Regulation Beyond Structure and Process

Andrew Rudalevige

TWELVE MONTHS into the Donald Trump administration, it is safe to say that these years will not be remembered for the president's single-minded pursuit of a consistent, substantive policy agenda. But when it comes to questions of government regulation — or, more to the point, deregulation — Trump has been consistent and swift. During the presidential campaign, Trump touted his insights on regulatory burdens as gleaned from his long business career. His platform promised that his administration would direct agencies to abolish two regulations from the books for every one added — and he issued an executive order to that effect 10 days after he took office.

That directive, Executive Order 13771, also put in place a "regulatory cap" for fiscal year 2017 and gave the Office of Management and Budget (OMB) authority to enforce limits on the "incremental costs" of agencies' regulatory agendas as part of the annual budget process. Shortly thereafter another executive order declared that "It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people" and directed all agencies to appoint Regulatory Reform Officers to lead deregulatory task forces. Other early Trump orders directed specific departments and agencies to weaken high-profile rules already on the books, especially those linked to environmental protection or financial regulation. "We're going to be doing a big number on Dodd-Frank," the president promised.

Meanwhile, the bulk of the substantive legislation passed in the early

---

ANDREW RUDALEVIGE is the Thomas Brackett Reed Professor of Government at Bowdoin College. *He is deeply grateful to the Ewing Marion Kauffman Foundation for its financial support of this research, as well as to those interviewed for this project.*

months of the Trump administration consisted of resolutions offered under the 1996 Congressional Review Act, rolling back regulations passed late in Barack Obama's second term. In 2017, 15 rules were rescinded using the act (compared to just one in the previous 20 years), ranging from educational-accountability requirements under the 2015 Every Student Succeeds Act to limits on the disposal of mining wastes. Regulations not yet published in the *Federal Register* were "frozen," and most are unlikely to be defrosted. And the promulgation of new rules dropped off: As of the end of November, the American Action Forum counted just 234 rules that were finalized in the first 10 months of 2017. At this rate, the total number of new rules finalized in 2017 will be well below the annual average of 377 issued per year during the Obama administration.

Beyond legislation, the defense of various Obama-era regulations held up in court was abandoned, while less formal "guidance" documents interpreting statutes across the bureaucracy were delayed or replaced. The Justice Department, for instance, scrapped Obama's emphasis on avoiding the use of mandatory minimum sentences; the Education Department reversed its previous stance promoting transgender rights. Meanwhile, the president wasted no opportunity to condemn bureaucracy: He seemed to declare it an existential threat to "the West" in a July 2017 speech in Warsaw, Poland.

Do the actions of the Trump administration and Congress so far add up to the "deconstruction of the administrative state" promised by former White House strategist Stephen Bannon? The administration's regulatory pronouncements certainly indicate a clear direction, but the results will be evident only in the long term. Rescinding a regulation is more complicated than simply signing an order: It requires the same lengthy notice-and-comment period necessary to bring that regulation into being in the first place, and the same level of substantive justification — what the Supreme Court in 1983 called "a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." That analysis cannot rest solely on the fact that the president wants fewer regulations. Nor can agencies delay finalized rules without seeking to rewrite them: An effort by the Environmental Protection Agency to sideline a rule limiting methane emissions has already been rejected by the D.C. Circuit Court of Appeals. More broadly, a coalition of left-leaning interest groups brought a lawsuit in February

against the "two-for-one" directive, on the grounds that two extant rules can't simply be set aside to meet the constraints of an arbitrary target; the plaintiffs have argued that the executive order amounted to the president "ordering agencies to violate the law."

Ensuring that the Trump administration's deregulatory efforts have a lasting effect will require a longer-term commitment to the institutionalization of regulatory reform. There is a long history of presidential efforts to rein in regulation, and many of today's proposals start with changes in the current structure and process — based on Ronald Reagan's 1981 executive order that charged the Office of Information and Regulatory Affairs (OIRA) with imposing cost-benefit analysis on major rules — and seek to replicate or extend them.

But the larger lesson of OIRA's own history and the regulatory review it codified is that structure and process are necessary but not sufficient for reform of the regulatory state. Lasting reform comes only from institutionalization, which requires the long-term investment of organizational resources, ranging from staff expertise to political capital. Whether those resources will be provided depends on how much good government a president really wants to buy.

STRUCTURE AND PROCESS

Regulatory reform has been a priority for years among lawmakers, who have introduced several pieces of legislation aiming to deter costly micromanagement, punitive overreach, and the "capture" of federal agencies by the industries they regulate. Proposals tend to center on some combination of process and structure: on the way regulations are formulated, or on the creation of new organizations to review and even veto regulations once formulated. In some cases, lawmakers would gain a much larger role: The REINS Act — "Regulations from the Executive In Need of Scrutiny" — would require that Congress approve all major regulations before they can go into effect. The REVIEW Act ("Require Evaluation before Implementing Executive Wishlists"), by contrast, would shift the burden to the judiciary, delaying rules' effective dates until any preemptive lawsuits are complete. A third acronym-rich measure, the SCRUB Act ("Searching for and Cutting Regulations that are Unnecessarily Burdensome"), is backward-rather than forward-facing. It would create a commission to scour the Code of Federal Regulations and propose past rules for collective rescission by legislative vote.

Another group of proposals would require that new and additional analysis be performed as part of the process of promulgating a regulation. The most comprehensive of them, the Regulatory Accountability Act, would expand public-notice and record-keeping requirements for agency rulemaking, codify procedures for retrospective reviews, and require by law that proposed rules with major economic impact undergo exacting cost-benefit analysis, including the use of formal public hearings in some cases.

Today's ideas for structural reform, such as statutory requirements for cost-benefit analysis, use the experience of OIRA as a starting point. OIRA was created within the OMB by the Paperwork Reduction Act of 1980, but its most salient role was assigned by President Reagan in February 1981 through Executive Order 12291. That order tasked OIRA with vetting the regulatory agenda and the rules proposed by the executive-branch agencies in order to ensure that the benefits of regulations outweigh their costs.

Reagan's order attracted a good deal of criticism at the time. But having been endorsed by all presidents since, OIRA is now a rare example of a contemporary government agency with a bipartisan fan base. OIRA, according to political scientist and longtime agency observer William West, serves as a technocratic "ideologue for efficiency." Cass Sunstein, who headed OIRA during the first term of the Obama administration, has called it the "guardian of a well-functioning administrative process." Most observers agree, even if they have widely varying views on what the office's review process should achieve. At a 30th-anniversary conference that brought together OIRA heads from five presidential administrations, George Washington University law professor Richard Pierce introduced the proceedings by praising the agency as "an institution . . . that attempts to infuse some degree of rationality in the process of continuing changes in regulatory policy."

As a result of its institutional support and bipartisan appeal, OIRA has become the model for most regulatory-reform proposals involving structural change, which tend to focus on ways that the agency's role can be extended or duplicated. The Regulatory Accountability Act would expand OIRA's purview to the work of independent regulatory commissions. And this journal has recently featured two major structural proposals in a more creative vein. In the Fall 2016 issue, Philip Wallach and Kevin Kosar advocated a Congressional Regulation Office that

would mirror OIRA (as the Congressional Budget Office does OMB); this would "provide a disinterested check on agencies' self-interested math" and enable Congress to be a serious participant in the regulatory process through something like the REINS Act. Even more broadly, Edward Glaeser and Cass Sunstein recommended in the Summer 2014 issue that every state should create its own OIRA, enhancing the analytic power of regulatory review to tamp down local rent-seeking. As they observe, "the general consensus is that the process of regulatory review, with its insistent focus on costs and benefits, has made the situation a lot better than it would have been otherwise."

Structure and process surely matter for outcomes. As Stanford political scientist Terry Moe wrote in an influential 1989 essay, "Structural choices have important consequences for the content and direction of policy," and stakeholders therefore fight bitterly over those choices. But transplanting an organization to conduct regulatory review in another venue — a state capitol, say — will not necessarily have the same effect in Washington State that OIRA has now in Washington, D.C. Just because new boxes to check are added on the process side (or a new stop is created on a flow chart, or a new commission is formed to examine past rules), does not mean that rational "good government" will result.

That caution is warranted in practice, as detailed below, but it also makes theoretical sense. In the late 1960s, two prominent scholars writing in very different fields came to complementary definitions of what it meant for a function or organization to be institutionalized. Samuel Huntington, in *Political Order in Changing Societies*, argued that institutionalization "is the process by which organizations and procedures acquire value and stability," specifically by gaining "adaptability, complexity, autonomy, and coherence." Nelson Polsby's historical analysis of the U.S. Congress likewise argued that an "institution" must be well bounded (autonomous), internally complex, and universalistic (in other words, following impersonal rules rather than favoritism or nepotism).

All that is to say that simply creating an organization and assigning it a given task does not make it an "institution"; the organization must first develop an internal procedural template with standardized rules for performing that task, as well as an external "value" that begins with others accepting that its job is legitimate. Over time "value" becomes "reputation," and eventually a form of power in its own right. As political scientist Daniel Carpenter's research shows, bureaucratic reputation

arises from autonomy and expertise, which become embedded in beliefs about the "capacities, roles, and obligations of an organization" among that organization's "audience networks."

These characteristics help indicate what resources are necessary for institutionalization. Those resources include organizational capacity, in terms of funding, staffers, and a culture of analytic expertise; organizational complexity, such that proprietary internal processes are established in a way that would make it difficult to shift a function to another actor; and organizational leverage, in terms of legal or de facto ability to impose sanction or reward. These could flow from various sources, including a president's willingness to spend political capital, but also from the tactical use of intra-organizational tools. Developing a reputation for skillful use of these resources also becomes its own form of capital. History, as well, can help — in OIRA's case, its placement in OMB allowed it to benefit from six decades of OMB relationships with the agencies and the office's wider levers of central clearance. But history doesn't automatically make an organization an institution, either. As former OIRA staffer Stuart Shapiro has written, when politics goes head-to-head with analysis, politics usually wins.

INSTITUTIONAL ORIGINS

OIRA's history offers a good example of the complex process of institutionalization, though these days, the office's origin story is usually presented as a single-shot "big bang," with President Reagan's famous executive order birthing a new institution. Suddenly, line agencies were required to submit all proposed and final-draft regulations for review; regulatory action was not to be "undertaken unless the potential benefits to society...outweigh the potential costs to society" and the regulatory instrument chosen would maximize the "net benefits to society." Major regulations required the completion of formal "Regulatory Impact Analyses."

The executive order was indeed a big deal. But the intellectual lineage of the order and the resources needed for it to actually work accreted slowly across multiple administrations going back to the early 1970s. The Reagan Revolution in this instance is perhaps better termed a Reagan Renovation, assembling organizational, personnel, and political resources into the configuration that was able to evolve into today's "ideologue for efficiency."

In the wake of the 1960s Great Society initiatives, and the follow-up wave of rulemaking concerned with protecting workers, consumers, and the environment, concerns about the cost of these measures quickly arose. President Richard Nixon had created the Environmental Protection Agency through a reorganization plan that went into effect in December 1970, but he was less excited about what the agency actually intended to do. While the EPA's budget in fiscal year 1973 was $2.4 billion, its regulatory actions under the Clean Air Act mandated some $65 billion in non-federal spending. The White House decided to form a "Quality of Life Committee," tasked with ensuring that "suitable analyses of benefits and costs" were conducted and that the EPA heeded the concerns of other agencies about its aggressive rulemaking efforts.

As what became known as the Quality of Life Review (QLR) got underway, OMB director George Shultz wrote a memorandum claiming the right to fold proposed agency regulations into OMB's longstanding authority to coordinate interagency review of budget requests, draft legislation, testimony to Congress, and executive orders. He soon specified that agency analysis of those regulations had to be accompanied by a "comparison of the expected benefits or accomplishments and the costs (Federal and non-Federal) associated with the alternatives considered." During the Lyndon Johnson administration, the Pentagon had pioneered this sort of analysis, applying cost-benefit benchmarks to Army Corps of Engineers regulations. Economist Jim Tozzi was the bureaucratic entrepreneur behind this review, and he became chief of OMB's environment branch in 1972.

OMB could not claim decision-making power to approve or veto proposed rules directly, however: The power to promulgate regulations pursuant to a given statute is normally delegated to a specific department head, not the president. Further, the Administrative Procedure Act dictates the outlines of the process by which regulations are drafted, published, and made effective. Even though OMB was hamstrung by statute, the QLR laid the groundwork for future attempts at regulatory analysis. And because it was conducted by the same personnel who oversaw the budget process, it gave OMB added leverage over agency behavior. In addition, since its review included not just draft regulations but any "standards, guidelines and similar materials" related to the regulatory process, it was harder for agencies to hide behind the APA. What Tozzi later termed the "force and depth" of the review template

was arguably unique. Its *breadth*, however, was quite constrained. While Shultz's memorandum theoretically applied to most regulations, the EPA was clearly its main and often only target.

QLR survived Nixon's early departure from office, and President Gerald Ford added new tracks of regulatory review. With inflation topping 11% in 1974, he required agencies to issue "Inflation Impact Statements" monitored by OMB and the new Council on Wage and Price Stability (CWPS), established by Congress to "review and appraise the various programs, policies, and activities of the departments and agencies" contributing to inflation. The council's economic analyses of regulatory programs became part of the public record during the formal rulemaking process. But agencies proved skilled at evasion: James C. Miller III, then a CWPS economist, recalled that, "I'd call up an agency and say, 'We just saw this morning in the *Federal Register* a regulation you published. We think it is a major rule which requires an [Inflation Impact Statement].' They'd say no and that was the end of the conversation." A 1976 report from the council to Ford noted the need for "formal directives that require agency compliance" to give regulatory review effective scope.

As it turned out, Jimmy Carter was eager to supply those directives. Six weeks into his presidency, Carter bluntly declared, "One of my Administration's major goals is to free the American people from the burden of over-regulation." QLR itself was phased out, but Carter wanted a larger system altogether. In March 1978, he issued Executive Order 12044, along with a handwritten note to OMB director James McIntyre: "Jim: Devote top effort to enforcement. I will help you personally."

Carter's order required agencies to prepare an extensive cost-benefit analysis for all major proposed regulations, including alternative approaches the agency had considered and rejected. ("Major" rules were now defined to include any regulation with at least a $100 million annual effect on the economy.) A new interagency Regulatory Analysis Review Group run by White House staff oversaw a supplemental process that reviewed a limited sample of rules to judge the agencies' analysis. The review group could not veto a regulation, but its feedback would be part of the open record of public comment. This stayed within the strictures of the Administrative Procedure Act but would pressure the agencies to avoid "pro-forma" analysis, as Charles Schultze, chair of the Council of

Economic Advisers, put it, "generating paperwork but having no impact on the quality of regulations."

The Carter administration's hopes for regulatory review proved overly optimistic, and despite the president's plea, enforcement of his order would be inconsistent. But it did teach analysts what questions to ask and what agency-evasion tactics to watch for. OMB was unsparing in the grades it gave to departments along these lines. A 1979 Department of Health, Education, and Welfare report was marked up with comments such as "not true," "not certain," "only at OMB request," and a series of scrawled question marks. The department needed "improved responsiveness to OMB," one staffer wrote, since the "greatest weaknesses of [its] 12044 practices" were pretty fundamental: "avoidance of regulatory analysis" and a "poor general attitude." The department boasted of an "absence of public complaints." But there was, OMB went on, "little other evidence of significant progress. . . . "

Carter had planned to reinforce these initiatives, perhaps with a binding regulatory budget, in his second term. He had been seeking a statutory mandate since 1979 for the type of analysis conducted by the Regulatory Analysis Review Group; as OMB's Tozzi later put it, he "didn't want the fluke of an election to overturn centralized review." (Of course, the 1980 election would only reinforce the demand for review.) Meanwhile, Carter shrugged off his cabinet's objections and signed the Paperwork Reduction Act of 1980 into law. The act extended a 1942 law requiring that agencies collect only essential information, authorizing OMB to weed out duplicate requests and even to veto agency information-collection demands. And it created a new Office of Information and Regulatory Affairs within OMB to manage all this.

Reagan's staff publicly downplayed its inheritance. But Jim Miller, the former CWPS analyst who became OIRA's first chief, privately wrote to OMB deputy director Ed Harper that "[o]ur program will build on the successes of the accounting and paperwork reduction programs," adding that it could now, "for the first time, make real changes in the substance" of regulations. If they found such success, it would be because "when Reagan issued the executive order, we had an infrastructure, which is very important," as Tozzi later said. "[W]e had a system in place." Indeed, despite OMB's embrace of the Paperwork Reduction Act generally, the office viewed OIRA as unnecessary: Under Carter, the agency had already reorganized twice around regulatory and

paperwork tasks, and by 1980 it boasted a 45-person Office of Regulatory and Information Policy.

Still, President Reagan capitalized aggressively on this existing infrastructure. Where Carter had consulted *ad nauseam* with the affected agencies over regulatory review, Reagan sprung it on them. On January 22, 1981, he announced the formation of a Presidential Task Force on Regulatory Relief, to be chaired by Vice President George H.W. Bush. A week later, he sent a memo to his cabinet announcing a freeze on pending regulations. And on February 17, he issued his executive order directing OIRA to review agency rulemaking. All of these were crafted by a small circle of White House and OMB staffers and announced largely as a *fait accompli*.

REGULATORY REVIEW UNDER REAGAN

The Paperwork Reduction Act had given OIRA new authority to reject agency information-gathering efforts—a helpful tool, since few regulations fail to generate paperwork. Even so, this nominal authority needed to be made tangible, and real institutionalization came only when the organization was buttressed by the crucial resources noted earlier: staff capacity; internal complexity that gave the organization value and autonomy; intra- and inter-agency leverage; and a reputation for having all these things.

For staff capacity, OIRA did not have to build from scratch: It sprang to life nearly fully formed as the sum of three extant staffs. OMB's Regulatory and Information Policy team joined a cadre of regulatory analysts taken from the now-defunct CWPS and a small group of statisticians who moved from Commerce to OMB. OMB's Tozzi and CWPS director Thomas Hopkins became dual deputies to OIRA administrator Miller. A system of "desk officers" divided up the regulations flowing from the various agencies, with the ex-CWPS analysts providing support on problem areas that cut across agency lines and for the vice president's task force. When Hopkins and Tozzi left government in 1983, the two divisions merged under a single deputy administrator, Robert Bedell, who had a decade of OMB experience and had helped to draft Reagan's order.

All this meant that most OIRA staffers already knew, and were known by, the agencies whose rules they oversaw. Still, Miller told his top aides in February 1981 that "the nature of our responsibility is increasing to the extent we need as much staff help as we can possibly

get." By then the agency had about 75 people on hand, peaking at about 90 by the fall of 1981; this was not really enough, and OIRA budget requests argued for as many as 140 (albeit in hopes of getting 115). At the same time, OIRA was making efforts to gain expertise in complicated substantive areas.

One of the touchstones of institutionalization is the development of universalistic, rather than subjective, rules: In the case of OIRA, that meant the creation of a neutral methodology of cost-benefit analysis across different policy arenas. Even under Carter, OMB's vacancy announcements seeking "leadership in the agency implementation of Executive Order 12044" prioritized skills in both research design and analysis in fields like "economics, statistics, mathematics, law, or administrative law." The need for quantitative skills ramped up with the more formal imposition of cost-benefit analysis in 1981, and new ads demanded "demonstrated analytical ability...background in economics, statistics, mathematics, financial analysis, or other quantitative analytical training." Already, most OIRA staff had advanced degrees, and they tended to stick around: Donald Arbuckle, who worked at OIRA from 1981 to 2006, recently stressed this continuity, noting it provided "an unusual, stabilizing quality for the office as it has evolved."

Beyond qualified people, OIRA needed to gain authority. One often-overlooked aspect of building authority is the role of organizational complexity—a crucial part of institutionalization. The development of effective routines allows assigned functions to be carried out in a meaningful way and also makes others reliant on those routines, giving value to the organization. To this end, Miller issued a series of more than a dozen "Standard Operating Procedures Memoranda" in May 1981. Number five, for instance, decreed that "whenever meetings are held to which staff from executive agencies are invited, the relevant [OMB] Budget Examiners should also be invited"; number nine said that recommendations on regulatory action should be checked with "the 'other side'" to better integrate the newly merged OMB and CWPS staffs.

The agency also had to develop rules for its "constituents" to follow. OIRA's first effort at Regulatory Impact Analysis Guidance, for instance, stressed to agencies the need to "enabl[e] independent reviewers to make an informed judgement that the objectives of EO 12291 are satisfied"—making the case for action over inaction, to start with, and moving to the benefits and costs of competing options and sequential

"stringency levels." This was an ongoing exercise bolstered by regular internal feedback designed to improve the analytic process. "What have we learned about reforming existing regulations...?" OMB asked itself in 1982. "What progress have we made trying to estimate the overall costs of Federal regulation? What measures do we have of the cost-savings due to Administration reform efforts? Is there any evidence that the Administration's actions have reduced the benefits of regulations (e.g., air and water quality, consumer and worker protection, etc.)?"

OIRA also benefited from the fact that it was not a stand-alone entity. As part of OMB, OIRA could piggyback on long-standing relationships and tools of leverage across the executive branch. OMB had been browbeating departments over their budget requests since the 1920s and managing the formulation of legislative proposals and executive orders since the 1930s. Having used the EPA budget as a weapon since the days of the Nixon administration, Tozzi, for one, knew the score. As he said, OMB was now "sort of a full-service bank....The Government works using three things: money, people, and regulations; the agency must get all three through OMB."

If OMB was viewed by the agencies with a blend of respect and resentment, OIRA sought to build a reputation for both competence and something like ruthlessness, or at least a willingness to use its various forms of leverage. A "Charles Atlas transformation," was how the *Washington Post* put it in 1981; or, as Miller said in an interview that year, "You know, if you're the toughest kid on the block, most kids won't pick a fight with you." Frequently OIRA's fights were with agencies; sometimes they were with other parts of the presidential administration, especially when the White House didn't think about how its actions might harm OMB's standing with the bureaucracy, cause inefficient policy outcomes, or both.

As noted above, Miller had reached out to the political appointees who headed the budget divisions very early on. After all, as a desk officer later noted, regulations "often contain significant budget issues." OIRA was happy to hold up rules when requested by budget staff or as a way for OMB management initiatives to gain traction in the agencies. There was help at the top, too: David Stockman, Reagan's first budget director, fully supported deregulatory efforts. And Stockman's successor was none other than Jim Miller, who after a stint running the FTC returned to head OMB in 1985.

As it was building up its own authority, OIRA also leaned on White House support. As Miller told his subordinates in May 1981, "while I gather that most agencies have been very cooperative with the desk officers...please provide me with the names of recalcitrant officials, dates, and, preferably, written evidence of their lack of cooperation. I will take this matter to higher levels." To make sure those higher levels would listen, Miller staffed the vice president's Task Force on Regulatory Relief with OIRA personnel and ensured that White House staffers were given frequent updates about rules in the pipeline and given an opportunity to react to them. Chief of Staff Jim Baker was regularly updated about legislation that might limit OIRA flexibility. And Ed Meese was asked to intervene to fight "significant backsliding" from "the President's strong deregulatory philosophy" more than once; indeed, when an OSHA regulation was sent to the *Federal Register* without OIRA clearance, OMB deputy director Joe Wright complained that a "premeditated attempt to circumvent a Presidential Order should not be allowed to go unnoticed...." He reminded Meese that "[l]ast year, we brought in several Administrators...to have 'religious sessions'—I certainly think another one is required in this case." The ability to summon West Wing deities made clear to agencies that the regulatory-review process existed in practice, not just on paper.

Other challenges came from Congress. Going back to the days of QLR, lawmakers (mostly, but hardly exclusively, Democrats) had been concerned with White House interference in agencies' rulemaking. Congressional solicitude for the independent regulatory commissions was one reason they had been spared from review for so long. Starting in June 1981, Democratic congressman John Dingell of Michigan, chair of the Energy and Commerce Committee's Subcommittee on Oversight and Investigations, kicked off a long series of hearings considering ways to rein in OIRA and regulatory review. "We believe such limitations would be unconstitutional and are opposing them," OMB deputy director Harper told Meese.

But the attacks from Congress also, counterintuitively, wound up strengthening OIRA's analytic mission. In 1986, Miller and OIRA chief Wendy Gramm cut a deal with Congress, effectively trading reauthorization and de facto legislative acceptance of regulatory review generally in return for additional oversight, in the form of enhanced procedural transparency and future Senate confirmation of OIRA administrators.

In the aftermath, George H. W. Bush's nominee to lead OIRA was never confirmed. But this meant the office was headed by a career civil servant for much of the administration, tamping down partisan provocations and solidifying the agency's reputation for neutral competence.

Political calculations were hardly absent from OIRA, of course. But as its first decade progressed, OIRA was able to devote more resources to the regulatory-review process, enhancing its authority and autonomy. And it could look forward to continuing that trajectory. By 1990, Democratic senator John Glenn of Ohio had a telling exchange with an anti-OIRA advocate testifying before the Senate. Glenn asked whether the witness "would prefer to have OMB completely out of the loop?" "Right," was the reply, "but we recognize that that is not likely to happen." To laughter in the hearing room, Glenn said in return, "I think you're correct."

In 1993, President Bill Clinton cemented OIRA's authority and put Reagan's version of regulatory review on a bipartisan footing with Executive Order 12866. Clinton's update, which remains in place today, limited OIRA review to "significant" rules and gave rhetorical assurance to agencies' regulatory independence. But in practice, wrote White House staffer (and future Supreme Court justice) Elena Kagan, Clinton's order codified an even more "expansive understanding of the President's authority over the sphere of administration."

PRESIDENTS AND GOOD GOVERNMENT

Presidential authority is a key starting point for managing the executive branch. But as OIRA's history should make clear, it is not the only important factor. Regulatory review did not instantly spring into being when Reagan signed his executive order; it came about only after more than a decade of effort prior to the Reagan administration, and it developed only because Reagan and his team invested in its maturation. That included building up staff, nurturing expertise, and paying for it; developing operating procedures and improved analytic techniques; and finding the skill and will to use both legal authority and extra-legal leverage. Bureaucratic entrepreneurs were also influential, a variable rarely noted but often present in institutional development. And Reagan's successors, of both parties, had to buy into the process.

One lesson in this history is that regulatory reform could not be imposed by simple fiat. Advocates of reform may find it easy to issue

executive orders, to draw new boxes on the organizational chart, or to establish more procedural hurdles for new regulations, but this won't have much effect if it is done on the cheap. In fact, some of the proposals on today's reform menu could actually lead to more politicized outcomes if procedural changes are made without the requisite investment in expertise. For instance, implementing the REINS Act without backup from something like a Congressional Regulation Office seems more likely to forestall *any* new regulation rather than demand accountability and smarter regulation. The CRO, in turn, without the kind of long-term investment of resources traced above—from cash to credibility—would fail to gain the expertise and autonomy it would need to counterbalance executive-branch power. The vitriol aimed at undermining the Congressional Budget Office's credibility over its analysis of Obamacare "reform and replace" legislation speaks to the importance of building such authority—and to the potential fragility of even a four-decade-old organization. Success in achieving any of the reforms being proposed requires institutionalization, which in turn requires the sustained provision of institutional resources.

What are the prospects for that in the Trump administration? So far, the evidence is uneven. Despite the administration's clear interest in regulatory policy, President Trump did not formally nominate Neomi Rao to head OIRA until mid-May; she was confirmed on July 10, nearly six months into the term. And that confirmation was a relative rarity: As the Senate's August recess approached, hundreds of vacancies remained in key subcabinet posts that would normally be used to shape regulatory (and deregulatory) proposals in the wider executive branch. The vacuum to date has been filled with a handful of "special advisors." At the EPA, new Administrator Scott Pruitt has reportedly outsourced many rule-making questions to Republican-affiliated legal groups and lobbyists for regulated industries. The review teams established by Trump's executive order likewise seem to be drawn from the ranks of private-sector actors with a direct stake in government policy. In short, the administration so far seems to prefer the regulatory biases produced by self-interest rather than the regulatory analyses produced by OIRA.

This is hardly unique to the Trump administration. Rent-seeking politics of various sorts have always come into conflict with cost-benefit analysis. When the EPA sought to regulate coal-fueled electric power plants in the late 1970s, for instance, Jimmy Carter needed Senate

Majority Leader Robert Byrd's vote for the SALT II treaty more than he needed a new rule on clean air. Likewise, many suspect that the EPA's Clean Power Plan (now withdrawn by the Trump administration) was held in abeyance until the 2012 election was safely past. And it is worth remembering that even the Reagan administration was not immune from political tradeoffs, in either direction. For instance, when OIRA pushed strongly for a less-costly approach to addressing worker exposure to cotton dust in 1983, the White House opted to avoid a public fight and sided with the Department of Labor's rule-writers. More systematically, OIRA has always been seriously understaffed relative to its workload: Recall that, in the early 1980s, OIRA had about 90 employees and hoped for 115. Since the mid-1990s, the office has been lucky to have as many as 50 staff members on hand.

Indeed, there may be an upper bound on what any president is willing to spend on good government, understood in this sense as policies based on disinterested, nonpartisan analysis. Even as Progressives hailed the rise of an administrative state as a way to bring enlightened and accountable "scientific management" to government policy—with politics held separate from administration—in practice, presidents have more often sought not technocratic neutrality but managerial control. In this light, OIRA is an interesting case because it swerved the other way: Invented to enhance presidential control over regulatory outcomes, it has survived because of its analytical power.

The distinction between politics and administration can be easily overstated, of course: When we discuss the "social cost of carbon" or the cash benefits accrued from a healthy human life, for instance, the results of analysis flow from the parameters we set. Politics will never cease to matter in the regulatory process. And while OIRA has succeeded in making its provision of accurate information a political benefit to successive presidents, that success depends on political actors being as interested in the "degree of rationality" OIRA provides as in outcomes that match their biases.

Given the inevitability of political pressures, real, lasting regulatory reform will require long-term resources—including expert staff and complex internal procedures that provide autonomy, organizational leverage, and a reputation for using that leverage, all of which are necessary for institutionalizing regulatory review. Proponents of cost-effective government—both inside and outside of government—need to back

not just reforms on paper, but the resources needed to implement reforms in practice.