The Institutionalization of Regulatory Review: Organizational Stability and Responsive Competence at OIRA

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Regulatory review received considerable attention in the 1980s as a controversial extension of presidential power. Although scholars have written less about it since then, it has hardly disappeared. It was tempered but remained viable under Bill Clinton and has been re-energized under George W. Bush. After surviving more than three decades and six presidencies, one would not be premature to observe that it has become institutionalized.

This article examines the institutionalization of regulatory review as a *means* of centralized presidential influence over the administrative process. Prominent scholars have argued that the need for responsiveness induces modern presidents to favor *ad hoc*, politicized managerial strategies in order to achieve their objectives. In marked contrast to this theory, OMB oversight of bureaucratic policy making has been implemented through a stable organization staffed almost exclusively by career civil servants. At the same time, it has promoted the political agendas of different incumbents.

Most discussions of individualized presidential management strategies have been critical of their effects. In this regard, an analysis of regulatory review is consistent with the popular thesis that presidents can rely on established organizations within the Executive Office to achieve their goals. It does not, however, support the accompanying contention that such organizations are likely to serve presidents through neutral competence.

INTRODUCTION

Regulatory review (aka "administrative clearance," "adinistrative rule review") empowers agents of the president within the Office of Management and Budget (OMB) to screen rules proposed by Executive Branch agencies. Its primary purposes are to ensure that policies formulated by the bureaucracy do not impose unreasonable economic burdens on society and that they are otherwise consistent with the president's objectives.

The establishment of centralized clearance of agency rules over the past three decades is a qualitative departure from the traditional means by which presidents seek to promote their objectives in the administrative process. Appointments, budgeting and spending powers, the ability to propose and veto enabling legislation, and most of the other tools at their disposal allow chief executives to influence the general direction of bureaucratic policy, primarily by focusing on "inputs." In contrast, regulatory review allows the Office of Management and Budget (OMB) to screen individual agency rules. Although rulemaking is far from being the only form of administrative output, it is the most direct and important way in which agencies create policy.[1]

Regulatory review can be further distinguished from other means of executive management by the fact that it has been instituted by presidents, themselves. As such, it evinces their growing awareness that their success is tied, not only to the legislative process, but to their ability to influence the exercise of policy-making authority that has been delegated to the bureaucracy. It also evinces presidents' growing dissatisfaction with the less-centralized, less-direct, and less-surgical means of influencing the administrative process that are afforded to them by the Constitution and statutory law.

The rise of administrative clearance is notable from at least three perspectives. Although they have hardly arrived at the same conclusions, scholars have already given a good deal of attention to its constitutional implications as an extension of presidential power. They have also given a good deal attention to the policy implications of its reliance on cost-benefit analysis as a criterion for evaluating bureaucratic initiatives. In contrast, scholars have given little if any attention to how the “institutionalization” of regulatory review speaks to popular beliefs concerning the *means* or *strategies* of centralization that presidents rely upon to achieve their managerial objectives.

Executive centralization is frequently described as a response to centrifugal influences that inhibit presidents’ efforts to control the bureaucracy through the appointment of so-called political executives to manage to line agencies (Nathan 1983; Moe 1985). These impediments allegedly include the inertia inherent in established organizations and the influences exerted on bureaucracy by legislators, interest groups, and other actors with agendas that differ from those of the president. Authorities have further argued that the need to cope with the same sources of fragmentation shapes the specific character of centralization. Thus, they contend that the desire for responsiveness often leads presidents to prefer *ad hoc*, politicized techniques over stable organizations staffed by career bureaucrats as a way of pursuing their policy goals (for example, Heclo 1975; Wyszomirski 1981; Moe 1985; Moe and Wilson 1994).

Although many scholars subscribe to this latter thesis, there is less agreement about the efficacy and desirability of personalized management strategies. Most students of public administration feel that presidents are well-served by formal organizations and career personnel within the Executive Office (Heclo 1975; Pfiffner 1991; Ronald Moe 1990). Their analysis is based in part on the identification of the permanent bureaucracy with the policy expertise, the institutional memory, and the communications networks that are essential to effective presidential management. It is also based on the assumption that civil servants will put their "neutral competence" to the service of whoever occupies the White House (Heclo 1975). Margaret Wyszomirski argues in this respect that the de-institutionalization of executive staff agencies has weakened their capacity to serve the president. As she notes, "The staffing of EOP core units has become increasingly personalized and, with it, narrowly politicized.... Whatever this does for presidents, it depresses the presidential agencies and... reduces the power of the presidency" (1982, p. 456).

Yet not everyone views politicization and de-institutionalization as being counterproductive to the needs of the president. In particular, Terry Moe's (1985) influential work identifies these developments with the realities of executive leadership (also Moe and Wilson 1994). Moe argues that they are necessitated in part by separation of powers. Whereas the kind of neutral competence advocated by Heclo may be a more realistic expectation in a parliamentary system, the competing demands placed on bureaucracy by legislators, the courts, and various constituent groups place a premium on partisan loyalty in Moe's analysis. Moe feels that *ad hoc*, politicized strategies are also necessitated by the inertia and resistance to change that are inherent in all bureaucratic organizations– including those that comprise the Executive Office. As he notes:

> all organizations have their own routines, their own agendas, their own norms, their own ways of coding and interpreting the world, their own bases of support, and the president cannot expect to control them easily. This is clearly true for the usual government agencies.... But it is also true of so-called presidential agencies like the Office of Management and Budget; while they may exist to serve the president and have no other constituency, formal organization inevitably creates interests and beliefs that set them apart from him (1985, p. 240).

How does the establishment of regulatory review speak to the arguments of Heclo, Moe, and others? Although it is obviously consistent with the thesis that presidents find centralized strategies to be appealing, the implementation of regulatory review has not been consistent with the thesis that such strategies take highly personalized forms. Not only has it become a stable function within the Executive Office; its organizational structure and key personnel have remained remarkably stable as well. At the same time, OIRA has faithfully promoted the agendas of different incumbents. It has done so, moreover, within the type of contentious policy-making environment that allegedly accentuates presidents' need for partisan loyalty (Moe 1985, Moe and Wilson 1994).

Regulatory review is only one of various ways in which presidents seek to shape policy. As arguably the most significant functional extension of executive power in decades, however, it at least suggests the need to take a more systematic look at the argument that presidents prefer *ad hoc* management strategies in achieving their goals. Popular as it is, this thesis is supported largely by anecdotal evidence. Perhaps functions that serve important presidential needs become institutionalized to a greater extent than is commonly acknowledged.

An examination of regulatory review also suggests the need to revisit popular notions about the character of responsiveness in presidential staff agencies. As such, it both supports and contradicts the conflicting evaluations of Heclo (1975) and Moe (1984) in important respects. Like Heclo (and unlike Moe), it suggests that presidents can rely on established organizations and career civil servants within the Executive Office to achieve their policy objectives– at least in some contexts. Yet the case of regulatory review is not consistent with Heclo's somewhat poorly specified argument that such bureaucracies serve the president through neutral competence. Like Moe, it suggests that organizations within the Executive Office must, to some degree, internalize the president's political preferences in responding to his needs (Dickinson and Rudalevige, forthcoming).

In developing these arguments, the following analysis examines structural features, internal dynamics, and effects of regulatory review that have received little attention.[2] It is based on OMB data, on previous studies, and on interviews with government officials that were conducted in 2002, 2003, and 2004. The interviewees include 16 current and former members of OMB's Office of Information and Regulatory Affairs (OIRA), as well as 4 officials from line agencies who have worked closely with OIRA. All have first-hand knowledge of regulatory review during the Clinton and George W. Bush administrations, and some have been involved in the process since the 1970s and 1980s.

The discussion is divided into three parts. The first section describes how regulatory review has become institutionalized over the past quarter century, while the second examines the character and the dynamics of OIRA's responsiveness to changing presidential administrations. The third section then analyzes the significance of these two developments in the context of popular theories of executive centralization.

THE INSTITUTIONALIZATION OF REGULATORY REVIEW

A brief review of the history of administrative clearance provides a necessary backdrop for the analysis to follow. Although one can find much more detailed accounts of its evolution elsewhere (Friedman 1995), most have given little attention to its internal structure and processes. Nor have they generally sought to place changes in regulatory review in perspective. In fact, the essential functions of regulatory review as well as its organizational characteristics have evinced a high level of continuity since the early 1980s.

Regulatory Review in the 1970s and 1980s

Regulatory review began on a limited scale when President Nixon required that proposed environmental rules be circulated within the executive branch. Under Presidents Ford and Carter, centralized policy oversight was extended to all "major" regulations having a projected economic impact in excess of $100 million per year. The ostensible basis for oversight under both of the latter administrations was a cost-benefit analysis of the proposed rule conducted by the agency and reviewed by an entity within the Executive Office of the President (EOP) (Verkuil 1980).

The programs instituted by Nixon, Ford, and Carter laid the foundation for a more extensive system of administrative clearance under Ronald Reagan. Issued in February of 1981, Reagan's Executive Order 12291 required cost-benefit analysis and centralized review for all (not just major) regulations.[3] It also delegated responsibility for administrative clearance to the Office of Information and Regulatory Affairs (OIRA), an organization within OMB that had recently been created by Congress to implement the Paperwork Reduction Act. Like earlier programs, E.O. 12291 stopped short of authorizing the Executive Office to block or change agency rules. (Many authorities felt that this would be illegal since Congress almost always delegated rulemaking authority to agency heads.) Nevertheless, the architects of E.O. 12291 felt that agencies would hesitate to ignore suggestions from an organization that scrutinized their budgets and that enjoyed such close proximity to the president (Deregulation HQ 1981).

E.O. 12291 also created a managerial role for the vice president. As chairman of the Task Force on Regulatory Relief, one of the George Bush's responsibilities was to review and seek to eliminate regulations that had outlived their usefulness or that were otherwise unreasonable. The other was to mediate unresolved disputes between agencies and OMB. As with OIRA, however, the vice president's power under the Reagan order was ultimately hortative. The Task Force was disbanded in 1983 and then reconstituted in 1986 (Friedman 1995).

Reagan supplemented E.O. 12291 in 1985 with the requirement that agencies compile yearly agendas of all ongoing and anticipated regulatory actions. Like Carter's similar initiative, "regulatory calendars" were designed to allow OMB to intercept troublesome agency policies at an early stage in their development. This was thought to be a significant extension of presidential influence given that agency policies often take years to develop and acquire substantial inertia in the process (Friedman 1995; West 2004).

Reagan's program of administrative clearance changed little under his successor. Although George Bush did not initially involve the Vice President in review, he resurrected this role mid-way through his term. The Vice President's Council on Competitiveness (or so-called Quayle Council) was active in its attempts to influence regulations, both directly and by working through OIRA (Duffy 1997).

Criticisms of E.O. 12291

Regulatory review under Reagan and Bush was controversial for several reasons. Some critics viewed it as an effort to stifle needed regulation. Some also complained that intervention by OIRA and the White House had been precipitated by appeals from business groups that had typically occurred behind closed doors (Eads and Fix 1984; Tolchin and Tolchin 1984). This arguably undermined transparency and balanced responsiveness in the policy-making process. Relatedly, it was alleged to subvert the goals of procedural requirements that agencies justify their rules on the basis of evidence and arguments contained in a public record (Verkuil 1980).

Congress became concerned with these issues in the mid 1980s.[4] Its misgivings about the effects of regulatory review were reinforced by institutional tensions that cut across party and ideological boundaries to some extent. Thus, a growing number of legislators came to feel that regulatory review caused the implementation of policy to deviate from statutory intent and that it had the practical effect of usurping authority that had been delegated to agency heads. Acting on these concerns, Congress threatened to terminate OIRA's funding and refused to confirm a politically appointed agency director during part of the Bush Administration (Friedman 1995).

E.O. 12866

Bill Clinton established his own program of regulatory review about eight months after assuming office. Rhetoric in the preamble of E.O. 12866 reflected a more balanced view of regulation and of the bureaucracy than had informed administrative clearance under Reagan and Bush.[5] Yet although the Clinton order sought to address alleged problems in the review process, its departures from E.O. 12291 were relatively modest in the final analysis.

E.O. 12866 redefined the role of the vice president in the review process. According to its critics, the Quayle Council had been secretive and had acted as a conduit through which the president's constituents could influence administrative policy (Broder and Woodward 1992). In response, the Clinton program stipulated that the vice president could not take the initiative to influence individual agency policies. He could become involved as a mediator in a dispute between an agency and OIRA, but only when requested to do so by both parties.

E.O. 12866 also sought to interject more openness into the oversight process by requiring that all written communications from parties outside of government to either OIRA or the White House must be placed on the public record. It further stipulated that only the Administrator of OIRA or her deputy could receive oral communications from non-governmental parties, and that all conversations between White House officials and private interests and between the OIRA and agencies must be docketed. Yet although some observers feel that the review process did become more open under Clinton (Duffy 1997), this may have had more to do with changes in organizational climate than with formal constraints. The transparency requirements of E.O. 12866 thus were not substantially different from procedures that had been instituted by OIRA Administrator Wendy Gramm in response to public criticism and congressional pressures in 1986 (Gramm 1986).

On its face, the most striking change affected by E.O. 12866 was its confinement of cost-benefit analysis and OIRA oversight to "significant" regulations. A significant rule was defined as one that met the old $100 million/year threshold; that satisfied one of a long list of other criteria;[6] or that either the agency or OIRA otherwise thought deserved attention. The practical effect of this revision was nevertheless limited by the fact that, as a small organization, OIRA had never given more than cursory attention to most of the policies that federal agencies proposed each year. Conversely, the definition of “significant” to include anything OIRA thought was significant gave the agency wide latitude to allocate its resources wherever it wished. The primary implication of confining review to significant proposals was to allow the majority of agency rules to be promulgated without delay.

As elaborated shortly, the most important change under Clinton was the creation of a more collaborative and less confrontational relationship between OIRA and the line bureaucracy. A primary means of accomplishing this was the encouragement of earlier communications between desk officers and their agency counterparts. The identification of OIRA concerns at an early stage of the policy-making process was designed to mitigate the problems of morale and the resistance to change associated with “late hits.[7] Even here, however, Clinton’s program hardly represented an absolute break with the past, for ample evidence suggests that there had been a significant level of early collaboration under E.O. 12291.[8]

Regulatory Review Under George W. Bush

In brief, although Bill Clinton altered administrative clearance at the margins, he kept the most important structural elements of the program he inherited from Reagan and Bush. In turn, George W. Bush has kept the mechanical features E.O. 12866 virtually intact. The only notable change contained in a one-and-one-half page amendatory executive order (E.O. 13258) is the complete removal of the vice president from the review process.

Several other changes have come at the initiative of Bush's OIRA Administrator John Graham. One has been to provide internet access to OIRA documents and data, and to communications received by OIRA on individual rules. Another has been the issuance of new guidelines for conducting the analyses that serve as the bases for review. These include guidelines on the quality of data used by agencies to justify their regulations, a strong emphasis on the "monetization" of regulatory benefits (which agencies had more latitude to describe qualitatively under Clinton), the requirement that agencies conduct a "probabilistic analysis of relevant uncertainties" in the consideration of rules with a projected impact in excess of $1 billion per year, the stipulation that agencies discount the value of lives saved by their regulations in the future, and peer review of agency studies (OMB Finalizes Changes 2003; 2004 interview).

Graham's initiative to adopt "prompt letters" is potentially the most significant departure from past practice under Bush. These are OIRA suggestions that agencies consider placing particular issues on their agendas. In one letter, for example, Graham asked the Occupational Safety and Health Administration to consider the possible life-saving benefits of automatic external defibrillators in the workplace. In another, he encouraged the Department of Agriculture to design an Environmental Quality Incentives Program that would emphasize training, economic incentives, and other alternatives to command-and-control regulation as ways of encouraging "innovative environmental stewardship" by agricultural producers.

Functional and Organizational Stability

Some conjectured that regulatory review would be eliminated with the election of Bill Clinton. This might have been a predictable response to the complaints of important Democratic constituents that the primary effect of executive clearance had been to stifle needed regulation. As discussed above, however, although Clinton did modify OIRA oversight in some ways, the reforms that he initiated were relatively modest departures from the past in a functional sense. Yet more surprising is that the organizational structure of regulatory review and the personnel who perform it have remained stable across administrations as well.

According to James Blumstein (2001), the fact that regulatory review remained intact through a moderate-to-liberal Democratic administration signaled its institutionalization. Blumstein observes in this regard that Clinton's E.O. 12286 helped to cement the role of centralized executive clearance, not merely by continuing its existence, but by explicitly stating that one of its purposes was to promote the Administration's policy objectives. Although this had always been a goal of review (and although few if any observers ever believed otherwise), previous executive orders had portrayed the basis for centralized clearance solely in terms of objective analysis. This was no doubt intended to defuse the controversy associated with a significant extension of executive power. Formally linking administrative rule review with the president's agenda thus was a subtle but significant change under Clinton that may have contributed to the legitimation of its true role. Just as it took a Republican to establish relations with China, this may have been easier for a Democratic president given that constitutional arguments against regulatory review had been motivated in large measure by political concerns.

What Blumstein and other observers have failed to note is that the organizational structure of regulatory review and the people who carry it out have remained relatively stable across administrations as well. George W. Bush's OIRA has four branches, two of which (Health, Transportation, and General Government; Natural Resources) have broad substantive policy jurisdictions that encompass most (but not all) of the administrative clearance that occurs. Although OIRA had six branches at the end of the first Bush Administration and five at the end of the Clinton Administration, its current structure reflects a consolidation rather than the elimination of responsibilities.

[Figure 1 About Here]

Perhaps the most significant changes at OIRA have been in its staffing levels. From a high of 90 FTEs in 1981, OIRA's size declined in a roughly secular fashion to 69 at the end of the Reagan Administration to 60 at the end of the first Bush Administration to 47 during Clinton's last year in office. This trend has undergone at least a modest reversal under George W. Bush with an increase of about 7 FTEs and plans to add several more positions in the future (OMB 2002).

Despite fluctuation in its size, however, there has been relatively little turnover among OIRA's key personnel. Only the Administrator is a presidential appointee. With the exception of two Schedule Cs who serve as special assistants to the Administrator, the remainder of the organization is comprised of career civil servants. Although a significant percentage of the desk officers who initially review rules leave after a few years ("burn out" and limited opportunities for advancement within a small and flat organization are the common explanations), most of the senior civil servants who are the keepers of OIRA's professional norms and sense of mission are veterans of several presidencies. Of the top seven (the Deputy Administrator and six branch chiefs) who were in place at the end of the first Bush Administration, five were in the same positions at the end of Clinton's first term. Four of the current President Bush's top six career personnel have worked in OIRA since its inception in 1981.

RESPONSIVENESS AT OIRA

Centralized executive oversight of agency policy making raises important constitutional and policy issues that have received considerable attention elsewhere. Aside from its systemic implications, however, the institutionalization of regulatory review is interesting simply because it has occurred. Its organizational stability and reliance on career bureaucrats seem inconsistent with the popular view that equates executive centralization with more personalized management techniques.

As discussed in the introduction, several leading authorities have argued that presidents prefer *ad hoc* management strategies because of the high premium they place on the partisan loyalty, flexibility, and responsiveness that political advisors within the White House can furnish. Whether or not their perceptions are misguided, presidents allegedly view bureaucratic organizations as being too subject to competing influences and too wedded to their own professional orientations and routines to be reliable instruments of executive management within a political task environment. In contrast to this view, OIRA has combined the high level of organizational continuity described above with responsiveness to changing presidential priorities.

Stability and Change at OIRA

Interviews with OIRA officials indicate that the organization is, in fact, dominated by a well-defined sense of purpose. A common denominator among its personnel is the belief that government intervention has the potential to produce more harm than good, and that the probable effects of agency rules should therefore be subjected to comprehensive analysis. Most feel that economic efficiency should be an important (although for many not the only) criterion for evaluating administrative policies.

Yet these organizational norms have not rendered OIRA unresponsive to the president. In part, this is because the "New Democrats" as well as the Republicans who have occupied the White House since the 1970s have been mindful of the need to consider the costs of regulation. The importance of this goal in relation to other social values has varied among administrations, however, and OIRA has adapted to changing presidential priorities within the overall parameters of its mission and culture.

A recent study by the General Accounting Office (2003) characterizes this adaptation in terms of the distinction between a "collaborative, consultative" relationship with agencies and an adversarial "gatekeeper" role. Partly as a reaction to allegations of heavy-handed gatekeeping under Reagan and Bush I, regulatory review became more consultative under Bill Clinton and his first OIRA Administrator, Sally Katzen. This change was signaled by the rhetoric of E.O.

12866, which portrayed bureaucracy in a positive light and which emphasized agencies' primacy in the regulatory process. Whether or not the substantive changes affected by the Clinton order were significant in a mechanical sense, moreover, review did become less invasive and less confrontational. Katzen, herself, characterized the new philosophy as a "hot tub approach" in which line-agency and OIRA staff worked together to find the most reasonable solutions to regulatory issues (2003 interview).

OIRA has returned to a more confrontational role under George W. Bush. Some feel in this regard that review has assumed a level of aggressiveness unmatched since the early years of the Reagan Administration (Adams 2002). Commenting on the change in OIRA's posture under Bush appointee John Graham, an official with the U.S. Chamber of Commerce noted (perhaps with some exaggeration) that, "Under Clinton agencies just ran completely independently. Now you have a traffic cop for the entire bureaucracy... and he will wield enormous influence" (Adams 2002). OIRA's staff have readily accepted its return to a gatekeeper orientation (2003 interviews).

Data describing OIRA's performance are limited in several respects.[9] With this caveat, changes in its orientation are reflected in the formal outcomes of regulatory review. Given the steady reduction in staffing levels that occurred throughout the 1980s and 1990s, it is perhaps most useful to examine the periods immediately before and after changes in presidential administrations. Whereas an annual average of 106 rules were either returned or withdrawn pursuant to review over the final two years of first Bush Administration, the figure dropped to 35.5 in the first two years E.O. 12866 was in effect.[10] Similarly, rules returned or withdrawn jumped from an average of 20.5 in the last two years of the Clinton Administration to 172 during George W. Bush's first year in office. Although these figures reverted to much more modest levels in 2002, none of the OIRA staffers interviewed for this study felt that this reflects a retrenchment to a less aggressive oversight posture. Rather, they felt that it was probably attributable to anticipatory adjustments by agencies, themselves (2003, 2004 interviews).

The Dynamics of OIRA Responsiveness

Responsiveness of administrative clearance to presidential preferences has occurred through several mechanisms. It has resulted in part from changes in OIRA's political environment that have altered its relationship with line agencies. Because OIRA does not have final authority to disapprove or change rules, its influence is naturally conditioned by the preferences of the president and his appointees (as well as by the preferences of legislators, judges, and other actors who have influence over the implementation of agency programs). OIRA lost bargaining power in its dealings with agencies given that the Clinton Administration was more regulation- and bureaucracy-friendly than its Republican predecessors. As in other administrations, very few disagreements that surfaced in the review process escalated to the president or the vice president. Nevertheless, the anticipation that the Clinton White House would not be as willing to support reviewers in disputes with agencies emboldened the latter and restrained the former (2002, 2003 interviews). As one OIRA staffer noted, "Al Gore and Dan Quayle [were] very different tie breakers" (2002 interview).

Yet OIRA's responsiveness has also resulted from its internalization of presidential agendas. Some officials had misgivings about Katzen's emphasis on cooperation, and at least one reportedly decided that it was more honorable to resign than to "work for a God Damned Democrat" (2003 interview). By and large, however, careerists accepted Katzen's different vision of the organization's role. In fact, senior staff did much of the work in crafting her less confrontational oversight strategy (as well as other features of E.O.12866) (2003 Katzen interview). OIRA's transition from a gatekeeper to a consultant (and then back again under George W. Bush) is the type of change in mission orientation that established organizations are alleged to resist.

Career personnel have also been attuned to the perspectives of the White House in dealing with the political issues surrounding individual rules. The Administrator must approve decisions to return regulations, and she or her deputy generally represent OIRA in disagreements with agencies. As a matter of course, staff have informed their superiors concerning the likely reactions of stakeholder groups and other governmental entities to alternative policy positions in such instances.

Beyond describing the implications of different options, the goals of presidential administrations and a sense of who the president's key constituents are and where they stand on regulatory issues have also percolated down to influence the exercise of "street-level" discretion. These considerations have come to bear as OIRA analysts have chosen which regulations to review carefully and as they have sought to influence their agency counterparts. The ways in which presidential priorities have been transmitted to OIRA staff range from formal directives to informal communications to tacit understandings. Several desk officers noted the role played by various White House offices (such as the Council on Environmental Quality and the Office of

Science and Technology Policy) in bringing preferences to bear in their areas of concern (2003 interviews).

None of this is meant to minimize the value of technically competent analysis as a core element of OIRA's mission and organizational culture. Former desk officer Stuart Shapiro (2004) notes in an insightful paper that professional objectivity exists in a state of tension with OIRA's other mission of promoting the president's policy and political agendas. As do analysts in other organizations (Meltsner 1976; Jenkins-Smith 1982), the balance that careerists strike between these two orientations varies from individual to individual as a function of their professional aspirations and other personal motives.

To one degree or another, however, all OIRA officials respond to the political environment within which oversight takes place. The fact that many of them are young and upwardly mobile accentuates this tendency. As a former desk officer noted, "All bureaucrats make political judgments. That's what it's like to be a yuppie in the Federal government" (West and Cooper 1985, p. 202). Several analysts indicated that they or some of their colleagues rely on trade journals and other sources information in an effort to anticipate how the White House and key stakeholders inside and outside of government would react to bureaucratic policy initiatives in their areas of responsibility (2002, 2003 interviews). And as Shapiro (2004) also notes, politics almost always trumps objective analysis when the two come into direct conflict with one another.

THEORETICAL IMPLICATIONS

Scholars have identified two constraints that define the environment of presidential management. One is the inertia inherent in bureaucratic organizations with established routines and tenured personnel. The other is the fragmentation of power in American government. Unlike a Westminster system, in which legislative and executive authority are fused, bureaucracy serves multiple masters in our Madisonian democracy. These constraints are offered to explain why presidents rely on centralized controls as an alternative to line bureaucracies in developing and carrying out their policy initiatives. They are further offered to explain why chief executives prefer *ad hoc* and politicized modes of centralization over established institutions. Presidents thus allegedly perceive that the same centrifugal tendencies which limit the responsiveness of line bureaucracies operate within Executive-Office bureaucracies as well.

Leading authorities present conflicting assessments of this latter development. Terry Moe (1985) and Moe and Scott Wilson (1994) argue that reliance on personalized and politicized modes of centralization yields the kind of "responsive competence" that presidents must have in order to achieve their goals in office. This, in turn, is highly salutary to Moe given his view of the presidency as the only institutional source cohesiveness and of accountability to broad national interests in our political system. In contrast, most other scholars feel that presidents would be better advised to rely more heavily on established organizations and career bureaucrats. Few if any of the latter view presidential management as an apolitical task. Where they differ from Moe is in their belief that "neutral competence" can effectively serve the interests of different political masters. In a well-known article lamenting the politicization of OMB, for example, Hugh Heclo (1975, p. 83) observes that:

> Neutral competence does not mean the possession of a direct-dial line to an overarching, non-partisan sense of the public interest. Rather it consists of giving one's cooperation and best independent judgment of the issues to partisan bosses– and of being sufficiently uncommitted to be able to do so for a succession of partisan leaders. The independence entailed in neutral competence... exists precisely in order to serve the aims of elected partisan leadership.

Heclo and other critics of politicization thus take exception with Moe's assumption that competing political influences and organizational inertia render the permanent bureaucracy unresponsive to presidents. They feel that this premise is especially suspect in regards to organizations within the Executive Office, which have only the president to look to for political support. In addition, critics of politicization implicitly endorse a somewhat different prescriptive model of presidential governance than does Moe (at least in regards to the president's relationship with the bureaucracy). Without denying the president's political motives, they place greater weight on the managerial benefits associated with stability– such as institutional memory and a knowledge of governmental folkways– and relatively less weight on the accomplishment of short-term political objectives. In contrast, Moe argues that the ability to accomplish policy goals in a relatively short time span is the essence of effective presidential leadership: it is how history and the electorate judge presidential success.

The preceding examination of OIRA sheds light on two, interrelated issues that emerge from the writings of Heclo, Moe, and others. One concerns these authors' common assumption that presidents prefer personalized management strategies over bureaucracies as means of centralized control. The institutionalization of regulatory review is not consistent with this theory. The other issue concerns the type of responsiveness that presidential bureaucracies are apt to provide. Although the case of OIRA supports Heclo's argument that stable organizations and career personnel within the Executive Office can serve the president's needs, it does not suggest that this is likely to occur through neutral competence.

Institutionalized v. Personalized Management Strategies

Although it is undoubtedly true that presidents have sometimes relied on *ad hoc* management strategies, OIRA's structure, its key personnel, and its essential mission and culture have remained quite stable across the past four administrations. Moreover, this has occurred within the type of pluralistic political environment that is allegedly most likely to compromise bureaucrats' loyalty to the president. Major agency regulations almost always pose important costs and benefits for organized interests (West 2004). Largely because of this, Congress has periodically shown a strong interest in OIRA's behavior as well.

Again, the probable explanation for OIRA's responsiveness is that, unlike their counterparts in line agencies, EOP bureaucrats have only the president to rely upon for sustenance (Heclo 1975). But if this is the case, why would some other presidential efforts to shape policy not have become more highly institutionalized? One possible answer is that most presidential management functions do not pertain directly to the administrative process. It may be that the task of overseeing the bureaucracy places a premium on substantive expertise and organizational differentiation that political aids within the White House cannot provide. A point that bears emphasis here is that, in addition to ensuring that agency policies are consistent with the president's agenda, an important purpose of regulatory review is to identify programmatic conflicts that arise among agencies as they implement their mandates. This is facilitated by the fact that the division of labor among OIRA analysts is defined by broad policy areas that cut across organizational boundaries within the Executive Branch.

The use of cost-benefit analysis also obviously requires expertise that political aids do not possess. Notwithstanding its political motivations, the grounding of regulatory review in this ostensibly objective technique has helped to legitimize what might otherwise have been perceived as an unacceptable extension of presidential power. Although they have disagreed as to its proper form and relative importance, moreover, recent presidents have all believed in cost-benefit analysis as at least one guide for sound regulatory policy. To some extent, therefore, political responsiveness by OIRA has been a matter of modulating the emphasis placed on a single objective. This may not require the same level of partisan loyalty as responsiveness within more open-ended parameters.

Yet one should not be too quick to dismiss regulatory review as an exception to a more general and important pattern of *ad hoc*, personalized modes of centralization. In a constitutional sense, it is perhaps the most significant extension of presidential power over the past thirty or forty years. In addition, relatively stable institutional arrangements may arise in response to managerial needs that persist across presidential administrations more frequently than many scholars suppose. An important observation here is that arguments to the contrary have not been developed in a very systematic way. Another important observation is that the distinction between institutionalized and personalized forms of management is a relative one in most contexts, and that most executive functions combine elements of both. It may be that scholars such as Heclo and Moe are focusing on the parts of the elephant that they find to be most interesting.

The preceding analysis hardly disposes of these issues. Rather, it suggests the need for a more comprehensive look at the presidency that employs clear conceptual and operational distinctions between institutionalized and politicized forms of management. Although this could extend to many functions, an examination of other parts of OMB might be the logical place to start. A former OIRA official who reviewed an earlier draft of this article felt that such an analysis would reveal similar patterns of stability and responsiveness in most but not all OMB units.

Neutral v. Responsive Competence

The observation that OIRA has combined institutional stability with responsiveness supports Heclo's (1975) prescriptions for if not his observations about presidential behavior: it suggests that presidents can rely on established organizations and career bureaucrats within the Executive Office to do their bidding. OIRA's behavior does not, however, coincide with Heclo's conception of neutral competence as the cultural medium through which this occurs. Indeed, given that a central goal of the oversight process is to ensure that bureaucratic policy is in line with the president's priorities and the interests of his constituents, it is difficult to imagine how OIRA could act effectively as the president's agent without internalizing his political goals to some extent. Although White House officials and other administration members become involved in the oversight process from time to time, the sheer volume of regulatory initiatives to be reviewed ensures that OIRA careerists must go beyond the provision of dispassionate advice to play a direct role in promoting the president's agenda. (Again, only the director of OIRA is a presidential appointee.)

These findings are consistent with an interesting analysis of the Bureau of the Budget (BoB) under Harry Truman. Although the post-WWII period is reputed to have been that organization's "golden age of neutral competence" (before the layering of political appointees that roughly accompanied its name change in the 1970s), Matthew Dickinson and Andrew Rudalevige (forthcoming) find that BoB careerists were quite sensitive to the Truman Administration's political priorities in providing advice and in various other ways that had more direct policy implications. As they note:

> ... it is clear that in the process of producing, refining, and promoting a presidential legislative program, and in providing advice to the president, the BoB was acutely sensitive to Truman's political interests.... The BoB's archival records are replete with evidence that Truman-era Budget personnel were intricately involved in all manner of political decisions, often working hand-in-glove with the White House staff.

Perhaps the issue here is how one defines neutral competence and politicization. Thought provoking as it is, Heclo's (1975) distinction between these qualities is not very precise or consistent. For example, his description of neutral competence as "the best independent judgment of the issues" (p. 97) and as a "fine disregard for the political bearing of who believes what at a given time" (p. 82) is difficult to reconcile with his characterization of neutral competence as "partisanship that shifts with the changing partisans" (p. 81). If one equates politicization with a certain critical mass of presidential appointees (as Heclo seems to do at some points in his analysis), then OIRA– like the old BoB– has not been politicized. If one frames politicization and neutral competence in functional terms, however, then the distinction clearly breaks down. Heclo's suggestion that career officials within the Executive Office can somehow serve the president's political interests while remaining politically neutral ultimately may not be particularly meaningful unless one chooses to resurrect the politics/administration dichotomy as a foundation for prescribing bureaucratic role orientations.

Dickinson and Rudalevige (forthcoming) attempt to salvage a distinction between the roles of Executive Office bureaucrats and political appointees by suggesting that there was a (frequently subtle) difference in orientation between the Truman White House and the Truman BoB. Whereas political aids were motivated primarily if not exclusively by the short-term interests of the president, the authors argue that OMB officials combined such partisan concerns with a concern for the presidency as an institution. (See Wysczomirski (1982) for a similar distinction.) These institutional responsibilities and prerogatives included the need to "rein in 'uncorrelated action' and bureaucratic freelancing," as well as the need to identify and resolve inter-organizational conflicts.

OIRA has pursued the latter goals as well. The essential purpose of regulatory review has, of course, been to rein in bureaucratic freelancing, and the use of cost-benefit analysis has provided a convenient initial screening device to this end. As already noted, moreover, a significant purpose of the review process has been to identify agency policies that duplicate or conflict with the implementation of programs by other agencies. In such instances, OIRA has often acted more as a mediator among contending interests within the Executive Branch than as an agent of top-down control pursuant to any pre-established presidential agenda (2002, 2003 interviews). Yet whether these roles serve the interests of the presidency as opposed to the interests of particular presidents is an open question. Helping the president to “interact more effectively with the bureaucracy” and to resolve inter-organizational conflicts arguably fit into both categories. As with the distinction between neutral and responsive competence, the distinction between institutional and individual interests breaks down upon close examination. The needs of the presidency are, per force, derived from the needs of particular presidents to govern effectively.

CONCLUSION

In closing, it is appropriate to ask what the future holds. The next logical step in the evolution of executive power is for presidents to rely more heavily on the administrative process to promote their agendas in an proactive way. In fact, although presidents have always done this to some degree, Elena Kagan (2001) points out that the Clinton White House initiated policy through the administrative process much more frequently than did any of its predecessors. A centralized strategy for creating policy through the exercise of delegated administrative authority has the potential to serve presidents of all political stripes to a greater extent than the essentially reactive and conservative device of regulatory review.

Could such a proactive strategy be affected through a stable organization staffed by career bureaucrats? Whereas “politically adjusted” cost-benefit analysis has lent itself to reactive oversight by OIRA, creating new policy through the direction of line agencies may require a higher level of sensitivity to the president’s needs than career civil servants can offer. It is worth noting in this regard that Clinton's proactive approach relied exclusively on directives formulated and conveyed by White House advisors. Kagan's (2001) analysis implies that this occurred on a more-or-less *ad hoc* and selective basis as a function of particular policy interests and political opportunities.

On the other hand, increasingly concerted presidential efforts to shape policy through administration may find the expertise afforded by an established organization within the Executive Office to be appealing. Future presidents may find institutionalized forms of proactive intervention to be indispensable to the extent that their goal is to promote comprehensive and coherent policy agendas through the administrative process. The assumption that executive centralization is a natural and much-needed rationalizing force in American government has inspired countless appeals for strengthening the administrative presidency by scholars, practitioners, and judges since the New Deal. In truth, the verdict is still out concerning presidents' motivation to play such a role. To the extent that they are so inclined, however, any successful attempt at systematic, centralized, and coordinated policy leadership through the administrative process would almost necessarily rely heavily on institutionalized but politicized forms of management.

As mentioned, OIRA has begun to recommend administrative initiatives on a limited scale under George W. Bush. There is currently little evidence directly linking prompt letters with White House preferences, but it will be interesting to observe how the program evolves.

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Figure 1
Current Organization of OIRA

Administrator

Deputy Administrator

Health, Transportation, and General Government Branch	*Natural Resources Branch*	*Science and Statistical Policy Branch*	*Information Policy and Technology Branch*

1. Commonly associated with economic and social regulation, rulemaking is also used to establish standards for the allocation of loans, grants, benefits, contracts, subsidies, etc.

2. Much of the literature on regulatory review has focused on its constitutional implications as a controversial extension of executive power or on the merits and demerits of cost-benefit analysis as a basis for oversight.

3. Less "formal" or rigorous analyses were required for the former. Both major and non-major regulations had to be presented to OIRA before they were published as proposed rules and again before they were promulgated as final regulations.

4. Congress had initially been supportive of regulatory review under Reagan. The Laxalt-Leahy Regulatory Reform Act of 1982 (S. 1080) passed the Senate but did not make it to the floor in the House. It would have codified a program of administrative clearance very similar to Reagan's.

5. Thus, it emphasized the need for executive oversight and economic analysis as checks against ill-conceived and uncoordinated government action, but it also affirmed the need for regulation and the primacy of administrative agencies in implementing policy. To this latter end, it called for a more flexible application of cost-benefit analysis that explicitly allowed for the consideration of social equity and for greater weight to be placed on qualitatively described benefits of regulatory policy. E.O. 12866 was crafted in such a way that it pleased everyone from the Sierra Club to the U.S. Chamber of Commerce.

6. A rule is also "significant" under the Clinton order if it: adversely affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or a state, local, or tribal government or community; creates a serious inconsistency or interferes with an action taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs; or raises novel legal or policy issues.

7. The Clinton order further sought to promote trust in the review process by requiring OIRA to share with agencies all written communications from outside the executive branch and to invite agency representatives to attend any meetings with extra-governmental actors.

8. One would hardly expect otherwise given a consideration of what was rational from the standpoints of both OIRA and agency officials. As Barry Friedman notes in his thorough study of regulatory review under Reagan and Bush I, "... many agencies [had] an *early warning system* by which agency staff members alerted OIRA desk officers about proposed regulations still on the drawing board, so that they would not catch OIRA by surprise" (1995, p. 83).

9. Although they report the number of rules changed after review, for example, they fail to describe the magnitude of changes. They also fail to report "informal" influences exerted on agencies before proposed rules are submitted for review. Finally, they obviously do not reflect how the anticipation of review affects agency behavior.

10. I have used 1993 and 1994 to calculate the latter firgure (rather than 1992 and 1993) because E.O. 12866 did not go into effect until November of 1992. It seems apparent from the data, as well as from journalistic and academic accounts, that the Clinton Administration did not make its regulatory preferences apparent until then.