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# Environmental Policy in the Reagan Presidency

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The Reagan administration is rapidly gaining a reputation as one of the most effective presidencies in recent history. At least in domestic policy, President Reagan has accomplished greater change in less time than any administration since Franklin D. Roosevelt's "hundred days." Nowhere is this more evident than in the field of environmental policy, where the administration has tried to reverse a cycle begun fifteen years ago. Notwithstanding intense opposition from environmental organizations, Congress, and the public, leading to the forced resignations of his top environmental officials during 1983, Ronald Reagan has set federal environmental regulation on a new course in the 1980s.<sup>1</sup>

Few would have predicted such dramatic change prior to 1981. Despite Reagan's longstanding antipathy to regulation, his espousal of the "sagebrush rebellion" in the late 1970s, and a mandate from the 1980 Republican platform to review the costs and benefits of existing environmental programs, most observers assumed that Reagan's agenda for regulatory relief would be blunted by strong public support for environmental protection. Both the Carter administration and Congress had shown increasing interest in use of cost-benefit analysis to improve the efficiency of environmental programs, but neither had questioned the basic premises and goals of the "environmental decade" of the 1970s. By 1980

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<sup>1</sup> See Norman J. Vig and Michael E. Kraft, eds., *Environmental Policy in the 1980s: Reagan's New Agenda* (Washington, D.C.: Congressional Quarterly Press, 1984).

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progressive environmental administration appeared to have matured into a permanently institutionalized and publicly accepted function of government.<sup>2</sup>

Literature on the presidency has suggested that presidents are rarely successful in radical policy initiatives. Most scholars have argued in recent years that presidents are severely constrained by limited resources and political capital; institutional opposition from Congress, the bureaucracy, and the courts; a zealous and critical mass media; a diverse and demanding assortment of interest groups; and the complexity and inertia of the executive branch itself. Before the Reagan administration, references to a “no-win presidency” and an “illusion of presidential government” had become common.<sup>3</sup> For example, in his preface to the 1980 edition of *Presidential Power*, Richard Neustadt reminded his readers that presidential weakness was the underlying theme of his original book and noted:

Weakness is still what I see. Expectations rise again and clerky tasks increase, priorities are needed more than ever but are harder to maintain, and prospects for sustained support from any quarter worsen as political parties wane.<sup>4</sup>

In his reappraisal dealing with the Carter administration, Neustadt was moved to ask: “Is the Presidency possible? Even in the humble sense of keeping the game going, handing on the office reasonably intact?”<sup>5</sup>

Such conclusions may have to be revised in light of the Reagan presidency. Reagan’s “revolution” is predicated on a radical reassertion of presidential powers and prerogatives, and his domestic agenda is primarily a *negative* one—cutting back taxes, spending, and regulation—which renders it less vulnerable to the usual political constraints. This article uses the case of environmental policy to examine how an incoming presidential administration strongly committed to reversing previous policies can achieve systemic, nonincremental policy change. What were the Reagan administration’s environmental policy goals and what strategies were used to pursue them? What questions do these goals and strategies raise about presidential intervention in regulatory processes? And what are the consequences for environmental protection?

#### ENVIRONMENTAL POLICY CHANGE AND THE PRESIDENCY

Reagan’s intervention in environmental policymaking goes far beyond precedents set by previous chief executives. Although President Richard Nixon played

<sup>2</sup> Helen M. Ingram and Dean E. Mann, “Environmental Policy: From Innovation to Implementation,” in Theodore J. Lowi and Alan Stone, eds., *Nationalizing Government: Public Policies in America* (Beverly Hills, Calif.: Sage Publications, 1978); Dean E. Mann, ed., *Environmental Policy Implementation: Planning and Management Options and Their Consequences* (Lexington, Mass.: Lexington Books, 1982).

<sup>3</sup> Paul C. Light, “Presidents as Domestic Policymakers,” in Thomas E. Cronin, ed., *Rethinking the Presidency* (Boston: Little, Brown and Co., 1982); Hugh Hecl and Lester Salamon, eds., *The Illusion of Presidential Government* (Boulder, Colo.: Westview Press, 1981).

<sup>4</sup> Richard E. Neustadt, *Presidential Power: The Politics of Leadership from FDR to Carter* (New York: John Wiley and Sons, 1980), xi.

<sup>5</sup> *Ibid.*, 241.

an important role in launching the “environmental decade” in 1970, most of the new environmental regulation that followed was the product of congressional legislation that owed little to presidential leadership. Most of the new social regulation of the 1970s, that is, federal programs that used regulatory techniques to achieve broad social goals, reflected strong pressures from environmental and consumer organizations backed by a massive shift in public opinion favoring vigorous protection of public health, safety, and the environment. Moreover, such legislation was developed through bipartisan coalitions in the key House and Senate committees that sought consensus on the major environmental issues.<sup>6</sup>

Most of the new environmental legislation delegated broad areas of discretionary authority to the implementing federal agencies. Many statutes also authorized citizen suits to enforce compliance and provided for judicial review of administrative rules and regulations. As a result, virtually every major environmental decision made by the agencies was contested in the courts, which came to play an important role in environmental administration. Although they upheld most agency actions, the courts put increasing pressure on the agencies to support their decisions with substantial evidence and a full public record of the administrative process.<sup>7</sup>

All presidents tried to exert coordination and control over environmental regulation in the 1970s, but they had relatively little impact on the development of agency policy. Presidents Nixon, Gerald Ford, and Jimmy Carter each established new mechanisms for reviewing agency rulemaking. Nixon set up an advisory council representing industry to convey business concerns over the new air and water pollution requirements. He subjected environmental regulations to “Quality of Life” review by the Office of Management and Budget (OMB) and other agencies. Ford required “inflationary impact statements” on new environmental regulations. Carter initially abolished such reviews, but in 1978 established an even more far-reaching regulatory oversight process through a new Regulatory Council and a Regulatory Analysis Review Group (RARG). RARG, staffed by the Council on Wage and Price Stability (COWPS) and the Council of Economic Advisers (CEA), singled out a small number of proposed regulations with major economic impacts (over \$100 million per year) for cost-benefit analysis in an effort to find regulatory alternatives that would reduce inflationary pressures. Although none of these initiatives had a major influence on the development of regulation, they made such agencies as the Environmental Protection Agency (EPA) increasingly sensitive to economic considerations and

<sup>6</sup> Walter A. Rosenbloom, *The Politics of Environmental Concern*, 2nd ed. (New York: Praeger, 1977); John C. Whitaker, *Striking a Balance: Environment and Natural Resources Policy in the Nixon-Ford Years* (Washington, D.C.: American Enterprise Institute, 1976); and J. Clarence Davies III and Barbara A. Davies, *The Politics of Pollution*, 2nd ed. (Indianapolis: Pegasus, 1975).

<sup>7</sup> Lettie M. Wenner, *The Environmental Decade in Court* (Bloomington: Indiana University Press, 1982); R. Shep Melnick, *Regulation and the Courts: The Case of the Clean Air Act* (Washington, D.C.: The Brookings Institution, 1983).

helped to stimulate more flexible and innovative approaches to policy implementation.<sup>8</sup>

General pressures for regulatory reform gathered more steam through the 1970s. By the middle of the decade Congress, as well as the White House, was showing increasing concern over the rigidities and anticompetitive effects of economic regulation by such older regulatory commissions as the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Aviation Administration. In the Carter administration a start was made toward deregulating transportation and energy. By the latter part of the decade attention began to shift to such new regulatory agencies in the executive branch as EPA and the Occupational Safety and Health Administration (OSHA).<sup>9</sup> Most economists advocated greater reliance on market incentives to reduce the costs of regulatory compliance; two examples from environmental policy are taxes on pollution discharged into the environment and permits to discharge pollution that are fixed in number and exchangeable among polluters. While Congress did not accept this general approach, there was growing support for new methods of cost-benefit and risk-benefit analysis to improve the flexibility and effectiveness of environmental administration.<sup>10</sup>

The Carter administration tried to balance these pressures while placing high priority on environmental protection. Carter drew heavily on the established environmental organizations for appointments and advice in furthering environmental goals. To some extent he “politicized” environmental administration by placing strongly committed environmentalists in key positions and attacking vested congressional interests whose projects the environmentalists opposed (especially large water projects). But at the same time Carter moved to establish economic review and oversight processes that went considerably beyond those of his predecessors; thus he laid the groundwork for much deeper intervention in regulatory decisionmaking in the Reagan administration.<sup>11</sup>

#### THE CASE FOR PRESIDENTIAL INTERVENTION

Some critics of regulatory policy had long advocated presidential intervention to increase the political accountability of regulatory agencies. In an influential ar-

<sup>8</sup> See, e.g., Douglas M. Costle, “Environmental Regulation and Regulatory Reform,” *Washington Law Review* 57 (1982): 409–32; and George C. Eads and Michael Fix, *Relief or Reform? Reagan’s Regulatory Dilemma* (Washington, D.C.: The Urban Institute Press, 1984), chap. 3.

<sup>9</sup> See, e.g., James E. Anderson, “Economic Regulatory and Consumer Protection Policies,” in Lowi and Stone, eds., *Nationalizing Government*, and James Q. Wilson, ed., *The Politics of Regulation* (New York: Basic Books, 1980).

<sup>10</sup> See, e.g., Lester B. Lave, *The Strategy of Social Regulation: Decision Frameworks for Policy* (Washington, D.C.: The Brookings Institution, 1981), and Daniel Swartzman, Richard A. Liroff, and Kevin G. Croke, eds., *Cost-Benefit Analysis and Environmental Regulations* (Washington, D.C.: Conservation Foundation, 1982).

<sup>11</sup> See Susan J. Tolchin and Martin Tolchin, *Dismantling America: The Rush to Deregulate* (Boston: Houghton-Mifflin, 1983), chap. 2; George C. Eads and Michael Fix, “Regulatory Policy,”

ticle published in 1975, Lloyd Cutler and David Johnson, the former a leading proponent of stronger executive authority in both domestic and foreign affairs, argued that the concept of regulatory decisionmaking by independent, nonpartisan experts no longer served the country well.<sup>12</sup> Reviving an old debate, they stated bluntly that “regulatory agencies are deeply involved in the making of ‘political’ decisions in the highest sense of that term—choices between competing social and economic values and competing alternatives for government action—decisions delegated to them by politically accountable officials.” Regulatory “failure,” as Cutler and Johnson defined it, occurred “when an agency has not done what elected officials would have done had they exercised the power conferred on them by virtue of their ultimate political responsibility.” They, therefore, suggested the need for “some mechanism allowing more frequent intervention in the regulatory process by politically accountable decisionmakers.”<sup>13</sup> Although they saw Congress and the president as sharing this responsibility, they argued that the president was in a much better position to impose political accountability:

If what we need is more flexible, coordinated and politically acceptable regulatory policymaking, it can be argued that the President should be given much more extensive power and responsibility to intervene in the regulatory process—whether he wants it or not. Even the critics of expanded presidential power would probably admit that the President is capable of acting more quickly than can the Congress in formulating and articulating national policy goals. In addition, the President and his immediate staff have an overview of government management—and a constitutional responsibility for executing all of the laws—that is not shared by a single regulatory agency, by any specialized congressional committee or by the Congress as a whole. The President is the only nationally elected officer, and thus, at least arguably, our most politically accountable official. He is uniquely situated to intervene (at least in a limited number of critical instances) in order to expedite, coordinate, and, if necessary, *reverse agency decisions*.<sup>14</sup>

Cutler and Johnson’s proposal was aimed primarily at the independent regulatory commissions and included provisions to ensure congressional approval, public debate, and judicial review of the record. However, it added impetus to a movement to strengthen presidential leadership in the wake of the Watergate debacle. It also challenged the prevailing wisdom that new areas of “technical” regulation—such as the environment, health, and safety—were best handled by professional experts in the regulatory bureaucracy and impartial judges in the courts. As Cutler recently put it, “Regulatory rulemaking calls for ‘political’

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in John L. Palmer and Isabel V. Sawhill, eds., *The Reagan Experiment* (Washington, D.C.: Urban Institute Press, 1982).

<sup>12</sup> Lloyd N. Cutler and David R. Johnson, “Regulation and the Political Process,” *Yale Law Journal* 84 (1975): 1395–1418. See also Cutler, “To Form a Government,” *Foreign Affairs* 59 (1980): 126–43.

<sup>13</sup> Cutler and Johnson, “Regulation and the Political Process,” 1399.

<sup>14</sup> *Ibid.*, 1410–11 (emphasis added).

balancing and accountability as much as does enactment of the authorizing legislation itself.”<sup>15</sup>

The pressures for regulatory reform and for presidential intervention in regulatory processes put environmentalists on the defensive. On the one hand, they were opposed to any regulatory reform or political intervention that might weaken the statutory mandates won in Congress; they wanted to see environmental administration professionalized and taken out of politics. At the same time, however, they were skeptical of new decisionmaking methodologies such as cost-benefit and risk-benefit analysis on grounds that they concealed subjective political biases that might weaken environmental commitments. The environmentalists looked to congressional committees and the courts to maintain pressure on the agencies to implement the laws, but opposed presidential intervention to impose cost-benefit criteria on decisionmaking. The Sierra Club ultimately brought suit against the Carter administration on grounds that political bargaining among the White House, the EPA, and regulated industries over sulfur emission standards represented an unconstitutional intervention and denial of due process in agency rulemaking.

The District of Columbia Court of Appeals eventually upheld the executive power of the president to intervene in regulatory policymaking in this case. In her opinion, Judge Patricia Wald held that “we do not believe that Congress intended that the courts convert informal rulemaking into a rarefied technocratic process, unaffected by political considerations or the presence of Presidential power.”<sup>16</sup> She reasoned:

The authority of the president to control and supervise executive policymaking is derived from the Constitution; the desirability of such control is demonstrable from the practical realities of administrative rulemaking. Regulations such as those involved here demand a careful weighing of cost, environmental, and energy considerations. They also have implications for national economic policy. Our form of government simply could not function effectively or rationally if key executive policymakers were isolated from each other and from the chief executive. . . .<sup>17</sup>

The *Sierra Club* decision has been extensively discussed in the legal literature. The point here is that it appeared to allow the president far more extensive powers to intervene in regulatory affairs than had been taken for granted before. Although President Reagan had launched his attack on environmental regulation before the decision was handed down, it appeared to many to legitimate his broad use of presidential powers to alter environmental policy.

Richard P. Nathan has also defended Reagan’s “administrative presidency.” Echoing Cutler, he supports broad political intervention in the administrative process: “The basic premise is that management tasks *can and should* be performed by partisans. This concept is not only appropriate, but necessary, to a

<sup>15</sup> Lloyd N. Cutler, “The Case for Presidential Intervention in Regulatory Rulemaking by the Executive Branch,” *Tulane Law Review* 56 (1982): 835.

<sup>16</sup> *Sierra Club v. Costle*, 657 F. 2d 298 (D.C. Cir. 1981), 406–07.

<sup>17</sup> *Ibid.*, 406.

functioning democracy in a large and technologically advanced nation such as the United States.” Nathan suggests that “*making government work better*” requires that “*politics penetrate operations, that the values politicians are elected to advance are reflected in the execution of the laws, as well as in their enactment.*”<sup>18</sup> He supports Reagan’s politicized administration as necessary to effective domestic policy management even though, in this case, the end result has been that “environmental policies of the prior fifteen years were substantially diluted.”<sup>19</sup>

#### THE DANGERS OF PRESIDENTIAL CONTROL

The fundamental issue raised by Cutler and Johnson, the *Sierra Club* decision, and Nathan’s review of the Reagan strategy is an old one: how can a balance be struck between the need for political accountability to elected officials and the need for skilled, professional, nonpartisan administration? In an overloaded regulatory state, the case for stronger presidential direction of the bureaucracy is an appealing one. As reformers have long pointed out, too many agencies have been “captured” by the clientele they are supposed to be regulating. But the dangers of presidential “capture” of the agencies could be equally as great. As one critic put it, unfettered White House intervention could bring about a situation in which any decision “will be based almost entirely on a ‘political’ judgment about who should win and who should lose.”<sup>20</sup> Another constitutional expert has warned, “The great danger from presidential intervention in rulemaking is that scientific and professional understanding—the facts—will be reduced to too small a role.”<sup>21</sup>

The *Sierra Club* case raised two primary issues. One was whether presidential intervention in the substance of agency rulemaking violated the separation of powers, given the fact that Congress had delegated rulemaking authority to a specific administrator. The Circuit Court rejected this argument, as reflected in Judge Wald’s opinion. The second issue was whether *ex parte* discussions among the president, agency officials, and regulated parties, which took place after the formal comment period had ended, violated the principles of due process embodied in the Administrative Procedure Act. Courts have generally required that all evidence that materially affects the outcome of agency decisions be placed in the record, that affected parties be given an opportunity to comment on such evidence, and that the full record be available for judicial review. In this case, the court relaxed these requirements for public disclosure of the content of presidential deliberations regarding the final agency decision. But it still held that the

<sup>18</sup> Richard P. Nathan, *The Administrative Presidency* (New York: John Wiley and Sons, 1983), 7, 13 (emphasis in original).

<sup>19</sup> *Ibid.*, 78.

<sup>20</sup> Alan B. Morrison, “Presidential Intervention in Informal Rulemaking: Striking the Proper Balance,” *Tulane Law Review* 56 (1982): 892.

<sup>21</sup> Kenneth Culp Davis, “Presidential Control of Rulemaking,” *Tulane Law Review* 56 (1982): 854.



agency's decision "must have the requisite *factual support* in the rulemaking record, and under this particular statute the Administrator may not base the rule in whole or in part on any '*information or data*' which is not in the record, no matter what the source."<sup>22</sup> The decision does not give the president the right to impose arbitrary and capricious decisions or to exercise discretion not granted under the statute. Nor is there anything in the decision that allows a president to violate the statutory intent of Congress in administering regulatory policy.

#### EVALUATING PRESIDENTIAL INTERVENTION

The issue then is not *whether* a president may intervene in regulatory decision-making, but *how*, and *for what purpose*. Most would agree on the importance of reaching some balance between political accountability and expertise, politics and professionalism, reform and continuity, and presidential and congressional oversight. But how do we evaluate the particular balance struck in any one administration or field of policy? Two criteria are particularly important in evaluating such presidential interventions. The first is *legitimacy*—does the president's action serve to further the goals embodied in relevant statutes? Does the president have an electoral mandate or public support for the political resolution of the issues that he imposes? The case for political accountability only holds if these conditions are met. The second criterion is *technical rationality*—is the president's decision compatible with a reasonable interpretation of factual evidence in the record? Or, more broadly, does the pattern of presidential intervention permit skilled professionalism as well as political responsiveness in administration?

It is important to distinguish between the general merit of arguments for regulatory reform and presidential direction and the kind of policy change we observe in the Reagan administration. We try to do so by describing the administration's policy goals, the strategies used to pursue them, and the impact on environmental institutions and policies.

#### *Reagan's Environmental Policy Agenda*

Reagan's environmental policy goals were derived from his broader agenda for regulatory reform, and were described in some detail in the 1980 Republican platform. The platform reaffirmed the party's "long standing commitment to conservation and wise management of America's natural resources," and declared that a "healthy environment is essential to the present and future well-being of our people," and that a "government role is necessary" to ensure pollution is controlled and public health protected. However, it noted also that it was "imperative that environmental laws and regulations be reviewed, and where necessary, reformed to ensure that the benefits achieved justify the costs im-

<sup>22</sup> *Sierra Club v. Costle*, 657 F. 2d, 407 (emphasis in original).

posed. Too often, current regulations are so rigid and narrow, that even individual innovations that improve the environment cannot be implemented.” “We believe,” it said, “that regulatory procedures must be reformed to expedite decisionmaking. . . . [And we] strongly affirm that environmental protection must not become a cover for a ‘no-growth’ policy and a shrinking economy.”<sup>23</sup>

In the fall of 1980 Reagan appointed a transition task force on the environment to produce specific reform suggestions. Chaired by Dan Lufkin, a former head of Connecticut’s Department of Environmental Protection, the task force also included two former EPA administrators, Russell Train and William Ruckelshaus. It produced a voluminous report calling for moderate reforms in line with the Republican platform. The report recommended reexamination of environmental laws passed in the previous decade, but did not advocate cutting programs on a wholesale basis. As Russell Peterson, a former Council on Environmental Quality (CEQ) head under Presidents Nixon and Ford, described it, the report “sought to maintain the momentum of environmental protection while allowing for some easing of regulation and for economic incentives for pollution control.”<sup>24</sup> The Lufkin report was largely ignored, however, and by late 1980 the president’s environmental policy agenda was being shaped more by the views of James G. Watt and the conservative Heritage Foundation.<sup>25</sup>

Watt was an experienced and successful administrator prior to his appointment as secretary of the interior, but he held views dramatically at odds with the transition task force. He was reportedly recommended to the president by Joseph Coors, of Coors Brewing Company, and Senator Paul Laxalt of Nevada. Coors was a leading contributor to the Reagan campaign and an important figure in conservative Republican politics, and Laxalt was chairman of the president’s national campaign organization. Both were prominent representatives of the so-called Sagebrush Rebellion, a conservative western movement especially active on public lands issues. In contrast, the Lufkin task force was more closely identified with the Bush campaign and the moderate wing of the party. Watt was later appointed head of a new Cabinet Council on Natural Resources and Environment, and emerged as the administration’s chief spokesman on energy and environmental issues. By turning to Watt and the policy recommendations of the Heritage Foundation, Reagan was abandoning a moderate Republican policy agenda and a campaign that had stressed coalition building for a far more aggressive, narrow, and ideological strategy. That decision had major implications for the direction of environmental policy initiatives in the first three years of his administration and for their legitimacy.

One of the most notable risks in such a political strategy was a tendency to

<sup>23</sup> *Congressional Quarterly Weekly Report*, 19 July 1980, 2046.

<sup>24</sup> Russell W. Peterson, “Laissez-Faire Landscape,” *New York Times Magazine*, 31 October 1982, 32.

<sup>25</sup> See especially Louis J. Cordia, “Environmental Protection Agency,” and James E. Hinich, Jr., “Regulatory Reform: An Overview,” in Charles L. Heatherly, ed., *Mandate for Leadership: Policy Management in a Conservative Administration* (Washington, D.C.: Heritage Foundation, 1981).

downplay experience (in substantive policy) and professionalism in the pursuit of ideologically-defined goals. Another was to assume that Congress and environmental groups had little claim to participate in decisions putting such an agenda into effect. Both risks were evident in the substance and tone of the Heritage study. Displaying little familiarity with environmental programs or support for their legislatively mandated goals, the EPA chapter in the report referred to the agency as a “morass of regulatory controls” and argued that it needed “proper administrative direction and not legislative remedy.”<sup>26</sup> Numerous reports in the press indicated that the study was “widely used by Mr. Reagan’s transition staff after his election.”<sup>27</sup>

### *A Mandate for Change?*

The election results on November 4 represented an impressive victory for Reagan over President Jimmy Carter. Reagan won nearly 44 million votes (50.7 percent) to Carter’s 35.5 million (41.0 percent), with John Anderson capturing 5.7 million (6.6 percent). Carter received the lowest percentage of the popular vote of any incumbent Democratic president in U.S. history.<sup>28</sup> Reagan interpreted that vote as a mandate for conservative policy change and economic revitalization. Consequently he launched a thoroughgoing attack on economic and regulatory policies and, as part of that effort, attempted a radical alteration in environmental policies.

Reagan’s margin over Carter and Republican gains in the Senate and House (in particular, Republican capture of the Senate for the first time since 1954) seemed to convince many political observers that the president did indeed receive a mandate for his policy agenda. As Thomas E. Mann and Norman J. Ornstein noted, “the results of the 1980 election produced a clear and distinct change in the *political dialogue* and the *political agenda*, with both Democrats and Republicans talking about and focusing on the need to reduce public spending, balance the budget, and shore up our national defense. . . .”<sup>29</sup> Reagan was successful in seeking congressional approval for his economic policy, and the massive cut-backs in environmental programs—at least in the first year—in part because of the widely shared belief that such a mandate existed and thus legitimized his policy agenda. Nearly every study of the 1980 election, however, casts consider-

<sup>26</sup> Cordia, “Environmental Protection Agency.”

<sup>27</sup> William E. Schmidt, “Denver Lawyer’s Role in E.P.A. Decisions Is Focus of Inquiries by Congress,” *New York Times*, 26 February 1983, 7. See also Peterson, “Laissez-Faire Landscape.” In a general review of the administration’s record after one year, the Heritage Foundation itself said that almost two-thirds of its recommendations had been adopted. See B. Drummond Ayres, Jr., “Conservatives Bid Reagan Cut More,” *New York Times*, 22 January 1983, 7.

<sup>28</sup> Gerald M. Pomper, “The Presidential Election,” in Pomper, ed., *The Election of 1980* (Chatham, N.J.: Chatham House, 1981).

<sup>29</sup> Thomas E. Mann and Norman J. Ornstein, “The Republican Surge in Congress,” in Austin Ranney, ed., *The American Elections of 1980* (Washington, D.C.: American Enterprise Institute, 1981), 300–301 (emphasis in original).

able doubt on the existence of such a mandate and therefore on the legitimacy of the strategy used by the Reagan administration to put its agenda into effect.<sup>30</sup> A review of public opinion on environmental issues provides an even clearer indication that public support for environmental protection remained exceptionally strong, as even the Reagan administration recognized by late 1983.<sup>31</sup>

Nevertheless, convinced that he had a mandate for conservative policy change, the president set out to define new environmental policy priorities, and he selected James Watt at Interior and Anne Gorsuch at EPA to carry out his policies. In at least some respects, the president's environmental policy agenda reflected the Republican platform and the position of the Lufkin transition task force. Thus, in the first annual report of the Reagan CEQ, the guiding principles of the administration's policy were set out: regulatory reform, including extensive use of cost-benefit analysis in determining the value of environmental regulations; reliance as much as possible on the free market to allocate resources; and decentralization or environmental federalism, shifting responsibilities for environmental protection to state and local governments whenever feasible.<sup>32</sup>

The principles outlined in the council's report were not too far removed from the consensus among scholars that environmental policy had "moved from an era of commitment to environmental quality goals to a period of searching for efficient, economical, and politically feasible techniques and mechanisms for protecting the environment."<sup>33</sup> If the Reagan administration had tried to build on this emerging consensus, it might have accomplished more than it ultimately did and avoided many later embarrassments.

However, to fashion a new environmental reform coalition in Congress would have required considerable time and effort, as well as recognition that most of the existing environmental quality goals had broad, bipartisan support, even in the new Republican Senate. The president would have had to articulate a clear and compelling case for revising regulatory statutes and procedures without sacrificing basic environmental objectives. But a consensus-building strategy of this kind conflicted with the ideological fervor of a new administration determined to achieve quick results in economic deregulation and recovery. The supply-side tax and budget cut program took precedence over everything else by

<sup>30</sup> See, e.g., Everett Carl Ladd, "The Brittle Mandate," *Political Science Quarterly* 96 (Spring 1981): 1-25; Paul R. Abramson, John H. Aldrich, and David W. Rohde, *Change and Continuity in the 1980 Elections* (Washington, D.C.: Congressional Quarterly Press, 1982); Pomper, "The Presidential Election"; William Schneider, "The November 4 Vote for President: What Did It Mean," in Ranney, ed., *The American Elections of 1980*; and Warren E. Miller and J. Merrill Shanks, "Policy Directions and Presidential Leadership: Alternative Interpretations of the 1980 Presidential Election," *British Journal of Political Science* 12 (July 1982): 299-356.

<sup>31</sup> Robert Cameron Mitchell, "Public Opinion and Environmental Politics in the 1970s and 1980s," in Vig and Kraft, eds., *Environmental Policy in the 1980s*; Philip Shabecoff, "Ruckelshaus Says Administration Misread Mandate on Environment," *New York Times*, 27 July 1983.

<sup>32</sup> Council on Environmental Quality, *Environmental Quality 1981* (Washington, D.C.: Government Printing Office, 1982), 2.

<sup>33</sup> Ingram and Mann, "Environmental Policy," 131.

the time Reagan assumed office. In this context, environmental policy came to be seen as a derivative element in the economic recovery program, obviating the need for separate congressional legitimacy. Substantive policy change could then largely be pursued through an administrative strategy: What was not attained legislatively could be achieved through control of the bureaucracy. This approach would have the advantage of producing tangible results more quickly, allowing more direct presidential intervention in environmental regulation, and minimizing highly visible and potentially controversial proposals that would accompany requests to Congress to alter the basic environmental statutes.

### *The Administrative Strategy Under Reagan*

The administrative strategy consisted of four interrelated components: personnel policies emphasizing the selection of loyal and ideologically committed policy officials; government reorganization intended to facilitate centralized White House control of policy change and to institute changes within departments and agencies that would help further the president's policy agenda; budgetary cutbacks justified largely by appeal to economic needs and governmental reform, not policy change; and centralization of regulatory oversight to implement the president's economic and regulatory relief goals. The general strategy has been discussed in several recent midterm assessments of the Reagan administration.<sup>34</sup> We examine it here as a case study of environmental policy change and regulatory reform.

*Personnel Policies.* According to Nathan, the "key ingredient" of Reagan's administrative strategy has been the appointment of loyal and committed policy officials willing to spearhead the conservative "revolution":

Appointed policy officials in agency posts have penetrated administrative operations by grabbing hold of spending, regulatory and personnel decisions. From the beginning, these and other administrative tactics have been used aggressively by the Reagan administration.<sup>35</sup>

The major examples that Nathan used to illustrate the point included Anne Gorsuch and James Watt. Like others, they "successfully took on the bureaucracy to pursue the administration's policy goals."<sup>36</sup> The effect of such personnel policies at the EPA were particularly devastating: the agency suffered enormous budgetary cutbacks that necessitated sharp reductions in personnel. Many career

<sup>34</sup> See, e.g., Nathan, *The Administrative Presidency* and "The Reagan Presidency in Domestic Affairs," in Fred I. Greenstein, ed., *The Reagan Presidency: An Early Assessment* (Baltimore: Johns Hopkins University Press, 1983); Palmer and Sawhill, eds., *The Reagan Experiment*; and Hugh Heclo, "One Executive Branch or Many?" in Anthony King, ed., *Both Ends of the Avenue: The Presidency, the Executive Branch, and Congress in the 1980s* (Washington, D.C.: American Enterprise Institute, 1983).

<sup>35</sup> Nathan, *The Administrative Presidency*, 69.

<sup>36</sup> *Ibid.*, 78.

officials, especially highly trained and experienced lawyers and other professionals, departed from the agency as morale declined. The numbers themselves are revealing. Combining full-time and part-time staff, employment at the EPA dropped from 14,269 on January 31, 1981 to 11,474 by November 1982. The staff at the agency headquarters dropped from 4,700 when the Reagan administration took office to perhaps as low as 2,500 by September 1982.<sup>37</sup> In March 1983, the Office of Personnel Management reported that 2,618 EPA positions had been eliminated since January 1981; 1,513 of them were “employees with full-time, permanent appointments.”<sup>38</sup>

Yet the numbers do not reveal the full impact of this strategy. The Reagan environmental policy team was distinguished chiefly by its lack of federal experience and by its hostility toward EPA programs they were to administer. Both qualities were intentional. Nathan notes that six months before the 1980 presidential campaign got underway, a system was being developed for appointing persons to cabinet and subcabinet positions. Designed by Edwin Meese and E. Pendleton James, it was intended to provide centralized control of presidential appointments. The individuals were carefully selected and screened for their ideological purity and were briefed by the White House, rather than agency professional staff, to ensure that the presidential agenda would be faithfully executed.<sup>39</sup> Louis J. Cordia, formerly at the Heritage Foundation and later an official at the EPA, helped to screen EPA officials and prospective officials as a member of the Reagan transition team. His role surfaced in 1983 amidst press accounts of so-called “hit lists” of scientists found to be ideologically unacceptable to the administration.<sup>40</sup>

EPA and Interior Department officials were recruited largely from the private sector and from regulated industries, reflecting Reagan’s determination to shift the balance of representation in executive agencies toward the business community. For example, Rita Lavelle, EPA assistant administrator for hazardous waste, was formerly a public relations officer for Aerojet-General; Kathleen Bennett, assistant administrator for air, noise and radiation, had been a lobbyist for the American Paper Institute; and Robert Perry, EPA general counsel, worked as a lawyer for the Exxon Corporation from 1969 to 1981.<sup>41</sup> The top EPA post was not filled until May 1981 when Anne Gorsuch, a Watt protégé, was confirmed as administrator. Gorsuch (later Burford) had been an attorney for the Colorado telephone company and a member of the Colorado legislature. She had no management experience, no experience in Washington, D.C., and no significant

<sup>37</sup> Philip Shabecoff, “Budget Office Is Said to Be Asking 17% Cutback in Funds for E.P.A.,” *New York Times*, 13 December 1982; and “U.S. Environmental Agency Making Deep Staffing Cuts,” *New York Times*, 3 January 1982.

<sup>38</sup> Dick Kirschten, “Administration Using Carter-Era Reform to Manipulate the Levers of Government,” *National Journal*, 9 April 1983, 732–36.

<sup>39</sup> Nathan, *The Administrative Presidency*, 74–75. See also Kirschten, *ibid.*

<sup>40</sup> Stuart Taylor, Jr., “Ex-E.P.A. Aide Says He Drew Up ‘Pro and Con’ Lists on Personnel,” *New York Times*, 17 March 1983, 12.

<sup>41</sup> *New York Times*, 21 June 1981, and 26 February 1983, 18.

experience with or knowledge of environmental policy. She saw her job largely as improving administrative efficiency at EPA and implementing the administration's environmental deregulation agenda.<sup>42</sup>

While such a personnel strategy was understandably attractive to an incoming conservative administration, there were significant risks.<sup>43</sup> In one limited study of middle-level appointments in the first half of 1981, G. Calvin Mackenzie found that nearly sixty percent of the sub-Cabinet offices, nearly eighty percent of the independent agencies positions, and virtually all of the independent regulatory commission positions were staffed by people with no previous service in the executive branch. Noted Mackenzie, "You've got an especially dangerous situation with people so inexperienced."<sup>44</sup> Similarly, two career EPA officials voiced their complaints in a *New York Times* article: "Virtually none of the top managers have more than a few months experience in their areas of responsibility; many had no prior experience in government, and certainly none in the environmental field."<sup>45</sup> Thus it was not surprising that, especially early in their tenure, Gorsuch's management team distrusted the professional staff, the career staff grew suspicious of the new policy officials, and the agency's capacity to implement environmental policies declined sharply. Moreover, the press was replete with accounts of alleged political manipulation of scientific data and ideological screening of scientific advisory bodies. One result was the erosion of the credibility of environmental data analysis and policy analyses produced in the administration.<sup>46</sup>

*Reorganization.* Particularly in the first year of the administration, reorganization of agency offices became an integral part of the overall strategy. There were two separate aspects of this organizational strategy. The first has received more attention, and involved internal reorganization of offices within the EPA and Interior Department, and the virtual elimination of selected environmental offices within the Department of Energy, Department of Transportation, and the Executive Office. Justified on the basis of improved management and elimination of overlap and duplication of responsibilities, the organizational changes also can be viewed as a determined effort to downgrade those offices likely to challenge the president's policy agenda and to institutionalize his environmental and

<sup>42</sup> Richard N. L. Andrews, "Deregulation: The Failure at EPA," and J. Clarence Davies, "Environmental Institutions and the Reagan Administration," in Vig and Kraft, eds., *Environmental Policy in the 1980s*.

<sup>43</sup> Chester A. Newland, "The Reagan Presidency: Limited Government and Political Administration," *Public Administration Review* 43 (January/February, 1983): 1-21.

<sup>44</sup> Quoted in Steven R. Weisman, "Reagan's Appointees Reflect the Process, for Better or Worse," *New York Times*, 20 March 1983, 1.

<sup>45</sup> John Jones and Jack Smith, "Critics of E.P.A. Are Right," *New York Times*, 1 September 1982, 23. The authors' names are pseudonyms of EPA career professionals.

<sup>46</sup> Lawrence Mosher, "More Cuts in EPA Research Threaten Its Regulatory Goals, Critics Warn," *National Journal*, 10 April 1982, 635-39; and "Environmental Quality Council Trims Its Sails in Stormy Budget Weather," *National Journal*, 24 July 1982, 1306-07.

natural resource policies. For example, soon after assuming office Gorsuch abolished the EPA's Office of Enforcement, then reestablished it with a much smaller staff, and later reorganized it once again. All this took place within the first twelve months of her tenure. In the spring of 1982, she replaced the two top officials, moved division chiefs around, and redefined the responsibilities of the office.<sup>47</sup> Presumably the changes help explain the eighty-four percent decline in the number of cases EPA referred to the Justice Department between June 1981 and July 1982.<sup>48</sup>

In the Interior Department, James Watt reorganized the Office of Surface Mining, reduced its field offices from thirty-seven to twenty, and replaced five regional offices with two technical service centers. The move was clearly intended to weaken enforcement of the federal strip-mining law, which was enacted over vigorous coal industry opposition in 1977. Watt also announced in early 1983 that his agenda for the next two years included further structural, strategic and personnel changes that would lock in the sweeping changes already made in the Department. "I will build an institutional memory that will be here for decades," he said. He was at work on codifying his policies to ensure that they penetrated to the level of the Department's operating manuals and directives as well as the rewriting of regulations.<sup>49</sup> In a parallel move shortly after taking office, Reagan fired the entire staff of the CEQ, some of whom had served since the Nixon and Ford administrations. New appointees were selected from the president's campaign organization, but the overall size of the staff was reduced by more than half.<sup>50</sup> To many, the personnel cuts meant that the CEQ simply could not be expected to perform its former functions of advising the president on environmental issues, monitoring the nation's environmental progress, and overseeing implementation of the National Environmental Policy Act.

The second component of the reorganization strategy was intended to centralize policy planning in the White House. Three policy staff organizations were created to do so: the cabinet councils, including the Council on Natural Resources and Environment chaired by Watt; an Office of Policy Development (OPD), formerly the Domestic Policy Staff in the Carter administration; and a newly created Office of Planning and Evaluation (OPE).<sup>51</sup> Based on Nathan's interview data, the councils seem to have been active and operated effectively, in large part because officials shared strong ideological beliefs about policy directions.<sup>52</sup> Chester A. Newland's review of the three organizations reinforces

<sup>47</sup> *Washington Post*, 23 June 1982. See also Davies, "Environmental Institutions and the Reagan Administration."

<sup>48</sup> Howard Kurtz, "Since Reagan Took Office, EPA Enforcement Actions Have Fallen," *Washington Post*, 1 March 1983.

<sup>49</sup> Philip Shabecoff, "Nearing Complete Renovation of Interior Department Rules," *New York Times*, 23 January 1983.

<sup>50</sup> Davies, "Environmental Institutions and the Reagan Administration." See also Mosher, "Environmental Quality Council Trims Its Sails."

<sup>51</sup> Newland, "The Reagan Presidency," 5.

<sup>52</sup> Nathan, *The Administrative Presidency*, 73.



that conclusion. For example, the Council on Natural Resources and Environment met twenty-six times in 1981 alone, and a total of thirty-one times by April 29, 1982. The OPE evidently allowed the Reagan White House to focus more on longer-term issues to help carry out the president's agenda than has been typical of recent presidencies, again in part because of the distinctive philosophy of government and ideological orientation of the Reagan administration.<sup>53</sup>

*Budgetary Decisions.* One of the most distinguishing features of the Reagan presidency is the extent to which the budgetary process was used to achieve goals of policy change. Committed to the goal of curtailing the growth of government by whatever means available, and possessed of a finely developed political skill in working with Congress—at least on budgetary issues—Reagan was exceptionally successful in pushing his budget proposals through Congress in his first year.<sup>54</sup> Massive cuts in environmental program budgets were subsumed into the general program of fiscal retrenchment, and OMB played a leading role in shaping those cuts to reinforce the president's policy change agenda. Few environmental programs escaped sharp cuts, and some of the retrenchment was so severe that long-lasting adverse effects are inevitable. For example, the EPA's research and development funds were cut by more than half, after accounting for inflation, between 1981 and 1984.<sup>55</sup> Yet even the Reagan administration had argued that more scientific research was necessary as a base for future EPA action.

Unlike other presidencies in which departmental and agency heads might be expected to protest such cuts, Reagan's policy leaders welcomed the prospect of reduced budgets. After the president signed the fiscal 1983 budget for the EPA, Gorsuch said she was pleased with the result: "This was the last act of a seven-act passion play. . . . We got essentially what we wanted."<sup>56</sup> At one point in late 1981, the OMB considered cutting funds for the EPA by fifty percent despite the nearly universal conclusion among environmental policy specialists that even with its previous budget the agency lacked the resources to implement the wide range of programs assigned to it.<sup>57</sup> Congress did not go along with all of the Reagan budget requests, but the figures nevertheless reveal the degree to which the budgetary strategy carried major implications for policy change.

The overall shift from the Carter to the Reagan administration is perhaps best captured in the spending total for all federal programs that deal with natural resources and environmental protection. In January 1981, Carter's final budget es-

<sup>53</sup> Newland, "The Reagan Presidency," 7, 11.

<sup>54</sup> Palmer and Sawhill, eds., *The Reagan Experiment*; Hedrick Smith, "The President as Coalition Builder: Reagan's First Year," in Cronin, ed., *Rethinking the Presidency*.

<sup>55</sup> Mosher, "More Cuts in EPA Research Threaten Its Regulatory Goals," 635; Robert V. Bartlett "The Budgetary Process and Environmental Policy," in Vig and Kraft, eds., *Environmental Policy in the 1980s*.

<sup>56</sup> Philip Shabecoff, "E.P.A. Chief Claims Victory on Budget," *New York Times*, 13 October 1982, 20.

<sup>57</sup> Philip Shabecoff, "Funds and Staff for Protecting Environment May Be Halved," *New York Times*, 29 September 1981.

timated that for fiscal 1984 the total spending authority would be \$16.2 billion. Reagan proposed a fiscal 1984 budget of \$8.9 billion, thirty-two percent less than obligated in 1980, without adjusting for inflation.<sup>58</sup> The figures can be viewed usefully from another angle. Although spending on environmental protection and natural resources programs had increased from 1.5 percent of the federal budget in 1970 to 2.4 percent in 1980, it fell back to an estimated 1.5 percent in 1983 and was projected to decrease to 1.2 percent in fiscal 1984. Under Reagan budget projections, by 1986 it would fall to 0.88 percent.<sup>59</sup> A fundamental reordering of policy priorities had been achieved through the budgetary process.

The extent of budget cutbacks varied from agency to agency, but a few figures suffice to illustrate the change and its impact. Reagan proposed a 1984 operating budget for the EPA of \$948.6 million, which was down from the \$1,039 million Congress approved in fiscal 1983, and seventy percent of the \$1,346.8 million obligated to fiscal 1981, again without accounting for inflation. Correcting for inflation, Reagan's proposed fiscal 1984 operating budget for EPA (excluding the Superfund program) was \$409.1 million, down from a peak budget in 1979 of \$740 million (both in constant 1972 dollars), a forty-five percent decline.<sup>60</sup> By 1984, the EPA's budget represented no greater spending power than the agency had in 1972, although Congress had assigned it numerous additional responsibilities since the early 1970s.

OMB had hoped to cut the EPA's budget even more for 1984, but in June 1983, the administration finally backed down and accepted Ruckelshaus's recommendation to add another \$165.5 million to the original EPA budget. By late 1983 Ruckelshaus was less successful in raising the budget. He requested a fiscal 1985 budget of \$1.35 billion, about the same amount that Congress appropriated in the last year of the Carter administration. However, the president requested only \$1.21 billion.<sup>61</sup>

*Regulatory Oversight.* Consistent with the other efforts to bring central White House control over policy planning through the cabinet councils, OPD, and OPE, President Reagan gave special emphasis to expanding initiatives in both the Carter and Ford administrations to review regulatory proposals for cost and economic impact. The regulatory review staff was moved from the former Council on Wage and Price Stability to the OMB and put under the control of

<sup>58</sup> Bartlett, "The Budgetary Process and Environmental Policy."

<sup>59</sup> Calculated from Executive Office of the President, Office of Management and Budget, *Budget of the United States Government: Fiscal Year 1984* (Washington, D.C.: U.S. Government Printing Office, 1983), 5-43, 9-5, and previous budget documents.

<sup>60</sup> Bartlett, "The Budgetary Process and Environmental Policy." Amounts are deflated to 1972 dollars using implicit price deflators for federal government purchases of nondefense goods and services, as calculated by the Bureau of Economic Analysis, Department of Commerce.

<sup>61</sup> Cass Peterson, "EPA's Ruckelshaus to Get Half the Budget Increase He Sought," *Washington Post*, 27 January 1984. The 8.5 percent increase that Reagan requested for fiscal year 1985 would leave EPA's operating budget eleven percent below that of fiscal year 1981 in nominal terms, and about equivalent to its budget of ten years ago when discounted for inflation.

a new Office of Information and Regulatory Affairs (OIRA) and Vice President Bush's Task Force on Regulatory Relief. An executive order (12291) requiring quantitative cost-benefit analysis to be performed for *all* major regulations was the device used to limit regulatory growth and force explicit consideration of costs. Regulatory action was not even to be proposed unless an agency could demonstrate that potential benefits exceeded costs. Given the current state of the art in cost-benefit analysis, such a requirement has dramatic implications for environmental and health regulation.<sup>62</sup>

Among regulations selected for early review by the task force were those affecting the auto industry (air emission standards and lead content in gasoline), hazardous wastes, premanufacturing notice for new toxic chemicals, and industrial pretreatment of waste water discharged into public sewer systems. While ostensibly the new process of regulatory oversight would produce more efficient and effective solutions for these and other problems, the Reagan administration was more concerned with inhibiting the introduction of new regulations and in showing quick results to the business community. The name of the Bush task force (regulatory "relief," not "reform") symbolized this goal.

The procedures embodied in Reagan's executive order differed substantially from orders of Presidents Ford and Carter. OIRA has broad powers to review rules *before* they are issued and to delay their publication in the *Federal Register*. This may be tantamount to dropping proposed regulations into the proverbial "black hole" by delaying them indefinitely.<sup>63</sup> It is also an open invitation for *ex parte* industry lobbying before any formal comment period. There is ample evidence that OMB has served as a conduit for business attacks on regulation and has directly attempted to influence agency rulemaking. For example, John E. Daniel, former EPA chief of staff under Gorsuch, testified before a congressional investigative committee in the fall of 1983 that OMB tried to dictate regulations to EPA, urged that cost factors be considered in setting health rules when the Clean Air Act prohibited their use, threatened reprisals against the agency, and showed proposed rules changes to industry officials before they were made public.<sup>64</sup>

Most importantly, the entire process is closed to the public and there is no administrative record. This is a far cry from the carefully crafted guidelines suggested for presidential intervention by Cutler and others.<sup>65</sup> Kenneth Culp Davis has predicted that, without correction, the whole system will ultimately fail for two reasons:

- (1) Public support for the system will be withdrawn and opposition will develop, because needless secrecy will impair accountability.
- (2) Changes made by the President or his representatives in agencies' final rules will be often invalidated by reviewing

<sup>62</sup> Swartzman, Liroff and Croke, eds., *Cost-Benefit Analysis and Environmental Regulations*.

<sup>63</sup> Tolchin and Tolchin, chap. 3.

<sup>64</sup> "Ex-E.P.A. Aide Says Budget Office Put Case for Industry," *New York Times*, 28 September 1983.

<sup>65</sup> Cutler, "The Case for Presidential Intervention," 847-48.

courts because of failure to include in the rulemaking records facts and ideas of central relevance to the rules.<sup>66</sup>

Whether this turns out to be the case or not, it is questionable whether OIRA has the resources to conduct credible cost-benefit analyses. Several studies cast doubt on the quality of agency submissions, on the adequacy of OIRA's staff, on the cost of full regulatory reviews, and on the use made of economic data.<sup>67</sup> Since regulatory analyses are not published, it is impossible to judge whether they meet professional standards. But at least one OMB official has stated that much of the economic analysis is not taken seriously and has been used chiefly to support decisions made for other reasons: "We're not doing heavy analysis. The economic analysis is just window dressing for the executive order."<sup>68</sup> If such a perception is confirmed, it will set the legitimate use of cost-benefit analysis back for a long time. It will be difficult to achieve genuine regulatory reform in this climate.

#### CONSTRAINTS ON PRESIDENTIAL INTERVENTION

As is evident from the previous discussion, President Reagan's "intervention" in regulatory policymaking went much beyond that of previous administrations. A comprehensive political-administrative strategy was followed that resulted in substantial change across the entire field of environmental policy. To what extent did the usual constraints on presidential policymaking limit the effectiveness of this strategy? Were Congress, the courts, interest groups, and the media able to frustrate Reagan's initiatives as most of the presidency literature would suggest? The answer is mixed, but on the whole negative.

Congress had some notable successes in blocking and embarrassing the president. None of the administration proposals for amending the major environmental laws was enacted, and a House contempt citation of Anne Gorsuch and subsequent investigations of the scandals in EPA succeeded in driving the entire EPA leadership from office (although only Rita Lavelle was eventually convicted for perjury and obstruction of Congress). Congress also halted James Watt's plans for mineral and petroleum exploration in wilderness areas, and restricted

<sup>66</sup> Davis, "Presidential Control of Rulemaking," 862.

<sup>67</sup> See, e.g., Eads and Fix, "Regulatory Policy" and *Relief or Reform?*, chap. 6; W. Kip Viscusi, "Presidential Oversight: Controlling the Regulators," *Journal of Policy Analysis and Management* 2 (Winter, 1983): 157-73; V. K. Smith, ed., *Environmental Policy Under Reagan's Executive Order: The Role of Benefit-Cost Analysis* (Chapel Hill: University of North Carolina Press, 1984); and General Accounting Office, "Improved Quality, Adequate Resources, and Consistent Oversight Needed If Regulatory Analysis Is to Help Control Costs of Regulations" (Washington, D.C.: Government Printing Office, 2 November 1982).

<sup>68</sup> Quoted in Tolchin and Tolchin, *Dismantling America*, 74. See similar statements by OMB officials quoted in Jonathan Lash, Katherine Gilman, and David Sheridan, *A Season of Spoils: The Reagan Administration's Attack on the Environment* (New York: Pantheon Books, 1984), 19-26. For a defense of the administration's actions under the executive order, see Christopher C. DeMuth, "A Strategy for Regulatory Reform," *Regulation* 8 (March/April, 1984): 25-30.

oil lease sales in some fragile parts of the outer continental shelf (OCS). Nevertheless, Congress was not able to prevent most of the organizational, regulatory, and enforcement changes that Watt, Gorsuch, and others carried out. Nor, despite numerous legislative and oversight hearings, have any new safeguards been enacted against such abuses in the future. Most important, Congress proved incapable of resisting large budget and personnel cutbacks within the framework of the new budget reconciliation process. The most effective veto powers of Congress—to refuse new legislation and budget appropriations—were largely irrelevant in a cutback administration such as this. Indeed, the divisions and stalemate on the Hill precluded constructive reform and largely reinforced the president's administrative strategy.

What about the courts? Have they proven to be an effective alternative avenue for challenging administrative actions? Much has been made of the fact that many of Watt's coal, mineral, and oil leasing programs have been tied up in court, and that the Interior Department alone faced some 4000 lawsuits by late 1983.<sup>69</sup> Although such litigation has slowed the implementation of new rules and regulations, it is not yet clear that it will prevent the achievement of the administration's major deregulatory goals.

First of all, as Lettie Wenner has shown, the principal impact of litigation has been to delay administrative action rather than to prevent it.<sup>70</sup> When the courts find agency decisions deficient, they normally remand them for further consideration by the same administrators, often resulting in modified proposals to achieve the same regulatory objectives. Second, the Supreme Court has shown a marked tendency in recent years to defer to the discretion of administrative agencies and has greatly restricted the authority of the lower courts to challenge agency rulemaking procedures.<sup>71</sup> Third, while the *Sierra Club v. Costle* decision does not give the president carte blanche to impose regulatory decisions unsupported by evidence, it would appear to place few limitations on his power to block new regulations that are not in conformity with his program. It will be difficult to sue the president on procedural grounds when he has taken no action. Although the president backed off his broader claims to executive privilege to withhold EPA documents from Congress following the contempt citation of Gorsuch, there seem to be no effective judicial constraints on negotiations between the president or OMB and regulated parties. Finally, it must be kept in mind that the government has won over sixty percent of the environmental cases to which it has been a party over the past decade, and this does *not* appear to have changed in the Reagan administration.<sup>72</sup> For every case that has gone against the administration, it is easy to find one in which it has prevailed.

<sup>69</sup> Philip Shabecoff, "Will William Clark Pick Up Where James Watt Leapt Off?" *New York Times*, 6 November 1983.

<sup>70</sup> Wenner, *Environmental Decade in Court*, and "Judicial Oversight of Environmental Deregulation," in Vig and Kraft, *Environmental Policy in the 1980s*.

<sup>71</sup> See Norman J. Vig, "The Courts: Judicial Review and Risk Assessment," in Susan G. Hadden, ed., *Risk Analysis, Institutions, and Public Policy* (New York: Associated Faculty Press, 1984).

<sup>72</sup> Wenner, "Judicial Oversight of Environmental Deregulation."

Thus, for example, while environmentalists and state governments won temporary injunctions against offshore oil lease sales off the California, Massachusetts, and New Jersey coasts,<sup>73</sup> the courts have upheld Watt's general OCS leasing program, and have recently thrown out the Coastal Zone Management Act as the states' last legal impediment.<sup>74</sup> Similarly, although the courts have found Interior in violation of the National Environmental Policy Act (NEPA) in permitting oil and gas development in wilderness study areas, and enjoined several coal lease sales,<sup>75</sup> they have upheld most leasing procedures, as well as delegation of surface mining controls to states even though state rules may not be as "stringent" as federal regulations issued under the Surface Mining Control and Reclamation Act of 1977.<sup>76</sup> At the EPA, lawsuits brought by environmentalists have forced the agency to issue legislatively mandated regulations for hazardous pollutants under the Clean Air Act, Resource Conservation and Recovery Act, and Comprehensive Environmental Response, Compensation and Liability (Superfund) Act. Other suits have made EPA issue industrial pretreatment standards required by the Clean Water Act.<sup>77</sup> But judges could not force the agency to write adequate regulations, and have subsequently had to remand many of them.<sup>78</sup> Courts have also upheld EPA approval of state implementation plan revisions that allow higher sulfur dioxide emissions in several states,<sup>79</sup> and have upheld controversial water pollution permits and so-called sweetheart settlements with toxic polluters.<sup>80</sup> Finally, in a unanimous and far-reaching decision handed down in June 1984, the Supreme Court upheld extension of the air pollution "bubble" policy to nonattainment—noncomplying—areas, calling EPA's 1981 interpretation of the Clean Air Act "a reasonable accommodation of manifestly competing interests" that is "entitled to deference."<sup>81</sup>

Litigation is only one form of interest group activity. The environmentalists have probably been more effective in their appeals to Congress and public opinion. They have succeeded in their primary goals of keeping the major en-

<sup>73</sup> *California v. Watt*, 16 ERC 1729 (1981); *Conservation Law Foundation v. Watt*, 18 ERC 1904 (1983); *Kean v. Watt*, 18 ERC 1921 (1982).

<sup>74</sup> *California v. Watt*, 19 ERC 1281 (1983); *Secretary of Interior v. California*, 20 ERC 1201 (1984).

<sup>75</sup> *Sierra Club v. Peterson*, 19 ERC 1705 (1983); *National Wildlife Federation v. Watt*, 19 ERC 1959 (1983).

<sup>76</sup> *Sierra Club v. Watt*, 18 ERC 1565 (1982); *Citizens for Responsible Resource Development v. Watt*, 20 ERC 2097 (1984).

<sup>77</sup> *Sierra Club v. Gorsuch*, 18 ERC 1549 (1982); *New York v. Gorsuch*, 18 ERC 1575 (1983); *Environmental Defense Fund v. Gorsuch*, 19 ERC 1410 (1983); *Environmental Defense Fund v. Gorsuch*, 17 ERC 1092 (1982); *Natural Resources Defense Council v. Gorsuch*, 17 ERC 2013 (1982).

<sup>78</sup> *National Association of Metal Finishers v. EPA*, 19 ERC 1785 (1983); *Sierra Club v. EPA*, 19 ERC 1897 (1983).

<sup>79</sup> *Connecticut v. EPA*, 18 ERC 1417 (1982); *New York v. EPA*, 19 ERC 1662 (1983); *New York v. Administrator, EPA*, 19 ERC 1367 (1983).

<sup>80</sup> *Montgomery Environmental Coalition, Inc. v. EPA*, 19 ERC 1169 (1983); *Webb v. EPA*, 19 ERC 1398 (1983); *U.S. v. Seymour Recycling Corp.*, 18 ERC 1944 (1982).

<sup>81</sup> *Chevron USA Inc. v. NRDC*, No. 82-1005. See Linda Greenhouse, "High Court Upholds Reagan on Air Pollution," *New York Times*, 26 June 1984.

vironmental statutes intact and forcing Reagan's initial appointees from office. But they were almost totally excluded from administrative decisionmaking under Gorsuch and Watt. Although environmentalists are now consulted, their influence remains far below what it was in the Carter administration. Economic interests, in contrast, have had continuous access to the president, OMB, and the operating agencies. Their direct involvement and support has influenced all environmental and regulatory decisionmaking, clearly furthering the administrative strategy.<sup>82</sup> Likewise, state and local governments seeking greater control over environmental policy have encouraged devolution of responsibilities, another major administrative goal. They have not, however, succeeded in preventing large cuts in federal grants for state program implementation.

Finally, the media played a significant role in discrediting Reagan's early environmental policies, but may not have hurt him in the long run. The press dramatized the Gorsuch-Lavelle scandal for three months, and had a rare field day with Watt's pronouncements. Newspapers and magazines also printed many opinion polls and commentaries indicating that the administration was out of touch with public sentiment on environmental issues. By focusing primarily on the personal and the dramatic, however, they inevitably missed much of the routine decisionmaking in the agencies. They also offered the president opportunities to defend his policies and criticize the environmentalists. Although Reagan has not succeeded in changing public opinion on the need for strict environmental protection—especially against new toxic waste hazards—he has had considerable success in deflecting blame from the White House. Indeed, Reagan's skillful handling of the Burford and Watt “resignations” may even have gained him sympathy in the face of *their* shortcomings.<sup>83</sup>

Nevertheless, environmental policy had become an extremely sensitive issue for the president by 1983, and he has taken various steps to limit the political damage that might impede his reelection. The appointments of Ruckelshaus and William Clark (the latter to replace Watt) were carefully calculated to restore credibility to EPA and a sense of fairness and moderation at the Interior Department. The change in style was unmistakable by the end of 1983: The new agency heads held well-publicized meetings with representatives of environmental groups for the first time in three years and adopted a far more conciliatory posture before Congress.<sup>84</sup> Ruckelshaus brought a competent and experienced team

<sup>82</sup> Tolchin and Tolchin, *Dismantling America*; “Ex-E.P.A. Aide Says Budget Office Put Case for Industry,” *New York Times*.

<sup>83</sup> Although polls during 1983 showed that a majority of the public did not trust Reagan administration officials on environmental policy, a CBS-*New York Times* poll in April found that by a margin of forty-eight percent to thirty-eight percent the public still trusted Reagan himself to make the right decisions on the environment. League of Conservation newsletter, October 1983. Cf. Barry Sussman, “Poll Says Most Think Reagan Prefers to Protect Polluters,” *Washington Post*, 5 March 1983.

<sup>84</sup> Cass Peterson, “Ruckelshaus Rocks No Boats at EPA,” *Washington Post National Weekly Edition*, 12 December 1983; and Joseph A. Davis, “Ruckelshaus Team Moving Into Place at EPA,” *Congressional Quarterly Weekly Report*, 12 November 1983, 2391.

of administrators and scientists back to EPA, and reversed several of Burford's earlier decisions. Clark dismissed three of Watt's top lieutenants and indicated that he would review Interior policy on coal-leasing, offshore oil sales, and national park development. The report of the congressionally-mandated Linowes commission on coal sale practices will no doubt result in revised procedures. Thus by 1984 the administration seemed to have recognized the need for some substantive as well as stylistic changes.<sup>85</sup> However, Ruckelshaus continued to be stymied by OMB and the White House: he was unable to persuade the president to restore EPA's budget to nominal pre-1981 levels, or to propose a long-awaited administration strategy for control of acid rain.<sup>86</sup> It therefore appeared that no major policy initiative would be taken before the election, and that the massive federal deficit would preclude restoration of environmental programs for the indefinite future. Like most other domestic policies, environmental policy had been rendered hostage to the fiscal crisis produced in large part by the 1981 tax reductions.

#### CONCLUSIONS

On one level, our analysis of Reagan's environmental policies leads to an unavoidable conclusion: The president has gotten most of what he wanted. Despite widespread public and congressional opposition, the administration has succeeded in reducing the size, scope, and effectiveness of environmental agencies. The administrative strategy allowed substantial policy change at the agency level by altering priorities, capabilities, and procedures. Relatively few new regulations have been issued, and existing ones have been reinterpreted or revised to reduce their impact on industry. The share of the federal budget devoted to environmental and natural resource programs has been cut by half in three years. EPA staffing has been reduced by more than twenty percent. Although the major environmental statutes have not yet been revised, many of their provisions can no longer be effectively implemented, and Congress may now find it difficult to resist amendments to bring them into line with the *fait accompli*.

The Reagan strategy has circumvented other institutional constraints. Environmental policies, along with many others, have been forced into conformity with the president's economic program. Greater presidential control over the domestic policy agenda had been advocated, in one way or another, by students of the presidency for a long time. As Nathan and others have argued, Reagan has achieved greater success in this regard than any recent president. Indeed, those who had come to disparage the power of the presidency must now revise their theories in light of Reagan's domination.

<sup>85</sup> David Hoffman, "Reagan is Trying to Clean Up His Environmental Image," *Washington Post National Weekly Edition*, 9 January 1984.

<sup>86</sup> Cass Peterson, "EPA's Ruckelshaus To Get Half the Budget Increase He Sought"; Philip Shabecoff, "Head of E.P.A. Defends Reagan Plan for Further Acid Rain Study," *New York Times*, 27 January 1984.



Unfortunately, much of the recent presidency literature has implicitly assumed that anything that strengthens the Oval Office is conducive to better government.<sup>87</sup> The uninspired and often ineffectual presidencies of Ford and Carter, together with weakened and dispersed leadership in Congress, greatly strengthened this tendency by the late 1970s.<sup>88</sup> Lloyd Cutler, also one of Carter's top legal advisers, went so far as to suggest a series of constitutional amendments that would establish a quasi-parliamentary system.<sup>89</sup> He also supported much greater presidential intervention in regulatory decisionmaking, albeit with various safeguards to ensure congressional and judicial accountability.

We suggest the need for two other criteria in evaluating presidential interventions to achieve policy change: legitimacy and technical rationality. The first is necessary to ensure meaningful accountability, the second to preserve professional competence and sound policy analysis. In our view, which we hope is sensitive to fundamental democratic principles as well as the requisites for efficient public administration, President Reagan's administrative strategy for reversing environmental policy commitments fails to meet either standard and, therefore, cannot be considered a desirable precedent for stronger executive leadership.

On this level, President Reagan's radical policy departures must be judged a failure. Democratic accountability entails more than winning the highest elective office. Precisely because we do *not* have a parliamentary system, a partisan majority or mandate is not a sufficient basis to govern. We have three branches of government *sharing* powers, as Neustadt pointed out long ago, and for this reason the president must govern by persuasion.<sup>90</sup> Legitimation of policy change—especially radical policy reversal—thus requires broad public approval and the consent of Congress. Reagan had neither for his environmental policy and regulatory changes. He could not persuade members of his own party, let alone the opposition, to support Gorsuch or Watt, and many Republicans ultimately called for their removal. In Watt's case, ironically, the Senate threatened to pass a resolution that was the functional equivalent of a parliamentary vote of no confidence—indicating how out of balance the system had become.

Reagan's regulatory review process—which presumably has guided most agency rulemaking—fares poorly on the criteria of both legitimacy and technical rationality. It has no statutory foundation, the House of Representatives having rejected the administration's regulatory reform bill. Even if regulatory intervention can be defended under the executive powers clause of the constitution (as Carter's was in the *Sierra Club* decision), Reagan's OMB-OIRA process violates all norms of openness, fairness, and accountability to the public. It is doubtful

<sup>87</sup> An exception is Hecl and Salamon, *The Illusion of Presidential Government*.

<sup>88</sup> See, e.g., James L. Sundquist, "Congress, the President, and the Crisis of Competence in Government," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered* (Washington, D.C.: Congressional Quarterly Press, 1981); and Charles O. Jones, "Congress and the Presidency," in Thomas E. Mann and Norman J. Ornstein, eds., *The New Congress* (Washington, D.C.: American Enterprise Institute, 1981).

<sup>89</sup> Cutler, "To Form a Government."

<sup>90</sup> Neustadt, *Presidential Power* (1960 edition).

that it can be reconciled with the basic premises of the Administrative Procedure Act, which applies to all executive agencies. Finally, we have not found any published evidence to corroborate the claim that regulatory review and revision is grounded in credible cost-benefit analysis. Certainly the massive budget and personnel cutbacks of 1981 were made without any real assessment of their impact on program implementation or environmental quality.

The politicization of the administration, the loss of thousands of skilled personnel, and the reduction by half or more in the research budgets of EPA and other agencies have all undermined the technical and analytical capacities necessary to improve implementation of environmental programs. The administration's early assertions that policy would be based on better scientific evidence and that more efficient management would allow the environmental agencies to "do more with less" are belied by the record. The professional competence of the EPA, CEQ, and parts of the Interior Department has been severely damaged, despite recent efforts to restore the credibility of these agencies. Treating the career civil service as the enemy is not the way to achieve either political accountability or lasting regulatory reform. Reagan's administration may regulate less, but not better.

In summary, whatever the "success" of Reagan's administrative strategy as an exercise in presidential power politics, it does not provide a viable answer to the widely perceived need for more coherent and politically responsible leadership in Washington. Our review of environmental policymaking indicates that the balance between political control and expert administration has tilted so far toward the former that the legitimacy and effectiveness of much decisionmaking has been jeopardized. It also suggests that the traditional institutional constraints on executive power are less confining than posited in much of the literature, perhaps because it is easier to carry out a negative agenda than a positive one. But policymaking by ideological partisans that ignores congressional intent, judicial standards, and public preferences is not likely to strengthen the presidency in the long run. Proponents of a strong presidency must pay greater attention to the policy consequences of their prescriptions in light of the Reagan experience.\*

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