ability to act autonomously from the White House would be curtailed. Third, the scope of regulatory review would be reduced, so that only important rules would be routed through OIRA. Finally, OIRA would receive the political support necessary to reject regulations less often in the Clinton administration than in the Reagan and Bush administrations.

Proposition 5: In the Clinton administration, the prescribed decisional criteria for approving a regulation will be less strict.

Proposition 6: In the Clinton administration, OIRA will be given less autonomy from the White House in its negotiations with agencies over regulations.

Proposition 7: OIRA will review fewer rules in the Clinton administration than in the preceding Republican administrations.

Proposition 8: OIRA will reject fewer rules in the Clinton administration than in the preceding Republican administrations.

Should the above propositions hold, the President should be able to exercise substantial influence over policy making even where he has potential informational problems. This is because the appeals process summarized above, in which autonomous, conflicting agents may appeal to the President when they anticipate political support, assures the President some sort of warning signal, in the form of an appeal, when undesirable policies might be implemented. Regulatory review embodies such a process of "competitive agency."

The process of regulatory review

During the 1970's, the quantity of regulation produced in the executive branch increased exponentially. Without notable success, Nixon, Ford, and Carter each attempted some ad hoc measures to gain some control over this flow of policy. In the aftermath of his election in 1980, Reagan signed Executive Order (E.O.) 12291, placing

the responsibility of reviewing all significant regulations in OIRA, requiring, where statute allowed, the application of benefit-cost analysis to regulations.³

In practice, the review process has meant that the OMB is more sensitive to costs that programs impose (either regulatory or budget) than agencies are (as per proposition 2). 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 of the Republican presidents' efforts to control the Executive Branch in the 1980's. The Reagan administration successfully used OIRA to cut back on regulatory initiatives by federal agencies. Unsurprisingly, OIRA served as a lightning rod for critics of the Reagan and Bush administrations' regulatory policies.⁴ 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.⁵

As discussed below, Clinton replaced E.O. 12291 and related E.O. 12498, with 12866. The general structure of regulatory review was maintained, however. All significant initiatives by agencies must be reviewed by the OMB. A desk officer at the OMB, if s/he objects to agency initiatives and encounters agency resistance to modifying its proposal, will bring the branch chief and possibly the OIRA administrator into 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. The conflict will finally be resolved in the White House, potentially (but rarely, unlike the cases that Neustadt and Porter above examine) concluding with the President’s decisive involvement. In addition to this hierarchical and conflictual appellate process, where issues bubble up from the agencies, the White House, at times, will take the policy initiative and seek out information, either from the OMB or the agencies.

Figure 3 summarizes the interactions amongst the OMB, government agencies, and the President.

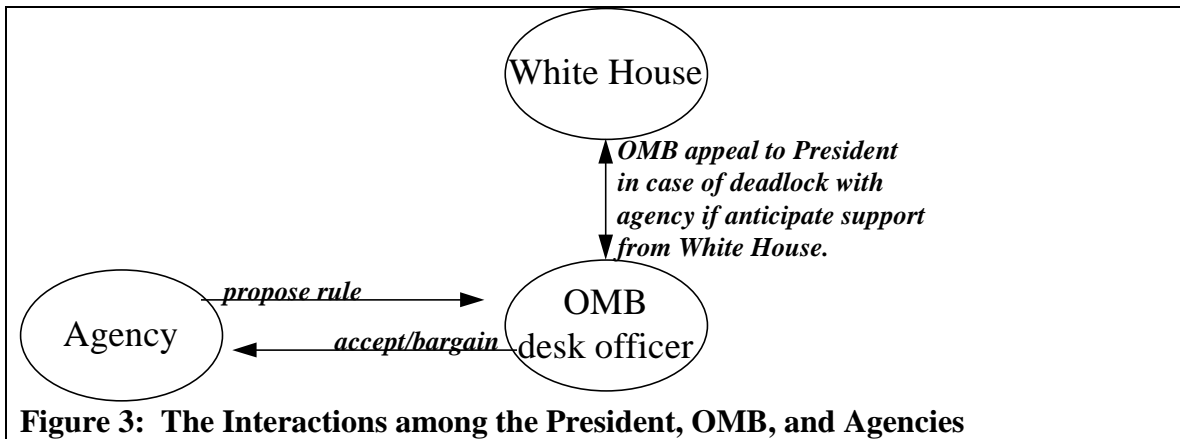


Figure 3 highlights a limitation of the regulatory review process: the review process provides a conduit of useful information to the President regarding agency proposals, allowing the President to modify or stop agency initiatives that run counter to his priorities. The review process does not offer 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 of the change in administrations from Bush to Clinton on OIRA members. 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 Bush and Clinton administrations. In addition, data on the

disposition of reviewed regulations are analyzed. The survey, interview, and disposition data are described in turn 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. Because of the social-interaction sections, returned questionnaires, while confidential, were not anonymous. Thirty-three responses were received out of the population of 43 (77%). A response was not received from the acting administrator.

Twenty-four individuals who had responded to the first round were still present at OIRA by the second round of the questionnaire (72% of the original respondents). Of those, 19 responded to the second round of the questionnaire (79%). Seven questionnaires were also received from the 9 previous respondents who had left OIRA before the second round.⁶ Those individuals were given the policy-oriented and the 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 3 of the 9 respondents who left OIRA were replaced, and responses from the successors to these individuals were also received.⁷ A response was not received from the new administrator.

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

The questionnaire that was 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. The questionnaire that was distributed in February 1995 repeated 13 of these items. The questions were in part based participant observation for eight months in 1989-90, and in part upon interviews the author conducted in October 1992 (see below). Item 1 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	weakly	neutral	weakly	disagree	strongly
agree		agree		disagree		disagree

From this set of substantive questions was 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.)⁸ 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 pertinent to the level of political support individuals received from the White House. Specifically, the questionnaire asked how often individuals anticipated being supported in a conflict with the agencies with which they dealt:

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

Time series data on disposition of regulations

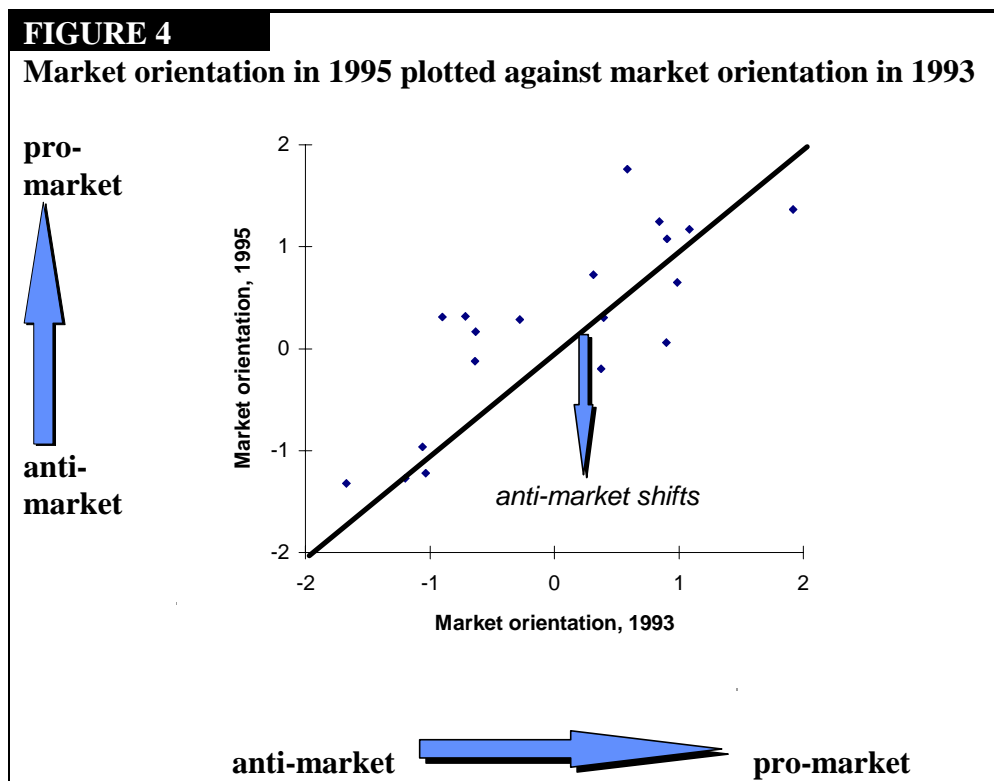
During the Reagan and Bush years, data on quantity and the disposition of reviewed regulations were published in the annual *Regulatory Program of the United States Government*. Those data have not been published during the Clinton administration; OIRA has continued to tabulate this information, and it is available at the OIRA docket library.

Results

The thesis of this paper is that a key mechanism of Presidential control is the allocation of his attention and support among competing agents. The method is to examine whether this allocation differed between two Presidents with different policy preferences; namely, Bush and Clinton. This section presents five findings: First, OIRA members 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 those OIRA members with relatively activist views; fourth, the Clinton White House communicated more with those OIRA members holding relatively activist views; finally, this redistribution of attention and support is matched by a shift in the disposition of the regulations reviewed by OIRA.

Stability of policy orientation of members of OIRA

Do OIRA members have stable policy preferences? Figure 4 is a scatterplot of the scores of repeat respondents on the market-orientation scale (using only individuals who stayed at OIRA). Included in the scatterplot is a 45° line plotting the “expected relationship” attitudes had remained perfectly stable. If individuals shifted toward less pro-market positions, they would be underneath the line; if they shifted toward a more pro-market position, above the line.



The scatterplot does *not* show any pronounced shift away from pro-market positions. In fact, there are more cases where individuals shifted toward more pro-market positions than vice versa. Table 1 presents a regression of 1995 market orientation on 1993 market orientation.

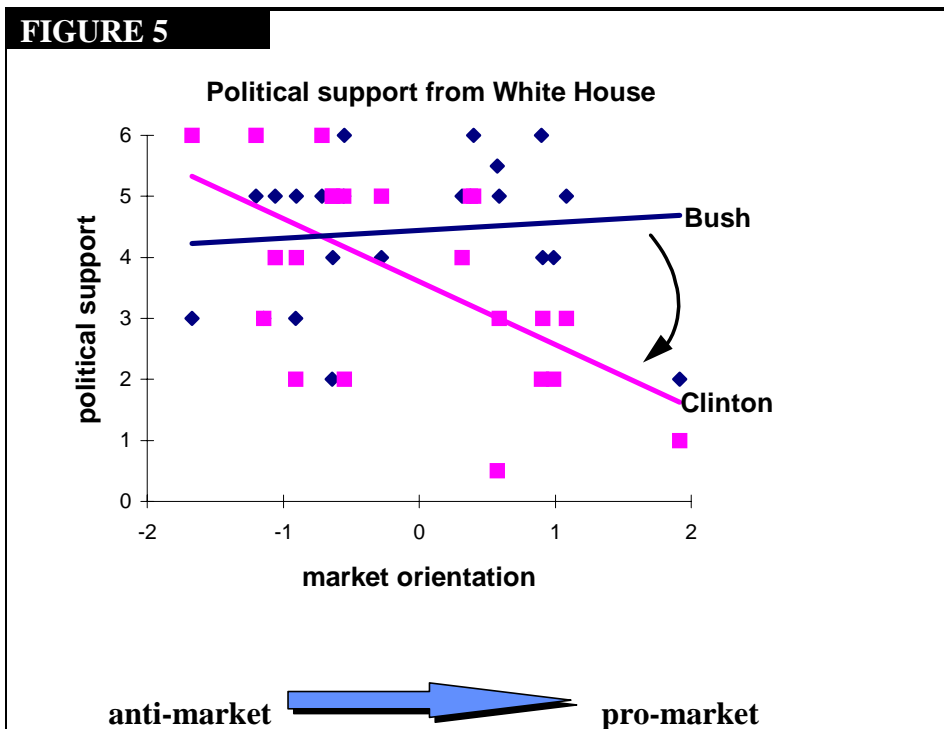
TABLE 1	
Regression of 1995 market orientation on 1993 market orientation	
constant (SE)	market orientation, 1993 (SE)
0.22 (0.13)	0.76**** (0.13)
N=19 R ² = .66 **** p<.0001, one-tailed test	

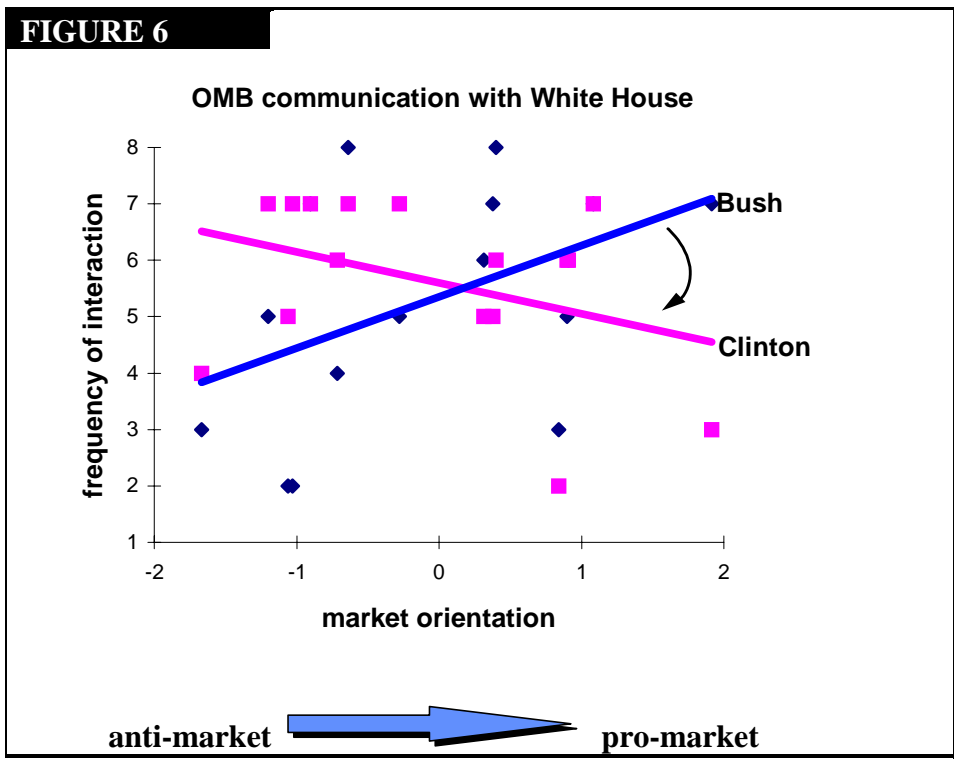
Table 1 confirms the visual inspection of figure 4; the constant term, which would capture a shift, is estimated to be positive.⁹ That is, on average, *individuals shifted to more pro-market positions*. While this result is not quite statistically significant, it suggests that, at the very least, it was unlikely that individuals shifted toward *less* pro-market positions. That is, the policy orientations of the OIRA members, so institutionally close to the President, were independent of the President's policy orientation (proposition 1).

Findings elsewhere examine the factors underlying and delimiting the autonomy of OIRA from the President (Lazer, 1996). The key factors underlying the autonomy of OIRA are (1) a recruitment procedure divorced from politics; (2) a powerful socialization process that new OIRA members are exposed to; and (3) low turnover among senior OIRA members, who are then in a position to preserve organizational values through their disproportionate impact on recruitment and socialization. The one factor that undermines the autonomy of OIRA in the long run is that younger OIRA members who do not receive political support from the White House are more likely to leave, and, as discussed below, political support is, in part, determined by the compatibility of policy orientation with the incumbent administration. An extended domination of the White House by one party or another might therefore change the average orientations of OIRA members.¹⁰ However, in the short to medium run, a new administration faces the problem of an OIRA staffed with individuals with incompatible policy orientations, raising the principal-agent issues noted above.¹¹

Political Support and Communication

Based on propositions 3 and 4, individuals who were pro-market in OIRA should have received relatively more political support in the Bush administration than in the Clinton administration. Figure 5 presents a scatterplot and associated regression lines of the relationship between political support and market orientation in the Bush administration (diamonds) and in the Clinton administration (squares), and figure 6 plots the relationship between communication with the White House and market orientation.





Figures 5 and 6 illustrate a “pivoting effect” where the relationship between market orientation and political support and communication with the White House was positive in the Bush administration, and negative in the Clinton. For example, in the Bush administration, an individual with a market orientation of 2 would have an expected level of interaction with the rest of the 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 -2 has four times the expected interactions with the EOP than the individual with a 2.

Table 2 presents statistical analyses of the impact of market orientation on the change in political support and communication with the White House.

TABLE 2				
The impact of market orientation on political support 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 3 and 4: as the negative constant term indicates, political support for OIRA in general declined, and individuals who were relatively pro-market experienced a great drop-off in political support ($p<.02$) from and communication ($p<.01$) with 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 (scores of 0), who had an expected political support drop-off of just one point. The change in communication patterns is equally dramatic: for example, individuals with a score of 1 on the market-orientation scale had their expected interactions with the EOP drop by 57% ($= 1 - 2^{-1.21}$). Conversely, individuals with a score of -1 had an expected increase in their interactions with the EOP to over 3 ($2^{1.69} = 3.22$) times their original level!

This pattern is corroborated by the interview data. In discussing political support with current OIRA members, it is clear that levels of support 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 the 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 has been more sensitive to labor, environmental, and consumer interests. As one interviewee stated,

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 mine)

Thus, the Clinton administration has systematically different criteria than Reagan and Bush, but the OIRA members continue to do their analysis as they had before. The general consensus at OIRA is that, philosophically, the Clinton administration is not unsympathetic to market-oriented solutions; politics, however, often points in other directions. As another member of OIRA stated,

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 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 appointees in the Clinton administration were relatively activist. This, in turn, affects the output of agencies. 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 applies, is, as one interviewee describes 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. As 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 suggests 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 mine)

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.¹²

In producing regulations, the regulatory review process involves multiple institutional players: the regulatory agency and OIRA. This provides the White House with a menu of policy options—and the evidence above suggests that it systematically communicates more 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 to support regulation. Both require OIRA to review major regulations. However, where 12291 required that "regulatory action shall not be undertaken unless the potential benefits to society for the regulation *outweigh* the potential costs to society," 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 mine)

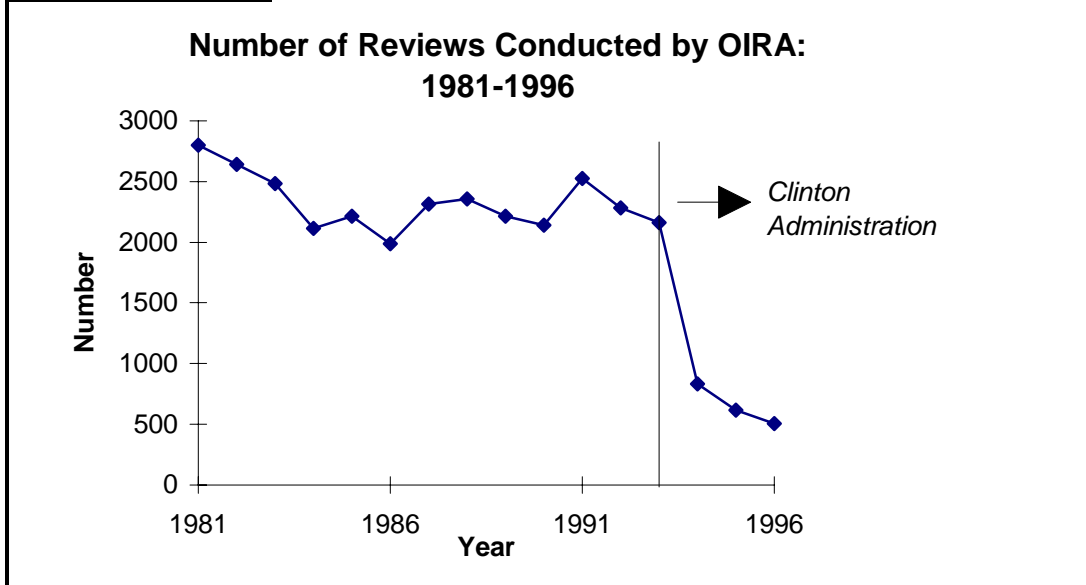
These clauses highlight two notable differences between 12291 and 12866. First, the “outweigh” criterion is a clearer, and more stringent, test of a regulation than a “justify” criterion. As one interviewee stated,

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 the specification in 12866 that regulatory impact analyses look at costs and benefits that may not easily be quantified. This reflects, as one informant stated, “less emphasis on rigid quantitative analysis on the course of regulatory review.” Notably, interviewees stressed that the changes in prescribed decisional criteria have not changed their analytically driven conclusions.

E.O. 12291 vs. E.O. 12866: Procedural changes

E.O. 12866 contains two important procedural changes from 12291. First, whereas 12291 did not specify a timetable for OIRA to review regulations, 12866 states that OIRA must complete its review within 90 days. As one interviewee stated, this “put[s] some pressure on us”: in the terms of this paper, it provides OIRA less autonomy from the White House in its negotiations with agencies. Second, 12866 restricts OIRA review to “significant regulatory actions”; whereas under 12291 all rules were routed through OIRA.¹³ Figure 11 plots the number of regulations reviewed by OIRA from 1981 to 1996.¹⁴

FIGURE 11

As figure 11 highlights, the number of regulations seen by OIRA had a precipitous drop of more than 70%.¹⁵ While this greatly overstates the impact on OIRA, since it still reviewed the most important rules, it does, as one informant stated, 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 the Clinton administration than the Bush and Reagan administrations. Eliminating regulatory review reduced the informational/time demands on the President by OIRA, without a great loss in policy terms for the President.

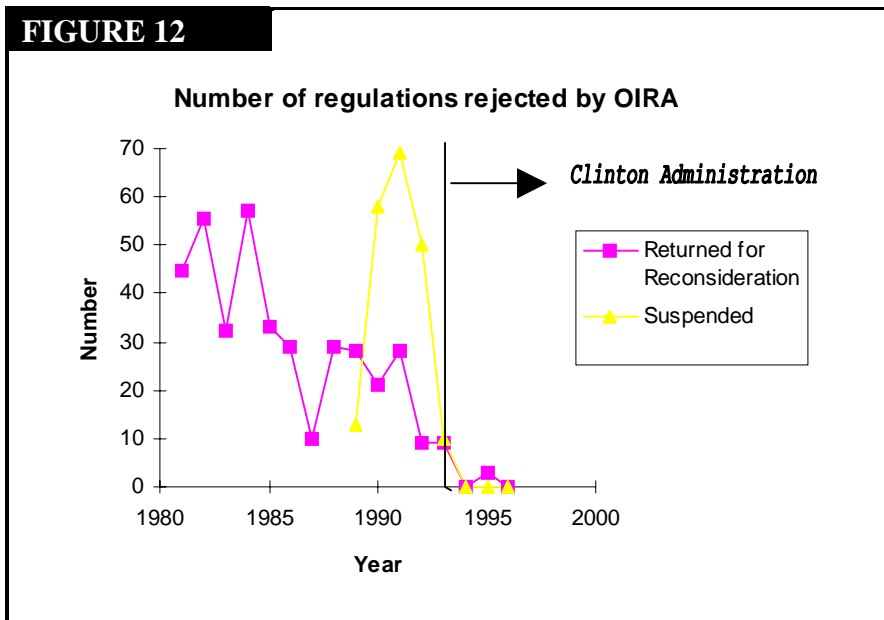
The disappearance of returned and suspended regulations

The above analysis has established that the Clinton administration has reduced the scope of regulatory review and advocated somewhat less stringent benefit-cost criteria to regulations. Further, the most market-oriented OIRA members report drastically lower 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 reviews.

Reviewed regulations may be disposed of in five ways: approved without change to be consistent with the executive order (12291 in Reagan/Bush, 12866 in Clinton); approved consistent with change; withdrawn by agency; review suspended; or returned for reconsideration.

Because the number of regulations reviewed by OIRA abruptly dropped, 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 greatly varied.

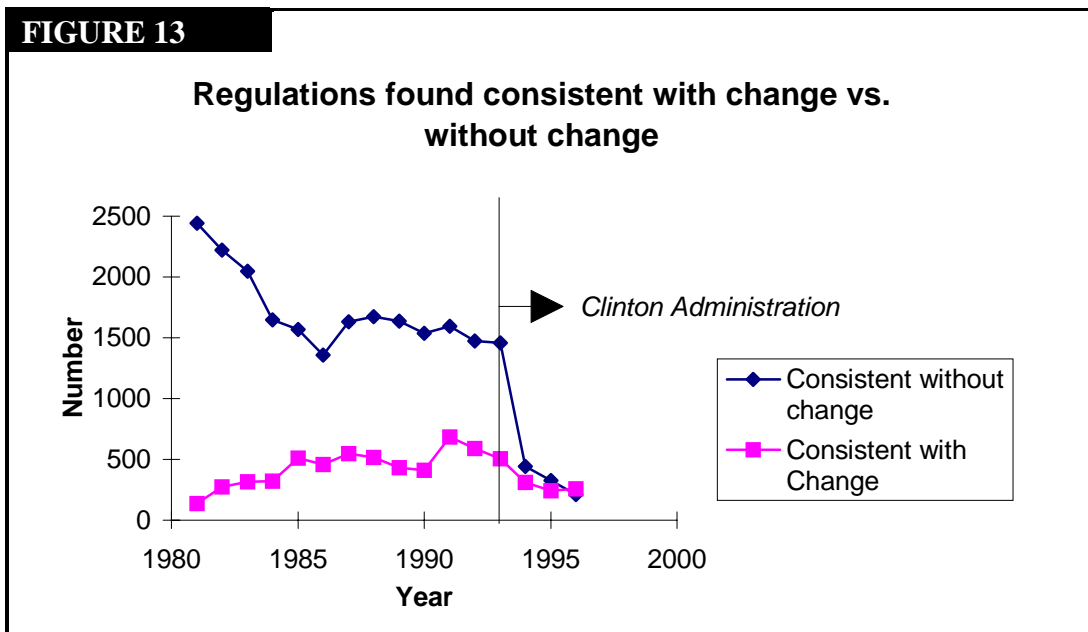
Returned and suspended regulations are crude measures of how often OIRA has successfully rejected agency proposals. Returns are the most severe rejection by OIRA of a regulation-- it essentially indicates that the agency and OIRA could not reach a mutually acceptable accommodation, and that OIRA had enough political support to tell the agency to start over. OIRA suspends reviews when it has requested an agency to make changes to a proposed regulation, and finds that the agency is taking too long to process the request.¹⁷ Many of the suspended regulations presumably include regulations that would have eventually been returned. Figure 12 plots these two categories of rejection from OIRA's inception in 1981 to 1996.



As figure 12 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 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 13 plots the number of regulations approved consistent with change as well as those found consistent with no change.



The average number of rules approved consistent with change dropped from 432.8 to 270.3. The number of rules approved consistent without change plummeted from 1735 to 327.

These raw numbers suggest that the Clinton administration used OIRA quite differently from the preceding administrations. The Clinton administration 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 (43%) than in the preceding Republican administrations (19%).¹⁹

Those data are consistent with the analysis above, which suggests that those OIRA members least inclined to compromise with agencies were the biggest losers in the Clinton administration.

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. When they find an agency proposal unacceptable, then relevant OIRA members will request Presidential attention, *if they anticipate political support from the White House*. The data indicate that OIRA members whose policy preferences differed from the Clinton administration experienced a dramatic decrease in political support and attention compared to the Bush administration. When the agency action is closer to the President's preferences than the OIRA member's, the OIRA member does not appeal to the President. On the other hand, the OIRA member with policy preferences similar to the President can press an agency, knowing that there is potential Presidential support. The President thus 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, and then to calibrating that institutionalized conflict so as to provide information just when it is most useful.

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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 Moe's (1984) influential review, and discussion of its applicability to politics, of the classic principal-agent literature.

³ This responsibility is reflected in the educational background of OIRA staff: for example, as of 1989, out of 40 policy staff, 10 had received doctorates (mostly in economics), 20 masters degrees (mostly MPP's and MPA's), and 5 a law degree (GAO 1989: 11). These numbers have not changed significantly during the Clinton administration

⁴ For a comprehensive discussion of OIRA and the ups and downs of regulatory review in the Reagan and Bush administrations, see Friedman (1995). Also see West and Cooper (1985), Benda and Levine (1988), and Bowers (1993) for a discussion of the constitutional authority of the President to review of regulation, and Pielsticker (1994) for a detailed analysis of the impact of OIRA reviews on EPA rule-making. 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.

⁵ Sherry Ettleson, Hearings Before the Committee on Governmental Affairs, United States Senate (Feb. 21-22, 1990: p. 45).

⁶ An additional 4 individuals from the original sample of 33 left after February 1995; responses had been received from all four.

⁷ Responses were also received from 2 individuals who had declined to respond to the first round of the questionnaire, and from 1 person who succeeded an individual who did not reply in the first round.

⁸ 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. See Lazer (1996) for a summary of the factor analyses. This also contains an examination of the inter-relationship among different ways of deriving these scales (e.g., the factor analytic vs. additive scales). The different methods of deriving these scales converge on virtually identical scores.

⁹ 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 (Lazer, 1996).

¹⁰ These findings suggest that divergent turnover rather than political opportunism explains the shift of senior level civil servants toward conservatism in the 1970's and 80's (Aberbach and 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 and Rockman label this "value concordance"). Washington policy circles over the last 25 years 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.

¹¹ Because senior (age > 40) OIRA members are relatively unlikely to leave until they retire, the short to medium run can be decades—e.g., 4 out of the 5 branch chiefs at OIRA in 1999 started their tenure during the Reagan/Bush years.

¹² See Aberbach and 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.

¹³ 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." (EO 12866)

¹⁴ For figures 11, 12, and 13, data from 1981 to 1989 are from U.S. government (1990). 1990 data are from U.S. government (1991), and 1991 is from U.S. government (1992). The data from the Clinton administration are available at the OIRA docket library (and from author, upon request).

¹⁵ Note that this overstates the impact on OIRA, since OIRA had focused a disproportionate part of its effort on major rules under 12291.

¹⁶ Unfortunately, it is not practical to derive the disposition of the subset of regulations that would have been reviewed under 12866 procedures during the *Reagan-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 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 Notably, this proportion has increased monotonically each year of the Clinton administration-- it was 51% in 1996, and 74% for the first two months of 1997.