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The Adverse Consequences of the Politics of Agency Design for Presidential Management in the United States: The Relative Durability of Insulated Agencies

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The US Congress has often sought to limit presidential influence over certain public policies by designing agencies that are insulated from presidential control. Whether or not insulated agencies persist over time has important consequences for presidential management. If those agencies that persist over time are also those that are the most immune from presidential direction, this has potentially fatal consequences for the president's ability to manage the executive branch. Modern presidents will preside over a less and less manageable bureaucracy over time. This article explains why agencies insulated from presidential control are more durable than other agencies and shows that they have a significantly higher expected duration than other agencies. The conclusion is that modern American presidents preside over a bureaucracy that is increasingly insulated from their control.

A burgeoning literature in political science describes how politicians benefit from delegating policy-making authority to executive actors, whether ministry officials or presidents or bureaucrats.[1] A serious problem confronting political actors when delegating authority, however, is whether the authority once given will be used as it was intended. This delegation dilemma has received a lot of attention in separation of power systems because the likelihood of political influence in and political disagreement about the administrative process is particularly acute.[2] In the United States, for example, the president is the nominal chief executive, charged with the responsibility to see that the laws are faithfully executed, even laws that he does not support. Unchecked, presidents would use executive action,[3] their reorganization authority,[4] their power to propose and

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[1] See, for example, David Epstein and Sharyn O'Halloran, *Delegating Powers* (New York: Cambridge University Press, 1999); Murray J. Horn, *The Political Economy of Public Administration* (New York: Cambridge University Press, 1995); John D. Huber and Charles R. Shipan, *Deliberate Discretion* (New York: Cambridge University Press, 2002), and the May 2000 issue of the *European Journal of Political Research*, which was dedicated to the issue of delegation in a comparative context.

[2] Rui J.P. de Figueiredo, 'Electoral Competition, Political Uncertainty, and Policy Insulation', *American Political Science Review*, 96 (2002), 321–33; Terry M. Moe and Michael Caldwell, 'The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems', *Journal of Institutional and Theoretical Economics*, 150 (1994), 171–95.

[3] William G. Howell, *Power Without Persuasion: A Theory of Presidential Action* (Princeton, N.J.: Princeton University, 2003); William G. Howell and David E. Lewis, 'Agencies by Presidential Design', *Journal of Politics*, 64 (2002), 1095–114.

[4] Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905–1996* (Lawrence: University Press of Kansas, 1998); James G. Benze Jr, 'Presidential Reorganization as a Tactical Weapon: Putting Politics Back into Administration', *Presidential Studies Quarterly*, 15 (1985), 145–57; Herbert Emmerich, *Federal Organization and Administrative Management* (University: University of Alabama Press, 1971).

co-ordinate the federal budget,[5] and their appointment and removal power[6] to shape public-policy outputs administratively. The US Congress, recognizing that the institutional design of administrative agencies partly determines policy outputs, has explicitly circumscribed these means of influence in the statutes, plans and decrees creating agencies. Congress has limited the influence of unilateral presidential action by writing specific statutes.[7] They have excluded some agencies from reorganization authority and limited presidential budgetary power by allowing some agencies to bypass normal Office of Management and Budget (OMB) budget reviews. They have diluted presidential appointment powers by giving agency administrators fixed terms and writing into law specific qualifications for appointees.

Scholars of political insulation and agency design assume that such 'hardwiring' decisions are durable. If agency structure can be changed easily, then the policies Congress has sought to protect with structural choices are as vulnerable as other policies. The recent termination of the Civil Aeronautics Board (1985), the Interstate Commerce Commission (1995) and several other agencies might lead us to rethink the importance of hardwiring as tool for securing durable policy.[8] Indeed, both Kaufman and Carpenter find non-trivial termination rates for administrative agencies across time.[9]

[5] Brandice Canes-Wrone, 'Essays in Executive Branch Policy Influence' (doctoral dissertation, Stanford University, 1999); Lance T. LeLoup, *Budgetary Politics* (Brunswick, Ohio: King's Court, 1980).

[6] Terry M. Moe, 'Regulatory Performance and Presidential Administration', *American Journal of Political Science*, 26 (1982), 197–224; Ronald Randall, 'Presidential Powers versus Bureaucratic Intransigence: The Influence of the Nixon Administration on Welfare Policy', *American Political Science Review*, 73 (1979), 795–810; Joseph Stewart Jr and Jane S. Cromartie, 'Partisan Presidential Change and Regulatory Policy: The Case of the FTC and Deceptive Practices Enforcement, 1938–1974', *Presidential Studies Quarterly*, 12 (1982), 568–73; Richard W. Waterman, *Presidential Influence and the Administrative State* (Knoxville: University of Tennessee Press, 1989); B. Dan Wood and James E. Anderson, 'The Politics of U.S. Antitrust Regulation', *American Journal of Political Science*, 37 (1993), 1–39; B. Dan Wood and Richard W. Waterman, 'The Dynamics of Political Control of the Bureaucracy', *American Political Science Review*, 85 (1991), 801–28; B. Dan Wood and Richard W. Waterman, *Bureaucratic Dynamics: The Role of Bureaucracy in a Democracy* (Boulder, Colo.: Westview Press, 1994).

[7] Epstein and O'Halloran, *Delegating Powers*; Terry M. Moe, 'The Politics of Bureaucratic Structure', in John E. Chubb and Paul E. Peterson,eds, *Can the Government Govern?* (Washington, D.C.: The Brookings Institution, 1989).

[8] Some of the others are the National Biological Survey, the Office of Technology Assessment and the Bureau of Mines. The United States Information Agency and the Arms Control and Disarmament Agency lost their organizational identity in 1999 when their functions were folded into the State Department. See David E. Lewis, *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946–1997* (Stanford, Calif.: Stanford University Press, 2003); *CQ Almanac* (Washington, D.C.: CQ Press, 1995), pp. 11–61; Duane A. Thompson, ' "Orderly Closure" of the Bureau of Mines: FY 1996 Funding', *Congressional Research Service Report to Congress* (Washington, D.C.: Congressional Research Service, 1996); Miles A. Pomper, 'State Department bill vetoed', *CQ Weekly* (1998), p. 2915, respectively. In 2001 significant efforts were made to eliminate the Agency for International Development, Amtrak and the Office of Federal Housing Enterprise Oversight. See Brian Friel, 'Scholars want AID folded into State Department', *Government Executive Magazine* (3 April 2001, on-line version); James C. Benton, 'Still far from financial viability, Amtrak could be broken up', *CQ Weekly* (2001), p. 601; Alan K. Ota, 'A new watchdog for Fannie and Freddie?', *CQ Weekly* (2001), p. 641.

[9] Kaufman examines agencies in existence in 1923 and finds a termination rate for that cohort around 15 per cent. Of the 421 agencies he examines overall (in 1923 and 1973), twenty-seven were terminated. Since the dataset excludes agencies created prior to 1923 and terminated prior to 1923 and excludes agencies created after 1923 and terminated prior to 1973, however, the sample is biased towards durable agencies. Kaufman's data also only includes agencies from executive departments (Herbert Kaufman, *Are Government Organizations Immortal?* (Washington, D.C.: The Brookings Institution, 1976); Daniel P. Carpenter, 'Stochastic Prediction and Estimation of Nonlinear Political Durations: An Application to the Lifetime of Bureaus', in Diana Richards, ed., *Political Complexity: Nonlinear Models of Politics* (Ann Arbor: University of Michigan, 2000), pp. 209–38).

Lewis finds that close to 60 per cent of agencies created since 1946 have been terminated.[10]

Whether or not insulated agencies persist over time also has important consequences for presidential management. Figure 1 graphs the number of agencies in existence with characteristics that limit presidential influence over time.[11] As the figure suggests, the number of agencies with such characteristics has increased over time. Not only has government become larger as a whole, but the population of agencies insulated from presidential control has been a substantial part of that growth. The durability of these agencies has concrete implications for the president's ability both to manage the executive branch and secure policy change administratively. If those agencies that persist over time are also those that are the most immune from presidential direction, this has potentially fatal consequences for the president's ability to manage the executive branch. Modern presidents will increasingly preside over an unmanageable bureaucracy, a population of unresponsive immortals.[12]

This article looks in detail at the US case and explains why agencies insulated from presidential control are more durable than other agencies. It argues that insulated agencies are more likely to produce policies closer to the legislative median's ideal point than other agencies. It tests whether agencies with insulating characteristics are more durable than agencies without these characteristics with data collected on all administrative agencies created between 1946 and 1997. I find that while agencies are vulnerable to structural change, hardwired agencies are more durable than other agencies and argue that presidents increasingly preside over a bureaucracy that is insulated from their control.[13] I conclude with the implications of these research findings for the literature on delegation.

I. WHAT HARDWIRING ASSUMES ABOUT AGENCY DURABILITY

The two most prominent explanations why US political actors design agencies that are insulated from all political influence (not just presidential influence) are those presented by McCubbins, Noll and Weingast and by Moe.[14] In the 'McNollgast' explanation, structure is chosen as an *ex ante* means of protecting against *ex post* opportunism by political actors. The House, Senate and president would all be better off if they changed the current policy, but the inability of each institution (particularly the president) to commit credibly to not changing the policy unilaterally in the future prevents them from coming to agreement. Their pledges not to influence policy in the future are not credible because they all have different preferences and means of influence. According to McNollgast, insulating characteristics such as statutory specificity and restrictive administrative procedures can make these pledges credible because they remove the possibility of future influence.

Moe argues that coalitions in power try to lock in their policy decisions with insulating structures. They want their policy decisions to last even if they lose power. Legislators

[10] David E. Lewis, 'The Politics of Agency Termination: Confronting the Myth of Agency Immortality', *Journal of Politics*, 64 (2002), 89–107.

[11] Lewis, *Presidents and the Politics of Agency Design*.

[12] I borrow this phrase from Kaufman, *Are Government Organizations Immortal?*

[13] I focus specifically on those characteristics that remove agencies from presidential control rather than those that remove agencies from congressional control.

[14] Mathew D. McCubbins, Roger Noll and Barry Weingast, 'Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies', *Virginia Law Review*, 75 (1989), 431–82; Moe, 'The Politics of Bureaucratic Structure'.

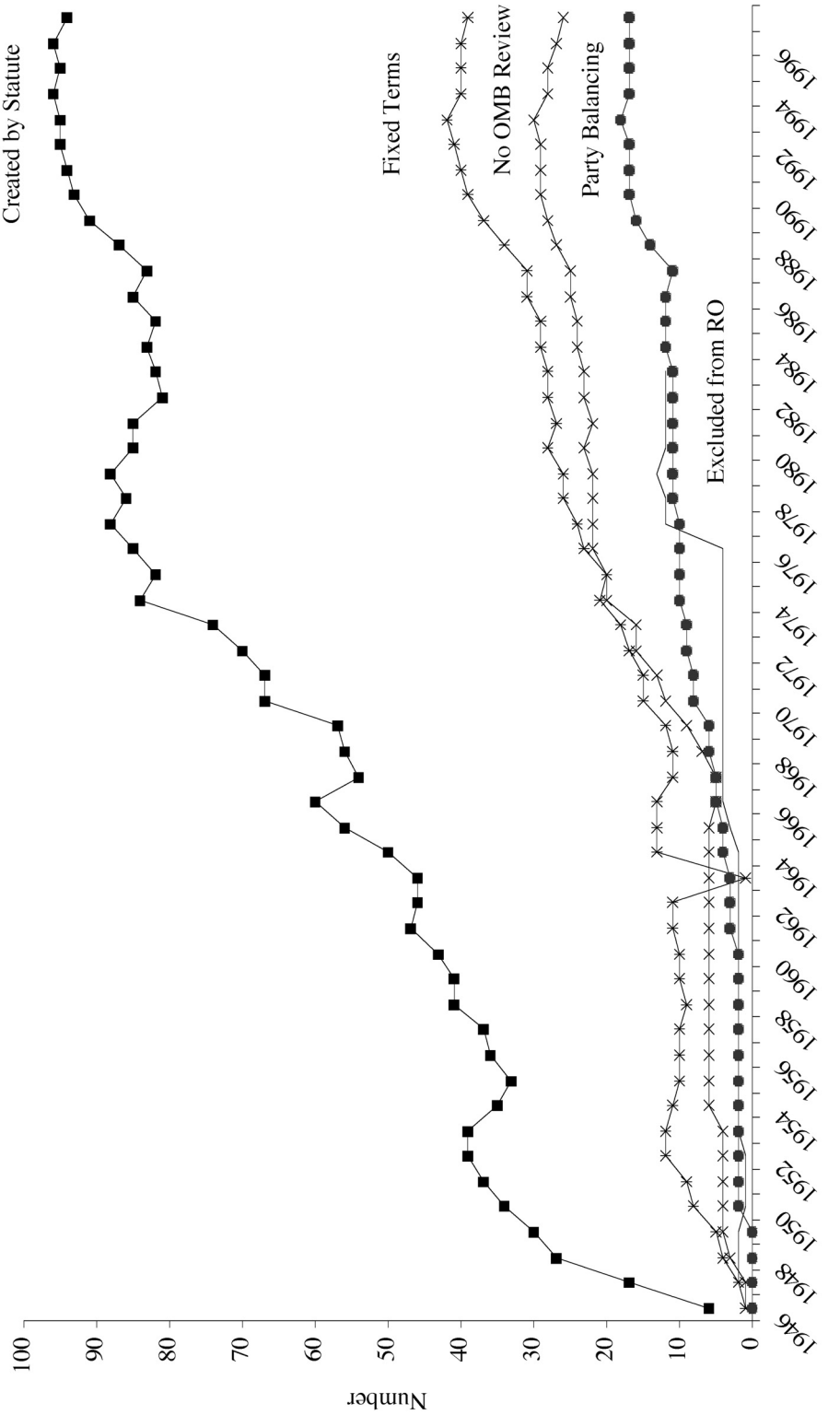

Fig. 1. Number of agencies with hardwiring characteristics by year, 1946–97

recognize that political payoffs for policy gains will be smaller if they are likely to be short lived because interest groups discount the value of policy gains in accordance with their expected durability.[15] The biggest threat to the durability of policies is electoral uncertainty. Congressional elections every two years and presidential elections every four years create uncertainty for majority coalitions and the groups that support them. When they worry about losing power, they remove agencies from political control by fixed terms for appointees, party balancing requirements, independence, specific statutes and other means.[16]

Both explanations depend critically on the durability of the hardwiring mechanisms. If additional statutory specificity, independence, fixed terms for political appointees or the like can be altered easily, then they provide neither a credible commitment against future influence nor a secure way of locking in policy. Both the view of insulation articulated by McNollgast and that argued by Moe depend fundamentally on the difficulty of passing new legislation. If new legislation can be passed, then all attempts at insulating are useless.

This creates problems for both theories of insulation. One of the primary difficulties to committing credibly is electoral uncertainty. Political actors cannot commit to a specific policy in the future precisely because they may not be in office in the future. Yet, the ways of committing credibly to future policies described by McNollgast (statutory specificity and administrative procedures) can be eliminated with just the type of electoral turnover that prevents commitment in the first place! New majorities and new presidents can come into office and pass new legislation. This same problem confronts Moe. The reason majority coalitions insulate is because they fear electoral turnover. Yet, if electoral turnover occurs will not the new majority just change the law creating the insulating characteristics?

The arguments of McNollgast and Moe make more sense relative to other electoral systems such as parliamentary systems, where legislating is much easier. In two-party parliamentary systems it is harder for legislators to commit to policies in the future because electoral turnover can lead to dramatic policy change.[17] In the American system, party turnover does not necessarily imply policy change because of supermajoritarian requirements for legislating.[18] Still, electoral turnover does present commitment problems in the United States just as in other systems, particularly since the most recent empirical research on the durability of administrative agencies finds that electoral turnover dramatically increases the termination rate of administrative agencies.[19] As such, statutory creation is not a sufficient guarantor of policy durability. Rather, insulated agencies must be durable for another reason.

[15] Horn, *The Political Economy of Public Administration*; Moe, 'The Politics of Bureaucratic Structure'.

[16] Party-balancing limitations state that 'no more than X members of the commission may be from the same political party'.

[17] Moe and Caldwell argue that formal structures are not particularly effective tools for committing to policies in the future in two-party parliamentary systems. Instead, politicians use other means of ensuring policy durability including the front-loading of policy benefits, the spreading of benefits to broad political constituencies, and the organizing of a policy's clients so that it will be politically difficult to change important policies (Moe and Caldwell, 'The Institutional Foundations of Democratic Government').

[18] See, for example, Keith Krehbiel, *Pivotal Politics: A Theory of US Lawmaking* (Chicago: University of Chicago Press, 1998).

[19] Lewis, 'The Politics of Agency Termination'.

WHY AGENCIES INSULATED FROM PRESIDENTIAL INFLUENCE ARE MORE DURABLE

Agencies in the United States are terminated for a variety of reasons, including a desire to cut costs,[20] large visible failures,[21] competition among agencies for budgets,[22] or because agencies produce policies that political actors oppose.[23] The key to insulated agency durability is that they are less likely to produce policy outputs that displease an important set of political actors: the US Congress. This is particularly important given that policy congruence is probably the single most important factor determining agency durability.[24]

The range of acceptable agency policies in Congress, or policies that will not result in serious termination attempts, is defined by congressional preferences and the costs of terminating an agency. Generally, the costs of agency termination are considered to be very high and an agency will not be terminated even if it deviates significantly from legislative preferences.[25] That said, termination does occur in some circumstances. Agencies insulated from presidential influence, however, are more likely than other agencies to produce policy outputs close to the congressional median's ideal point, making them more attractive to Congress than other agencies. Why do agencies insulated from presidential influence systematically produce policy outputs closer to Congress's ideal point? The answer to this question is rooted in the decision to insulate an agency from presidential control in the first place.

Why Does the US Congress Insulate?

There are a number of reasons why a Congress would try to limit the president's influence but the primary motivation is preference divergence between the current and future presidents and the current Congress.[26] When the preferences of the current president diverge from the enacting Congress, legislators seek to insulate the policy from presidential influence. They fear that creating an implementing agency as a standard hierarchical bureau with presidential direction will allow the president too much influence to set policy at his ideal point. Similarly, when Congress believes that future presidents' preferences will diverge from their own, they will seek to insulate (accounting for appropriate discounting). Congress places even more weight on their calculations about preference divergence for

[20] Arnold, *Making the Managerial Presidency.*

[21] Carpenter, 'Stochastic Prediction and Estimation of Nonlinear Political Durations: An Application to the Lifetime of Bureaus'; Daniel P. Carpenter and David E. Lewis, 'Political Learning, Fiscal Constraints and the Lifetime of Bureaus' (unpublished, Princeton University, 2003); Anthony Downs, *Inside Bureaucracy* (Boston, Mass.: Little, Brown, 1967).

[22] Kaufman, *Are Government Organizations Immortal?* Arthur L. Stinchcombe, 'Social Structures and Organizations', in J. G. March, ed., *Handbook of Organizations* (Chicago, Ill.: Rand McNally, 1965).

[23] Benze, 'Presidential Reorganization as a Tactical Weapon'; Kaufman, *Are Government Organizations Immortal?* Lewis, 'The Politics of Agency Termination'.

[24] Lewis finds that political opposition is a particularly important predictor of agency termination relative to other causes (Lewis, 'The Politics of Agency Termination'). Carpenter and Lewis find that fiscal constraints actually decrease the likelihood of termination (Carpenter and Lewis, 'Political Learning, Fiscal Constraints and the Lifetime of Bureaus').

[25] Specifically, an agency could deviate up to a point where the utility loss of the congressional median equalled the transaction cost of agency termination (Carpenter and Lewis, 'Political Learning, Fiscal Constraints and the Lifetime of Bureaus').

[26] Epstein and O'Halloran, *Delegating Powers*; Lewis, *Presidents and the Politics of Agency Design.*

some policies where the welfare losses associated with policy uncertainty and variance (e.g., monetary policy) are high.[27]

Consider, for example, congressional decision making about transport policy in the 1930s when many insulated agencies were created. In 1938, Senator Harry S. Truman (D–MO) argued that the Interstate Commerce Commission (ICC) should regulate the nation's waterways, stating, 'Transportation should be no political football.'[28] Truman and his Senate colleagues believed that placing authority for the regulation of waterways in a cabinet department would make it too susceptible to political interference and worried about the discontinuities in policy and implementation that would arise from changing administrations. As a consequence, Senator Truman advocated placing regulatory power in an independent regulatory commission rather than a cabinet department since independent regulatory commissions were insulated from presidential influence by design. If Truman had been certain that the current president and future presidents would share his preferred perspective on transport policy, there would have been no need to remove the policy from presidential control.

How Do Insulating Characteristics Increase Durability?

Statutory specificity, exclusion from reorganization authority, removal from OMB budget review, fixed terms for appointees and party balancing requirements for nominees counteract the primary sources of presidential administrative influence: unilateral action, reorganization authority, budget review, the removal power, the appointment power. By limiting presidential influence, these agency characteristics ensure agency ideal points closer to the ideal point of the congressional median and less policy variance caused by changing presidential administrations.

Consider, first, the case where an agency is insulated from presidential control by these devices but is not insulated from congressional control (insulating from congressional control would be accomplished through other means). If the president's influence is diminished but Congress's is not, insulated agencies will produce policy outputs systematically closer to the ideal of the congressional median than other agencies. Agencies that systematically produce policy outputs closer to the ideal point of the median member of Congress are going to be more durable than other agencies since Congress's termination decision is a function of both the costs of termination and the policy outputs of the agency.

Now consider the case where an agency is insulated from both the president and Congress. In this case limiting the amount of political influence has the effect of keeping policy close to the ideal point of the Congress that enacted the policy. Producing policies close to the ideal point of the enacting Congress has the effect of also producing policy outputs close to the current congressional median since the preferences of the

[27] This raises the question of why presidents would ever agree to create new agencies if agencies that are responsive to Congress are the ones most likely to survive over time. One obvious reason is that sometimes agencies are required to solve a policy problem, perform a crucial government task, or the like. It may also be that current presidents have no interest in protecting the interests of future presidents. In fact, it will be costly for presidents not to insulate if the preferences of future presidents differ substantially from their own. The president presiding at the creation of an agency gets to put his stamp on the agency, its design, its personnel, its mission, etc., but future presidents do not. The president at agency creation might conspire with the Congress to insulate agencies from future presidents and perhaps future congresses. I thank Barry Weingast for pointing this out.

[28] *Congressional Record*, 2 June 1937, 6745.

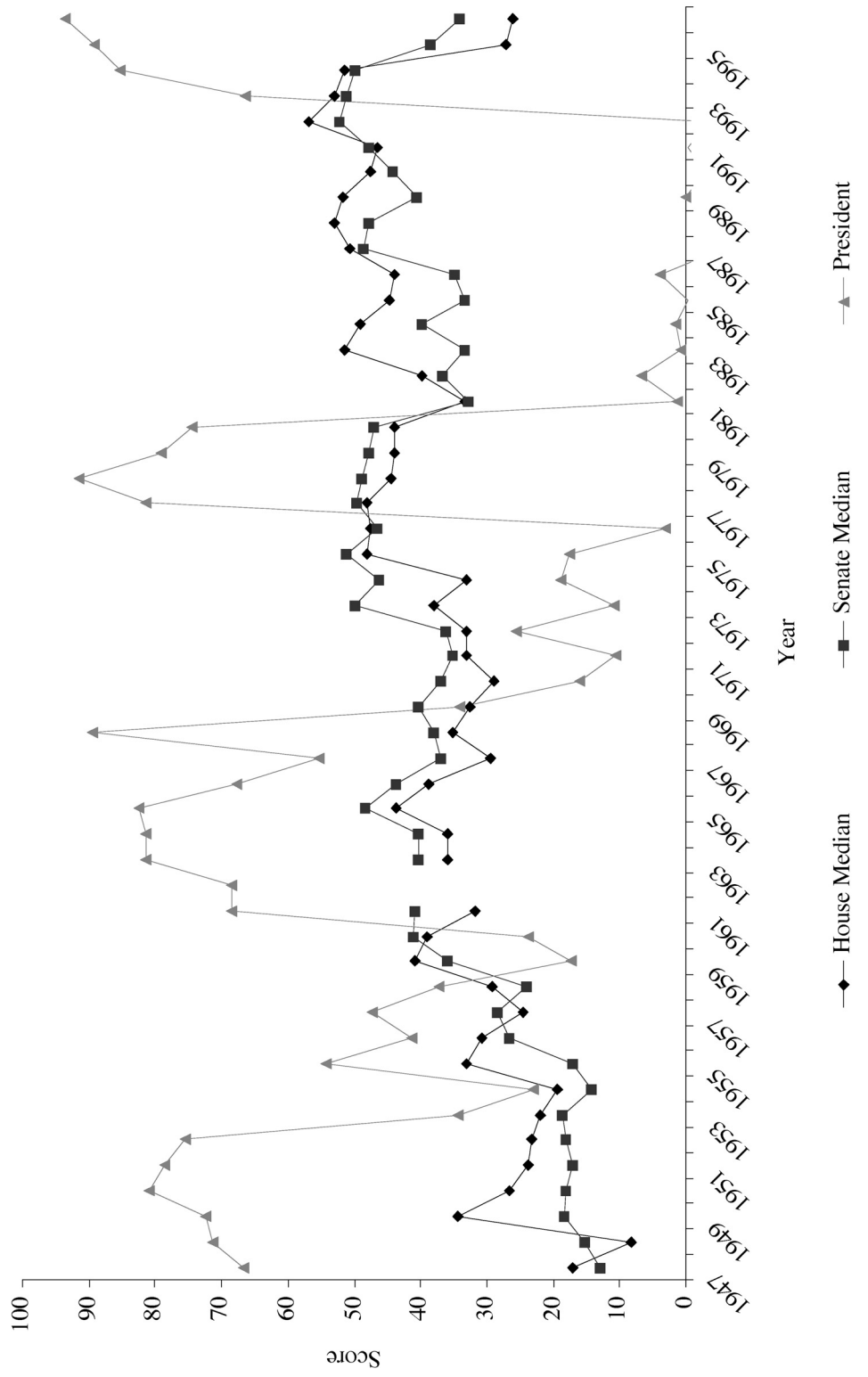

Fig. 2. Inflation-adjusted ADA scores, 1947–96

congressional median change so much more slowly than those of the president. Figure 2 graphs the inflation-adjusted ADA scores for the president and the chamber medians over time.[29] The preferences of the median in Congress change slowly relative to the president. Over time this means that insulated agencies reflecting the preferences of past congresses, should be more durable than uninsulated agencies that reflect the preferences of changing presidents. For either case, agencies that are insulated from presidential control should be more durable than other agencies because the policies they produce are more likely to be closer to the congressional median's ideal point.

An obvious rejoinder is that it would be in the interest of uninsulated agencies to act strategically and set policy in such a way that they are never terminated by Congress.[30] In this case we would expect there to be no difference in the relative durability of different types of agencies. This is certainly a possibility. The difficulty here is that the agencies that most need to act strategically to please Congress are also the agencies most subject to presidential influence. The appropriate question, then, is why presidents do not act strategically and have agencies moderate their policies just enough to mollify Congress but still please the president as much as possible. The answer is that presidents do take into account the preferences of Congress when setting agency policy in areas where Congress is attentive. The problem is that presidents may still set too extreme a policy either because they make mistakes in assessing congressional preferences or because they try and take advantage of the fact that Congress is sometimes inattentive to administrative policy making.

Another rejoinder is that some presidents may simply want to reduce the size of government and they will target those agencies that are easiest to target. For example, it is possible that conservative presidents want to reduce the size of government and they will target agencies created by executive action rather than by statute since terminating the former often does not require new legislation. If this is true, agency durability has less to do with the policy outputs insulated agencies produce and more to do with how insulating characteristics make these agencies costlier to terminate. This alternative explanation and the view presented above are not mutually exclusive. Insulated agencies will be less likely to succumb to (or be targeted by in the first place) presidential termination attempts both because they have the favour of Congress and because insulating characteristics increase the costs of termination. While statutory creation, exclusion from reorganization authority, and exclusion from OMB budget review all limit presidential influence over policy and keep policy outputs closer to the legislative median, they also make it harder for presidents to terminate agencies. Fixed terms for appointees and party-balancing requirements for nominees, however, have little relationship to the costs of agency termination. If agencies with these characteristics are more durable than other agencies, even when controlling for statutory creation, exclusion from reorganization authority and omission from OMB budget review, it provides support for the view that policy outputs favouring the congressional median are a source of durability.

[29] Tim Groseclose, Steven D. Levitt and James M. Snyder Jr, 'Comparing Interest Group Scores Across Time and Chambers: Adjusted ADA Scores for the U.S. Congress', *American Political Science Review*, 93 (1999), 33–49; George A. Krause, 'Partisan and Ideological Sources of Fiscal Deficits in the United States', *American Journal of Political Science*, 44 (2000), 541–59. Americans for Democratic Action (ADA) produce scores measuring how liberal or conservative politicians are, based on their votes or position.

[30] R. Douglas Arnold, *Congress and the Bureaucracy: A Theory of Influence* (New Haven, Conn.: Yale University Press, 1979).

The implicit argument of Moe and McNollgast is that the cost of legislating is almost always greater than the benefits of terminating an existing agency in a separation of powers system. This is only half the story. It is not just that Congress has a hard time terminating agencies because passing new legislation is difficult, but also that Congress does not want to terminate those agencies that set policy within a zone of acceptability partly defined by those costs. Both the costs of terminating an agency and the utility of Congress for the policy set are important.

DATA, VARIABLES AND METHODS

Ideally, a test of the preceding theoretical explanation would show a relationship between hardwiring characteristics and policies close to the congressional median. It would also show a relationship between such policies and agency durability. Since no valid measure of agency policies exists across agencies, I must settle for something less. I examine the connection between insulating characteristics and agency durability directly. I assume (rather than demonstrate) that hardwired agencies produce policies closer to the congressional median than their executive branch counterparts.[31] This is a reasonable assumption given the systematic difference that exists between the ideal points of top executive branch appointees who serve at the president's pleasure and those of appointees serving for fixed terms or serving as the median of insulated commissions since many commissions have party-balancing limitations on appointments. If hardwiring characteristics increase agency durability beyond that provided by statutory creation (and appropriate controls), this is relatively strong support for the theoretical argument.

To bolster this argument, I estimate models that test whether electoral turnover (preference change) increases the risk of agency termination. If preference change in Congress and the presidency increases the risk to agencies, this supports the idea that preference divergence between political actors and agencies increases the risks of termination. New majorities and new presidents see agencies created by the other party or past coalitions as embedding policy preferences opposed to their own and seek to terminate them. Those agencies whose outputs are close to the ideal of the congressional median should be more durable than other agencies.

To analyse the impact of hardwiring on durability, I use the data described in my earlier work.[32] Briefly, I gathered data on all administrative agencies created in the United States between 1946 and 1997, including large visible agencies such as the Environmental Protection Agency, the Bureau of Alcohol, Tobacco and Firearms, and the Defense Intelligence Agency. The dataset also includes smaller, less visible agencies such as the National Biological Service, the Office of Technology Assessment, and Travel and Tourism Administration. I used the *United States Government Manual (USGM)* and excluded all advisory commissions, multilateral agencies, and educational and research institutions. Each agency is coded with a start date and termination date (where appropriate) and characteristics that indicate insulation from presidential control. There are 423 agencies, 250 (or 59 per cent) of which were terminated before 31 December 1997,

[31] This is not a very strong assumption given the proprietary attention Congress pays to insulated agencies.
[32] Lewis, 'The Politics of Agency Termination'.

the last year in the dataset.[33] The shortest duration was 0.1 years and the longest was fifty-two years. The median duration was ten years and the mean was 14.5. My expectation is that agencies that are insulated from presidential influence should be more durable than other agencies. In particular, agencies that have characteristics that dilute the president's executive action, reorganization, budgetary, appointment and removal powers should be more durable than other agencies.

For the purposes of this article I define agency durability as the length of time from the agency's creation to its termination or significant organizational change. Information on agency termination was gathered using Appendix C of the 1997–98 *USGM*. The appendix lists all agencies terminated since 1933 and their dates of termination. I use the *USGM* definition except that I exclude those agencies that were simply renamed or transferred. I do not explicitly differentiate between agencies terminated out of malice and those terminated from success.[34] What is important for the purposes of this article is durability of the initial organizational design. If hardwired organizational design can be changed easily – either to favour or hurt particular interests – then the hardwiring literature is misguided and presidents have more control over the executive branch than was previously thought.[35]

Variables – Hardwiring Characteristics

There are a number of ways political actors can design agencies to remove them from presidential influence: statutory creation, exclusion from reorganization authority, removal from normal OMB budget review, fixed terms for appointees and party-balancing limitations on appointments. Agencies insulated from presidential control often have more than one of these characteristics.

Statutory creation: The characteristic most readily identified in the literature as ensuring policy durability in the United States is statutory creation. When Congress delegates authority to the president or an agency head to execute a new policy, legislators can choose to design the requisite administrative apparatus themselves or grant executives that power

[33] This is a remarkably high percentage, particularly given the widespread belief that administrative agencies almost never are terminated. Since we do not observe agencies after 31 December 1997, 38 per cent of agencies in the dataset are right-censored. I will account for this in model estimation. See Nancy Brandon Tuma and Michael T. Hannan, *Social Dynamics: Models and Methods* (Orlando, Fla.: Academic Press, 1984).

[34] For example, when the Drug Enforcement Agency (DEA) was created, four separate narcotics law enforcement agencies were eliminated. DEA's creation reflected a new federal commitment to narcotics policing. In this case proponents of stronger narcotics law enforcement had 'their' agencies terminated but got something better. I cannot distinguish these types of terminations from other terminations. Both types of termination represent significant policy change that hardwiring was supposed to prevent. Initial agency design is created as a compromise between relevant political actors, some high demanders and some lower demanders. Just because the high demanders win out in this case does not imply that these two types of agency termination are fundamentally different. Those low demanders, those wanting less federal enforcement, certainly feel that the termination of the three agencies was out of malice. Distilling out those cases that were terminated out of malice is therefore a tricky task.

[35] It should be noted that in almost all cases of agency termination, the agency's functions are parcelled out to new or existing agencies. When President Reagan proposed eliminating the Department of Education, for example, his budget did not include the department but had parcelled out its functions to other existing agencies. Once the federal government begins performing some function they rarely relinquish the authority. As a consequence, I measure the durability of organizational structure not function.

by default. In the latter case, granting executives power to create agencies often means that they can terminate them. Agencies that are insulated from presidential control are much more likely to have been created by statute.[36] Legislators can also be more or less specific in the statute about how an agency should carry out its responsibility. Agencies created by statute should both be physically harder to terminate and produce policy outcomes closer to the legislative median, making them less attractive to terminate. As such, statutorily created agencies should be more durable than other agencies. I coded each agency in the dataset according to the presence or absence of characteristics that limit the president's power of unilateral action and reorganization authority. All agencies created by statute (42 per cent) are coded with a 1 and all agencies created by executive action are coded with a 0.

H1: Agencies created by statute are more durable than agencies created by executive action.

Exclusion from reorganization authority: During the 1945–83 period exclusion from reorganization authority also increased the difficulty of termination. Under the most common form of reorganization authority granted by Congress, presidents made reorganization proposals and submitted them to Congress. Presidents could create, reorganize and terminate administrative agencies by submitting plans to Congress. If Congress failed either to alter or to negate the plans, they went into effect after a specified period of time.[37] The collective action problems of Congress made it difficult for them to respond to such presidential initiatives. It was difficult for party leaders to drum up support and interest and schedule votes within the short time-window.[38] The proposals were also unamendable, meaning presidents only had to find a plan amenable to at least half the members in each chamber of Congress to support his plan. It was easier to terminate agencies when presidents had reorganization authority because reorganization plans required no affirmative legislative action.

During the period when presidents regularly had reorganization authority (1945–84), however, Congress had means of responding to the advantage reorganization authority provided presidents. They excluded certain classes of agencies from inclusion in reorganization plans. At different times they excluded cabinet departments, independent regulatory commissions and all independent regulatory agencies from reorganization

[36] Agencies created by executive action also do not have the natural support of authorization committees in Congress. Since they have not been authorized formally by statute, they are likely to have the natural support only of appropriations committee members (as opposed to both authorization and appropriations committee members). To terminate agencies created by statute political actors must convince authorizing committees, appropriations committees, majorities in both chambers of Congress and the president to carry out the task, as opposed to just convincing the president. Kaufman argues that the dramatic increase in the number of agencies created without statutory underpinning has increased the rate of termination by unilateral executive action (Kaufman, *Are Government Organizations Immortal?* pp. 42–3). Since 1946, over 40 per cent of all agencies created in the United States have been created by executive action. The rise in executive created agencies has made the executive branch more susceptible to presidential termination and reorganization efforts (Howell and Lewis, 'Agencies by Presidential Design').

[37] The type of congressional action (one-house veto, two-house veto, joint resolution) necessary to stop a reorganization plan and the length of time that had to expire before a plan went into effect varied.

[38] Since the Supreme Court struck down the legislative veto in the *INS* v. *Chadha* (1983) decision, the president's reorganization authority has lapsed. Any president now wishing to reorganize the bureaucracy must pursue the reorganization directly through legislation.

authority.[39] The exclusion of agencies from reorganization authority prevented presidents from changing policy through organizational change and increased the costs of agency termination relative to other agencies thus increasing their durability. I also code all agencies according to whether they were ever excluded from reorganization authority (0,1). This list includes all executive departments between 1946 and 1997 and all independent regulatory agencies between 1946 and 1949 and after 1977.

H2: Agencies excluded from reorganization authority are more durable than other agencies.

Exclusion from OMB budget review: Presidents have influence over the budget from their ability to make the first proposal in a bargaining process where the costs of delaying a decision are high. This advantage is accentuated by the information asymmetry that exists between the two branches. Presidents have more and better information about actual agency costs, programmes and budgets and can use this to their advantage. The Office of Management and Budget (OMB) reviews, co-ordinates and makes all final decisions on agency budget requests before submission to Congress. They keep a tight reign on agency budget requests, testimony and discussion in order to achieve the administration's policy goals through the budget.[40] The president's advantage in the budget process is accentuated by the fact that negotiations occur in the shadow of the president's veto power.

Congress has diluted the president's budgetary influence by excluding some agencies from OMB budget review, taking some agencies and accounts off budget, and writing into law requirements that some agencies submit their budget requests to the OMB and Congress concurrently.[41] These measures decrease the president's agenda-setting and information advantage over Congress by providing Congress and the president with the same information and providing this information to Congress earlier than they would

[39] The Reorganization Act of 1945, in effect until 1949, prohibited plans proposing the abolition or transfer of executive departments and plans imposing 'any greater limitation upon the exercise of independent judgment and discretion' in the quasi-judicial or quasi-legislative agencies, by which they meant the independent regulatory commissions (79 *STAT* 615). The Reorganization Act of 1949 only prohibited the termination or consolidation of executive branch departments (81 *STAT* 205). Congress extended the authority of the 1949 Act in 1953, 1955, 1957, 1961, 1964, 1965, 1969 and 1971. Finally, the Reorganization Act of 1977 prohibited the abolition or consolidation of executive departments and all independent regulatory agencies (95 *STAT* 31).

[40] OMB Circular A-11 requires that the nature and amounts of the budget decisions are confidential until the president submits his budget to Congress. Agency officials are prohibited from submitting to Congress appropriations estimates or requests unless specifically requested by either chamber of Congress. Even in these cases, OMB reviews the material prior to submission. Circular A-11 mandates that all initial budget justifications, testimony, written responses to congressional inquiries, materials responding to committee reporting requirements, related cost information, financial management documents and budget-related materials submitted for oversight activities must be pre-cleared by the OMB. While witnesses are instructed to give 'frank and complete answers to all questions', they are specifically instructed to avoid volunteering information and opinions that are inconsistent with the president's programme (US Office of Management and Budget, *Circular A-11* (1996), pp. 26–8).

[41] Agencies in the legislative and judicial branches (i.e., the General Accounting Office, US Sentencing Commission) are not required to submit their requests to the OMB. Similarly, the Milk Market Orders Assessment Fund (in USDA), the International Trade Commission, and the Board of Governors of the Federal Reserve are not required to submit their requests to the OMB. Government-sponsored enterprises such as the Federal National Mortgage Association and the Student Loan Marketing Association are required to submit certain financial information to the OMB, but OMB is prohibited from changing their estimates. Finally, some agencies are required by law to submit their requests concurrently to the OMB and Congress. Among them are the Commodity Futures Trading Commission and the Federal Aviation Administration (US Office of Management and Budget, *Circular A-11*, pp. 26–8).

otherwise get it. This prevents the president from dramatically altering the policy of an agency through budget decisions. *Ceteris paribus*, this produces outcomes closer to Congress's preference, making these agencies more attractive than other agencies to members of Congress.[42] To capture the influence of OMB budget review on agency durability every agency in the dataset that at some point was excluded from normal review by the Office of Management and Budget is coded with a 1.[43] All other agencies are coded with a 0. In total, thirty-nine agencies, or 9 per cent of all agencies in the dataset are not subject to normal OMB review either because they are located in the legislative or judicial branch, are a government corporation, or are excluded in their authorizing statutes. Appendix A includes a list of all the agencies in the dataset that meet one of those criteria.

H3: Agencies removed from normal OMB budget review are more durable than other agencies.

Limitations on president's appointment and removal powers: Diluting the president's appointment and removal powers with fixed terms for political appointees and party-balancing requirements on nominations limits administrative policy change.[44] Removing the president's power to fire diminishes the president's ability to direct agency heads. The most extreme form of such limitations is judicial lifetime tenure. This effectively insulates judges from the most direct form of presidential influence. Congress does not give bureaucratic actors lifetime tenure but has given some appointees tenure of up to fifteen years. Usually, however, Congress grants administrative actors shorter terms of three to seven years. While not as insulating as longer terms, they still serve to insulate administrative actors from presidential direction.

In most circumstances, presidents can nominate persons of their choice to head administrative agencies. On occasion, however, specific qualifications for appointees are attached to their appointment. The most noxious form from the president's perspective is party-balancing limitations on appointments. These limit the degree of presidency-induced change by entrenching opposition to presidential direction. They are most commonly attached to commission-governed agencies but the statute creating the Law Enforcement Assistance Administration required that at least one of the deputies to the administrator be from a different political party.

I coded each agency in the dataset according the presence or absence of the

[42] Some agencies omitted from OMB review are also self-financed through profits, assessments or fees and avoid the yearly appropriations process, which insulates them from Congress also. In such cases, being outside the normal budget process – particularly the appropriations process – can actually increase agency costs. However, this will only make these agencies more vulnerable if the agency costs outweigh termination costs.

[43] To compile this list I began with a list of all agencies in the dataset that are located in the legislative or judicial branches such as the Office of Technology Assessment or US Sentencing Commission. I then included all agencies that are government corporations. Finally, Jee Ryang Baum, a former employee at the OMB, kindly provided me with a list of all current agencies with OMB bypass authority. I then searched the authorizing statutes of agencies terminated prior to 1997 for such authority. I assume that all agencies created by executive action are subject to budget review. While I know which agencies are excluded from OMB review, I do not know when they gained that authority. Most have bypass authority included in their original statutes. Some obtained it after their creation. Unfortunately, I cannot differentiate between the two types. I include a list of all agencies excluded from OMB review in Appendix A.

[44] Snyder and Weingast find that fixed terms for commissioners might not protect commissions from presidential influence as much as was previously thought. They find that presidents got control of the National Labor Relations Board through appointments in about two years on average (Susan K. Snyder and Barry R. Weingast, 'The American System of Shared Powers: The President, the Congress, and the NLRB', *Journal of Law, Economics, and Organization*, 16 (2000), 269–305).

characteristics diluting the president's appointment powers. Appointees who serve for fixed terms such as in the Commodity Futures Trading Commission and the Consumer Product Safety Commission govern only fifty-nine, or 14 per cent, of agencies created during this period. Twenty-three, or 5 per cent, of agencies created in the post-war period have party balancing limitations on appointees. The Federal Election Commission and the National Transportation Safety Board are examples.

H4: Agencies with fixed-term appointments are more durable than other agencies.

H5: Agencies with party-balancing limitations on appointments are more durable than other agencies.

Since many of these characteristics are given to the same agencies, there will be collinearity among them, increasing the size of the standard errors and biasing the results against support for my hypotheses. The use of binary variables, while an accurate description of the agencies, does not measure the *degree* of insulation from presidential control. As such, I have also estimated the models with an index created from the binary variables and these models confirm what is presented here.[45]

Variables – Controls

The most obvious rejoinder to the claim that structure influences agency durability is that it is not the structure of agencies that make them durable but the politics surrounding them. There is a politics and configuration of interests that form around a topic or type of government activity that determines agency design and, ultimately, durability.[46] Horn, for example, argues that the politics of regulation, sales-financed government activity and adjudication lead naturally to certain types of agency design that deviate from the normal cabinet bureau model.[47] The configuration of transaction costs in the delegation of authority for regulatory activity, for example, leads Congress frequently to choose the independent commission form of governance. What causes such insulated agencies to persist is not the structure but the politics surrounding regulation that make this structure the optimal legislative outcome. As a consequence I include controls for regulatory agencies (0,1), government sponsored enterprises (0,1), and agencies with adjudicative functions (0,1) as a means of parsing out the effects of agency structure from functional activity.[48]

[45] Specifically, I created factor scores for each observation on these structural characteristics. I assumed that all the characteristics would load on one primary dimension, insulation, and, with the exception of exclusion from reorganization authority, they do load on one factor. I used these scores to create a continuous insulation score bounded between 0 and 1. I estimated models with the new measure and the results confirm what is reported here and are available from the author upon request.

[46] An ideal measure would be the degree of clientele support rather than the type of agency activity. Without such a measure, however, I use the type of agency activity to measure the politics surrounding an agency's activities.

[47] Horn, *The Political Economy of Public Administration*.

[48] Melinda Warren, *Federal Regulatory Spending Reaches a New Height: An Analysis of the Budget of the U.S. Government for the Year 2001* (St Louis, Mo.: Center for the Study of American Business, Washington University, 2000); *USGM*. I code all agencies listed in the Center for the Study of American Business report as agencies with regulatory functions.

I also control for the political conditions at the time an agency was created. Another plausible alternative hypothesis is that it is not insulating characteristics that increase durability but the politics at the time an agency was created. In other words, insulation is not the cause of durability, rather the fact, for example, that an agency was created during divided government. In short hand, insulating characteristics are endogenous. To control for this I include controls for the hypothesized causes of insulation including divided government.[49] In the main text I include an indicator for divided government at the time an agency was created but I have also estimated models using other non-party and party-based measures. I have estimated models using the absolute value of the difference in the common space scores for the president and House median.[50] I have also estimated models including measures of political uncertainty including size of the majority, length of time the majority has been in power and seat change in the last election. Finally, I have estimated models with cohort indicators.[51] None of the specifications change the conclusions.

Political actors who want to insulate a new agency from presidential control often create new agencies as commissions or boards rather than administrations. This increases the number of actors that must be influenced in order for the president to change policy. The choice of commission or administration, however, is not primarily what determines the degree of insulation. A commission whose members are chosen by the president and serve at the pleasure of the president is only marginally less responsive than an administration with those same characteristics. It is the degree of independence allowed by fixed terms or specific qualifications for appointees that determines the degree of independence of a board or commission. I include a control for agencies governed by commission because fixed terms and party-balancing requirements usually occur with commissions. Only eleven of the fifty-nine agencies with fixed terms are administrations. Only one of the agencies with party-balancing limitations is an administration. Thus, a control is necessary to preclude omitted variable bias.

Finally, I control for the size of each agency and for those agencies whose activities could be construed as temporary. The size of an agency can increase the ease or difficulty with which political actors can terminate an agency.[52] Size is measured by an indicator variable for whether or not the agency has a separate line in the budget. Sixty-two per cent of the agencies (coded 1) in the sample have a line in the budget.[53] Large agencies are more difficult to terminate.[54] If an agency has a large budget, a multitude of employees or

[49] Epstein and O'Halloran, *Delegating Powers*.

[50] Nolan M. McCarty and Keith T. Poole, 'Veto Power and Legislation: An Empirical Analysis of Executive and Legislative Bargaining from 1961 to 1986', *Journal of Law, Economics, and Organization*, 11 (1995), 282–312; Keith Poole, 'Estimating a Basic Space from a Set of Issue Scales', *American Journal of Political Science*, 42 (1998), 954–93.

[51] The cohort indicators are coded 1 if an agency was created in that year and 0 otherwise. So, the indicator for 1947 is coded 1 for all agencies created in 1947 and 0 for all agencies created in other years. This specification is included in Appendix B.

[52] Kaufman, *Are Government Organizations Immortal?* Harold Seidman, *Politics, Position, and Power: The Dynamics of Federal Organization* (New York: Oxford University Press, 1998).

[53] *Budget of the United States Government*, various years. I have also estimated models using the log of the actual size of the agency's initial budget in 1992 dollars. The results do not differ substantially from the results reported here and have the disadvantage of being estimated with fewer cases. The model estimates for this model are included in Appendix B.

[54] Mark Ross Daniels, *Terminating Public Programs: An American Political Paradox* (Armonk, N.Y.: M.E. Sharpe, 1997); Kaufman, *Are Government Organizations Immortal?*

performs functions affecting many people, it is much less likely to be terminated. By contrast, a small agency targeted at a specific interest, granted a small budget and employing few people is easier to terminate. Since some agencies like the Resolution Trust Corporation are designed to carry out a discrete, time-bound function, I include an indicator variable for all agencies that are temporary (0,1).[55]

Methods

There are a number of ways to model agency durability. Some techniques model the natural log of the survival time and others the hazard rate. I have chosen the former in this case as the primary model of interest since I am more interested in the survival time than the rate of termination. The estimation of accelerated failure time (AFT) models allows for a natural interpretation of the coefficients in terms of expected durability in years.[56] These models are sometimes referred to as 'initial conditions' models since they include only time-constant covariates. I assume that the error term has a (log) normal density.[57] Since we do not observe if or when an agency is terminated after 1997, the data on 38 per cent of the agencies is right-censored. Right-censoring is quite frequent in time-dependent data and is accounted for in maximum likelihood estimation.[58]

Since the probability of termination in a given year is likely to be a function of factors that change over time, however, I also estimate a series of Cox proportional hazard models both to check the robustness of the main findings but also to control for a host of time-varying factors that affect the risk to termination. In particular, these models control for the impact of preference change due to electoral turnover in Congress and the presidency.

[55] Source: *USGM*. I have also estimated models that exclude all agencies that might be construed as temporary. The results are identical to what is reported here and included in Appendix B. This indicator is coded 1 for agencies that are explicitly defined as temporary in the originating documents or for agencies created for a discrete, time-bound purpose such as a war or economic crisis. All other agencies are coded with a 0.

[56] I have, however, also estimated a series of hazard models (which use the hazard rate as a dependent variable) with and without time-varying covariates and the results are robust to different models and specifications.

[57] To select the appropriate error density for the AFT model, I look at the baseline hazard rate of agency mortality. Superficially, the hazard rate appears to be non-monotonic, consistent with Carpenter, Carpenter and Lewis, and Newman (see Carpenter, 'Stochastic Prediction and Estimation of Nonlinear Political Durations'; Carpenter and Lewis, 'Political Learning, Fiscal Constraints and the Lifetime of Bureaus'; and Eric Andrew Newman, *Institutional, Political, and Economic Factors Affecting Rates of Organizational Change in California State Government, 1850–1975* (doctoral dissertation, Stanford University, 1991)). For model selection I first estimated a generalized gamma model. This model is quite flexible, allowing for a number of different baseline hazard functions including the Weibull (if $k = 1$), the exponential (if $k = 1$ and $\sigma = 1$), and the log-normal (if $k = 0$). I could reject the Weibull and exponential models but could not reject the log-normal based upon the results of the gamma model. I then compared the gamma, log-normal and log-logistic models with the Akaike Information Criteria (AIC). The AIC is: AIC $= -2(\log \text{likelihood}) + 2(c + p + 1)$ where c is the number of model covariates and p is the number of ancillary parameters. Based on lowest AIC score, the log-normal was the appropriate model. It should be noted that the results are not sensitive to the specification of the error density.

[58] See Tuma and Hannan, *Social Dynamics*. It is possible that the shape or functional form of the baseline hazard differs for different individual agencies or groups of agencies. I have estimated models allowing for different baseline hazards between temporary and non-temporary agencies and cannot reject the null hypothesis that the population of agencies is homogeneous. I have also estimated a model with gamma frailty and cannot reject the null.

TABLE 1 *ML Estimates of Accelerated Failure Time Model of Agency Durability, 1946–97*

Variable	Coefficient estimates
Insulating characteristics	
Agency created by statute (0,1)	0.49**
	(0.18)
Excluded from reorganization (0,1)	2.45**
	(0.77)
OMB bypass (0,1)	1.41**
	(0.52)
Fixed terms for appointees (0,1)	0.43*
	(0.33)
Party-balancing limitations (0,1)	1.16**
	(0.55)
Controls, Constant and Ancillary Parameter	
Regulatory agency (0,1)	0.94**
	(0.31)
Sales-financed agency (0,1)	0.05
	(0.66)
Adjudicatory agency (0,1)	0.45*
	(0.34)
Divided government at time of creation (0,1)	0.04
	(0.15)
Governed by board or commission (0,1)	− 0.69**
	(0.22)
Line in the budget (0,1)	0.09
	(0.16)
Temporary (0,1)	− 1.50**
	(0.35)
Constant	2.26**
	(0.15)
σ	1.39**
	(0.07)
Number of observations	6,376
Number of agencies	416
Number of terminations	250
X^2 (12 df)	102.83**

Note: Dependent variable: ln(t). I assume the error term has (log) normal density. *Significant at the 0.10 level; **Significant at that 0.05 level in one-tailed test of significance.

RESULTS AND DISCUSSION

Table 1 contains the estimates of the AFT models.[59] The dependent variable is the log of time until termination. As such, a positive coefficient indicates that a unit increase in the

[59] All analyses were performed in Inter-cooled STATA 7.0 for PC. Since the dataset has multiple observations on one subject, it is possible that the observations are not independent. As a consequence, I have also estimated the models with a robust estimator of variance to account for correlation of the errors in observations on the same agency. The results confirm what is reported in the main text and are included in Appendix B.

independent variable increases the expected durability of a new agency. I graph how changes in the independent variables affect the cumulative survival probabilities of agencies over time to assess the magnitude of the coefficients.[60] The model appears to fit the data well. The coefficients are generally large and significant and we can reject the null hypothesis that the variables do not improve the model fit. The divided government and line in the budget variables were the only variables whose coefficients were not significant in one-tailed tests. I employ one-tailed tests here both because of the directional hypotheses and because of the admitted collinearity of the measures of insulation.[61] I include standard errors for reference, however.

Impact of Model Controls on Agency Durability

One of the most interesting results from Table 1 is that agency function does influence agency durability. Regulatory and adjudicative agencies are significantly more durable than other agencies ($p < 0.05$ and 0.10, respectively). Holding all other factors constant, the probability that a regulatory agency survives fifty years is estimated to be about 48 per cent. The probability for non-regulatory agencies is about 25 per cent. A regulatory agency is almost twice as likely to survive fifty years.

No federal law mandates the appropriate organizational form for different types of government activity. For example, while considerable regulatory authority is granted to independent regulatory commissions like the Federal Communications Commission, the Federal Trade Commission or the Securities and Exchange Commission, an equal amount is granted to more traditional hierarchical structures like the Food and Drug Administration in the US Department of Agriculture and the Environmental Protection Agency. Even judicial functions are handled in a variety of different structural types from administrative law judges within cabinet departments to independent commissions such as the War Claims Commission. Sales-financed government activity is not necessarily the province of government corporations. Responsibility for the liquidation of government assets, a clear example of such activity, has been lodged to cabinet departments, independent commissions or government corporations. Structure and function can be parsed and both may affect durability.

The coefficient on governance by commission is significant but negative, indicating that commissions are less durable than administrations. The dataset already excludes advisory commissions and the results suggest that even when controlling for size, temporariness and the politics at the time a commission is created, the commission form is less durable than more hierarchical structures. Administrations are about three times more likely to survive fifty years than government commissions. Many reports on presidential management have

[60] I use the graphs of the survival probabilities to assess the magnitude because the marginal effects of the coefficients change with time. For a full discussion, see Mario A. Cleves, William W. Gould and Roberto G. Gutierrez, *An Introduction to Survival Analysis Using Stata* (College Station, Tex.: Stata Press, 2002). The graphs of the estimated survivor functions can be created by using a combination of model estimates and x values chosen. The survivor function for the lognormal model is:

$$S(t) = 1 - \Phi[\{\ln(t) - u\}/\sigma],$$

where $\Phi(z)$ is the normal cumulative distribution function, $u = X_i B$, and σ is estimated from the data. I specified the lines graphed be for the different values of the binary variable of interest. All other values were set at their means. Rather than calculate them by hand, I used the 'stcurve' command in STATA 7.0.

[61] All indicators, however, are significant at the 0.05 level in two-tailed tests with the exception of the fixed terms indicator.

criticized the commission form of governance as slow, inefficient and unable to plan.[62] As such, they may be easier targets for termination. If commissions have fixed terms and party-balancing limitations, however, they are substantially more durable than other agencies. Model estimates demonstrate that larger agencies and non-temporary agencies are more durable although the coefficient on line in the budget is insignificant.

Impact of Hardwiring on Agency Durability

Most importantly for the purposes of this article, however, is the performance of the hardwiring variables.[63] My expectation was that each hardwiring variable would be *positive* denoting that they increase an agency's durability – and this is what I did find. Agencies that are insulated from presidential control are more durable than other agencies. The coefficients on the variables indicating insulation are significant at the 0.10 or 0.05 level in every case. The hardwiring literature's assumption that insulating structure is durable is confirmed. Moe, McCarty, McCubbins, Noll and Weingast and Horn all assumed that structure was durable but this assumption had never been empirically verified.[64]

The coefficient on statutory creation is significant, positive and large indicating that agencies created by statute are more durable than agencies created by executive order, departmental order or reorganization plan. This confirms the argument of both McNollgast and Moe that the difficulty of legislating increases the durability of administrative agencies. Figure 3 includes a graph of the expected survival probabilities of agencies created by statute compared to executive-created agencies and agencies excluded from reorganization authority compared to those included in reorganization authority. Legislatively created agencies have a higher survival probability and simulations suggest that they have a 0.10 to 0.15 greater chance of surviving fifteen years and a 0.2 to 0.3 greater chance of surviving fifty years than agencies created by executive action. Agencies excluded from reorganization authority also have a substantially higher survival probability.[65]

Agencies hardwired to dilute the president's budgetary, appointment and removal powers are also more durable than other agencies. Figure 4 includes graphs of the relative

[62] Arnold, *Making the Managerial Presidency*; Gale E. Peterson, *President Harry S. Truman and the Independent Regulatory Commissions, 1945–1952* (New York: Garland, 1985).

[63] One possible concern with the measures of insulation is the overlap among them. This could be a problem because the reliance on five overlapping indicators might lead to overestimating the impact of any one measure. One way to get around this problem is to perform factor analysis and create factor scores on these structural characteristics in order to create a continuous variable that is an index of insulation. The assumption is that all the characteristics load on one primary dimension, insulation. One could then normalize these scores and use them as a continuous measure of insulation. I did this and the scores, with the exception of exclusion from reorganization authority, load on one factor. I re-estimated the models with the new measure as a robustness check and the results are substantively the same. I include them in Appendix B. I have also estimated models with a simple count of these binary variables and they produce similar results.

[64] Moe, 'The Politics of Bureaucratic Structure'; Nolan McCarty, 'Bargaining Over Authority: The Case of the Appointment Power' (paper presented at the Annual Meeting of the American Political Science Association, Atlanta, Ga., 1999); McCubbins, Noll and Weingast, 'Structure and Process, Politics and Policy'; Horn, *The Political Economy of Public Administration*.

[65] Only one agency created since 1946 that was excluded from reorganization authority was considered terminated by the *USGM* (Department of Health, Education, and Welfare). While this illustrates the durability of agencies excluded from reorganization authority, the small number of failures in this category could lead to overestimation of model coefficients. Therefore, some care should be taken in interpreting the results.

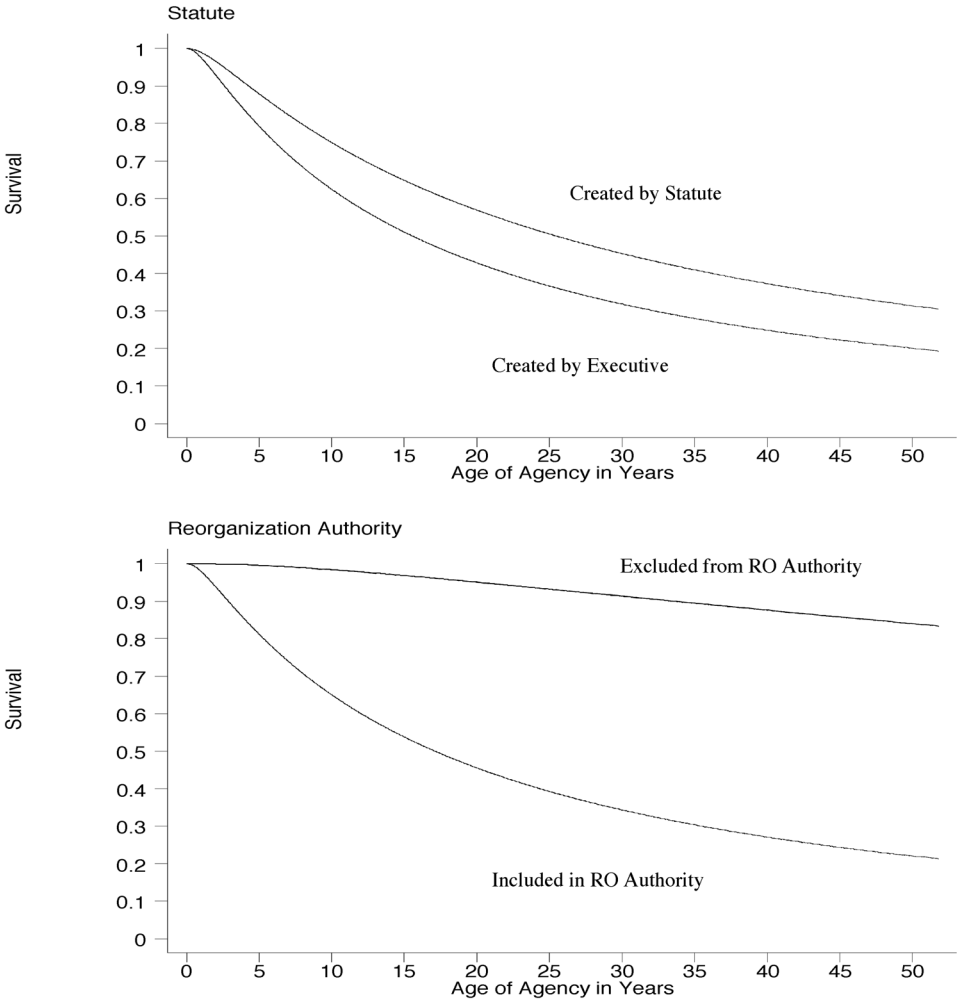

Fig. 3. Predicted survival probabilities by statutory creation and exclusion from reorganization authority

durability of hardwired and non-hardwired agencies. In all cases, those agencies insulated from presidential control at their creation are more durable than other agencies. The coefficients on all three variables are significant and positive. The estimated probability of surviving fifty years is close to 60 per cent for agencies omitted from OMB review compared to 20 per cent for other agencies created since 1946. So, agencies omitted from OMB review are close to three times more likely to survive fifty years. Agencies with fixed terms have about a 35 per cent chance of surviving fifty years compared to a 25 per cent chance for agencies without fixed-term appointments. Agencies with party balancing limitations are more than twice as likely to survive fifty years. Structural characteristics have a larger impact on agency durability than either an agency's function or the politics at the time an agency was created. These findings suggest that it is policy outputs close

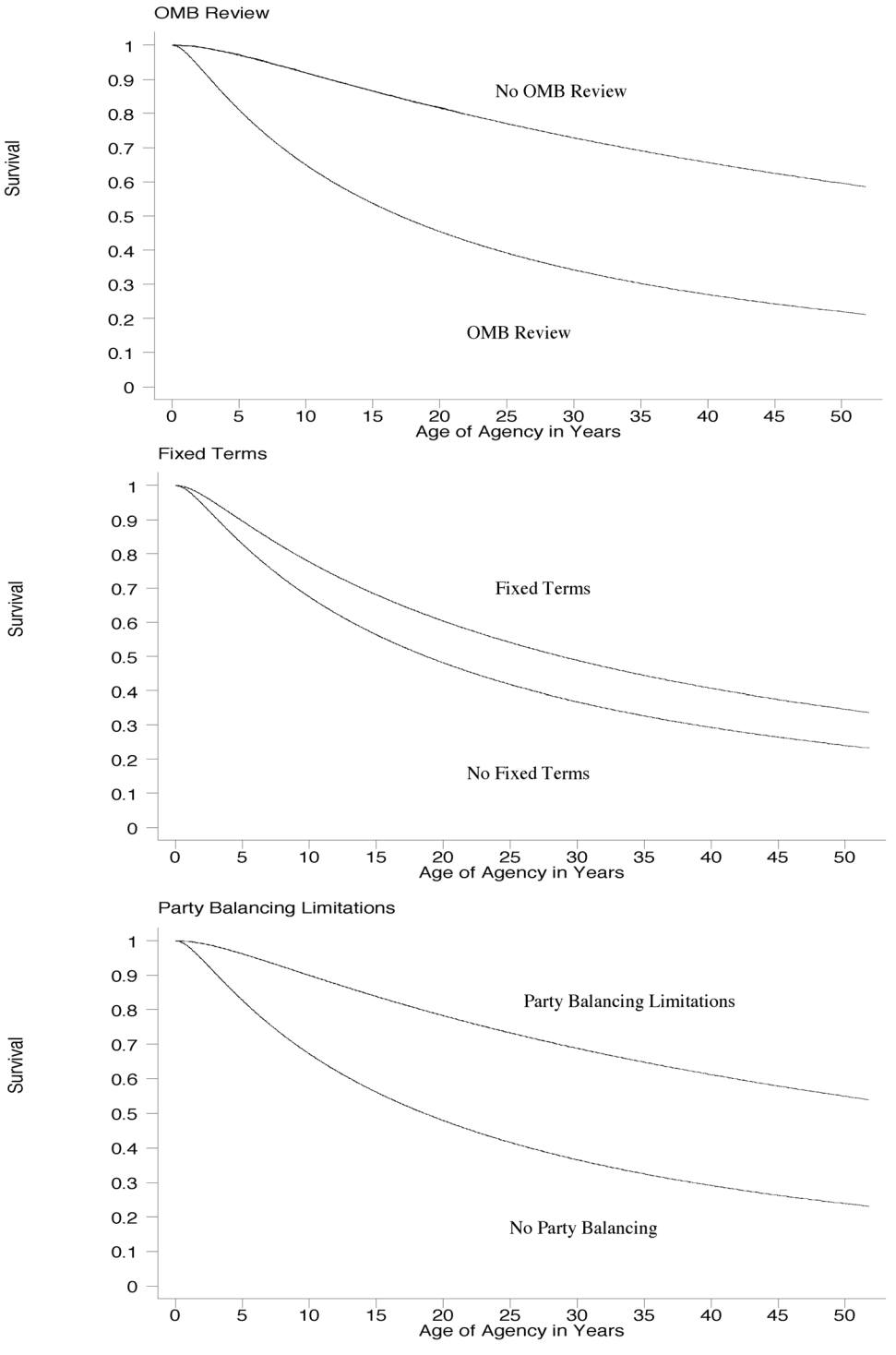

Fig. 4. Predicted survival probabilities by OMB review, fixed terms and party balancing limitations

TABLE 2 *Cox Model Estimates of Agency Hazards, 1946–97*

Variable	Coefficient estimates
Insulating characteristics	
Agency created by statute (0,1)	−0.61**
Excluded from reorganization (0,1)	−2.28**
OMB bypass (0,1)	−1.21**
Fixed terms for appointees (0,1)	−0.46*
Party-balancing limitations (0,1)	−0.77*
Time-invariant controls	
Regulatory agency (0,1)	−0.80**
Sales-financed agency (0,1)	0.28
Adjudicatory agency (0,1)	−0.41*
Divided government at time of creation (0,1)	0.05
Governed by board or commission (0,1)	0.69**
Line in the budget (0,1)	0.02
Temporary (0,1)	1.48**
Time-varying controls	
War (0,1)	0.82**
Unemployment	0.12**
Number of new agencies	−0.04**
Republican House (0,1)	0.27
Republican president (0,1)	−0.10
New majority in House (0,1)	0.19
New party in White House (0,1)	0.50**
Unified government at time of observation (0,1)	0.47**
New administration (0,1)	0.22*
Number of observations	6,376
Number of agencies	416
Number of terminations	250
X^2 (21 df)	184.70**

Note: Dependent variable: h(*t*). *Significant at the 0.10 level; **Significant at that 0.05 level in one-tailed test of significance.

to the legislative median (as opposed to the transaction costs of termination) that explain agency durability.[66]

Models with Time-Varying Covariates

The results provide substantial evidence that agencies insulated from presidential control are more durable than other agencies, but they do not include time-varying covariates. Table 2 includes estimates of Cox proportional hazard models where the dependent variable is the hazard rate, or probability of termination given that an agency has not been

[66] I have also estimated Cox models that interact Republican president with statutory creation to test whether presidents who want to shrink government are simply targeting those agencies that are easiest to terminate. The interactions were insignificant and positive. The positive coefficient implies that under Republican presidents statutory creation is not as important a determinant of durability.

terminated already. The models include controls identified in my earlier work including war (0,1), unemployment and the number of new agencies created in a given year, to control for periods of unusually rapid restructuring. The models control for preferences of the House and the White House with indicators for Republican House (0,1) and Republican-president (0,1).[67] Importantly, the models control for whether the party in control of either branch is the same as the party that was in control when an agency was created (0,1), for unified government, and for the presence of a new administration (0,1).

The results confirm what is reported above. The coefficients on the indicators of insulation are generally significant, negative and large.[68] In hazard models (as opposed to AFT models) a positive coefficient signifies an increase the hazard rate, or risks to an agency. Those agencies that are removed from presidential control are less at risk, hence, more durable than other agencies even when controlling for political variation and other factors from year to year. As expected, ideological change in Congress or the White House increases the risks of agency termination. The coefficient on party change is positive in both cases and significant for presidents, indicating that preference divergence stemming from electoral turnover increases the risks to agencies. A new president in the White House increases the hazard rate by 65 per cent. This reinforces the idea that electoral uncertainty makes structural solutions to commitment problems problematic. It also makes it less likely that structure can lock in policy in the long run, unless insulating structures are durable for another reason.

Structures that insulate an agency from presidential control ensure that policy outcomes will be closer to the ideal of the congressional median. This is what distinguishes such agencies from other agencies. In standard executive branch bureaux, changing administrations can mean real changes in policy. In insulated agencies the impact of changing administrations is muted so that policies have less variance and the variance occurs around an ideal point set by the enacting Congress or the current Congress. In either case, agencies that set policies close to the ideal point of the congressional median will be at less risk than other agencies. This is particularly true given that the elimination of agencies appears to require the agreement of both branches. The coefficient on unified government is large and significant, indicating that agencies are at much greater risk of termination during periods of unified government. An agency that secures the protection of one of the two branches is unlikely to be terminated.

CONCLUSION

This article has made two important points. First, it has argued that insulated agencies are more responsive to congressional direction than other agencies. As a consequence,

[67] Lewis, 'The Politics of Agency Termination'. Since there is disagreement about the importance of parties *vis-à-vis* ideology, I have also estimated models using Poole's common space scores as a measure of ideology (McCarty and Poole, 'Veto Power and Legislation', and Keith Poole, 'Estimating a Basic Space from a Set of Issue Scales'). They confirm what is reported here and are available upon request from the author.

[68] To interpret the impact of the coefficients on the hazard rate of agency mortality we must remember that

$\Theta(x) = \exp(\beta' x) = \prod_j \lambda_j^{x_j}$ where $\lambda_j \equiv \exp(\beta_j)$.

A common interpretation of x_j is that if it has no impact on $h(t)$, then $\beta_j = 0$ and $\lambda_j = 1$. The percentage change in the hazard rate associated with a unit change in $x_j = 100$ $(\lambda_j - 1)$. So, for example, if $\beta_j = 0.25$, then $\lambda_j = \exp(0.25) = 1.28$ and a one unit increase in x_j increases the hazard rate, $h(t)$, by $100(1.28 - 1) = 28$ per cent. I took this more or less directly from Nancy Tuma, *Event History Analysis* (unpublished, Stanford University, n.d.), p. 21.

insulated agencies live longer than other agencies. There is a selection process at work where those agencies producing policies that favour the legislative median are the most likely to persist over time. Secondly, it has shown that individual decisions to insulate administrative agencies from presidential control have long-term consequences. Individual decisions to insulate agencies from presidential control collectively and cumulatively are making the bureaucracy more difficult for presidents to manage over time. The good news for presidents is that agency structure is more malleable than usually recognized. Congress's increasing propensity to delegate authority to the executive branch provides presidents with greater opportunities to create, reorganize and terminate administrative agencies in order to facilitate presidential management. Unfortunately for presidents, the number of agencies created by statute has increased over time, as has the number of agencies with insulating characteristics. So, presidents may be creating relatively more agencies by executive action now than in the past, but the fact remains that the administrative state is still absolutely more difficult for them to manage. Presidents increasingly are faced with an accumulation of agencies over which they have little control. Removed from his control by statutory specificity, exclusion from OMB budget review, fixed terms and party-balancing requirements, these agencies are less directly accountable to the president.

These developments have consequences for policy outcomes in the United States. The persistence and accumulation of insulated agencies creates fragmentation in administration, fragmentation that can hinder effective policy implementation. When the Senator Truman discussed earlier became President Truman in the mid-1940s he lamented the fragmentation of transport policy that he had helped create while he was in Congress. From the new vantage point of the White House he recognized that transport policy was incoherent and perniciously unresponsive to certain segments of American society. He came to support a new department of transport that would unify the various agencies and remove the barriers to his influence. Presidents (along with vice presidents) are the only nationally elected political officials in the United States. In their position as chief executive, their responsibility to propose a federal budget and their responsibility to nominate top officials, they are delegated the responsibility of effectively co-ordinating the administrative state. Their ability to do so is undercut by decisions to remove certain agencies and policies from their administrative influence.

The persistence of insulated agencies also implies an increasing bias in government policy towards the preferences of the generally moderate median legislator. Rather than change dramatically from administration to administration, government policy will remain moderate and imperturbable. This implies a stability in policy that is consistent with the aims of most separation of powers systems but it also implies a decrease in political accountability. Separation of powers systems usually include checks and balances to curb the abuse of power, slow the policy process and ensure consensus in policy making. Yet at the same time, US presidents are elected officials with a unique perspective based upon their election constituency and an accumulation of insulated agencies decreases the ability of presidents to be responsive to their constituents.

In various political contexts political actors want to ensure the durability of policies they enact. Their desire to do so may be stronger or weaker depending upon the context in which they act. The means by which they attempt to accomplish this desire also varies. In the US case, the need to protect policies from administrative tampering both now and in the future is acutely felt since elections replace the chief executive apart from the party in the legislature. Similarly, the means of limiting the executive's power are unique to the specific

powers of the American president. In other contexts, however, the same problems arise even if the frequency and solutions differ. Moe and Caldwell suggest that majority parties in parliamentary systems often front-load benefits, disperse the benefits of policies widely and help organize a policy's clientele to ensure the durability of a policy.[69] The political difficulty of reversing course locks a particular policy in place.[70] Thies, looking at multiparty coalitions, argues that coalition partners use their junior ministerial positions to shadow each other's ministers as a way of ensuring a particular policy that has been agreed is implemented.[71] In each case, the stickiness of the procedure used to protect a particular policy outcome can limit the amount of discretion managers have to implement policy and affect the quality of administration.

[69] Moe and Caldwell, 'The Institutional Foundations of Democratic Government'.

[70] De Figueiredo, however, argues that in systems with few veto points, like two-party parliamentary systems, political actors are more likely to co-operate (rather than insulate) when electoral turnover is frequent (Rui J. P. de Figueiredo, 'Electoral Competition, Political Uncertainty, and Policy Insulation', *American Political Science Review*, 96 (2002), 321–33). See also Paul Pierson, *Dismantling the Welfare State: Reagan, Thatcher, and the Politics of Retrenchment* (New York: Cambridge University Press, 1994).

[71] Michael Thies, 'Keeping Tabs on Partners: The Logic of Delegation in Coalition Governments', *American Journal of Political Science*, 45 (2001), 580–98.

APPENDIX A *Agencies in Dataset Not Subject to Ordinary OMB Budget Review*

In Legislative or Judicial Branch
- American Folklife Center
- Congressional Budget Office
- Congressional Research Service
- Copyright Royalty Tribunal
- Cost Accounting Standards Board
- Federal Judicial Center
- Judicial Panel on Multidistrict Litigation
- Office of Technology Assessment
- United States Sentencing Commission

Government Corporation
- African Development Foundation
- Alternative Agricultural Research and Commercialization Corporation
- Americorps
- Amtrak (National Railroad Passenger Corporation)
- Commodity Credit Corporation
- Corporation for National and Community Service
- Federal Agricultural Mortgage Corporation
- Federal Home Loan Mortgage Corporation
- Financing Corporation
- Government National Mortgage Association
- Inter-American Social Development Institute
- Legal Services Corporation
- National Voluntary Home Mortgage Credit Extension
- Overseas Private Investment Corporation
- Panama Canal Company
- Pennsylvania Avenue Development Corporation
- Pension Benefit Guaranty Corporation
- Resolution Trust Corporation
- Saint Lawrence Seaway Development Corporation
- US Synthetic Fuels Corporation
- Virgin Islands Corporation

Bypass Authority in Authorizing Statutes
- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Federal Election Commission
- Federal Retirement Thrift Investment Board
- Merit System Protection Board
- National Transportation Safety Board
- United States Court of Veterans Appeals (in Department of Veterans Affairs)

APPENDIX B *ML Estimates of Accelerated Failure Time Models of Agency Durability, 1946–97*

Variable	With cohort indicators (1)	With initial budget—ln(1992 dollars) (2)	Temporary agencies (3)	With robust standard errors (4)	With insulation index (5)
Insulating characteristics					
Agency created by statute (0,1)‡	0.64**	0.50**	0.44**	0.49**	0.87**
Excluded from reorganization (0,1)	2.62**	1.68**	2.47**	2.45**	2.50**
OMB bypass (0,1)	1.17**	0.99**	1.44**	1.41**	—
Fixed terms for appointees (0,1)	0.57**	0.42	0.51*	0.43	—
Party-balancing limitations (0,1)	0.85**	0.75*	1.79**	1.16**	—
Controls, constant, and ancillary parameter					
Regulatory agency (0,1)	1.09**	1.21**	0.96**	0.94**	0.96**
Sales-financed agency (0,1)	− 0.20	0.44	0.19	0.01	1.03**
Adjudicatory agency (0,1)	0.41	0.48	0.24	0.45*	0.36
Divided government at creation (0,1)	− 0.23	− 0.08	0.03	0.04	0.08
Governed by board or commission (0,1)	− 0.63**	− 0.45*	− 0.71**	− 0.69**	− 0.59**
Line in the budget (0,1)†	− 0.01	0.03	0.09	0.09	0.18
Temporary (0,1)	− 1.60**	− 1.54**	—	− 1.50**	− 1.37**
Constant	5.96	1.76**	2.29**	2.26**	2.60**
Number of observations	6,376	4,032	6,228	6,376	6,318
Number of agencies	416	245	397	416	414
Number of terminations	250	141	233	250	250
X^2 (12, 12, 11, 12, 9 df)	208.47**	71.75**	87.99**	123.84**	89.39**

Note: Dependent variable: ln(t). I assume the error term has (log) normal density. *Significant at the 0.10 level; **Significant at that 0.05 level in one-tailed test of significance. σ = 1.21, 1.35, 1.42, 1.39, 1.41. Cohort indicators omitted in Model 1. †Model 2 includes log(initial budget in 1992 dollars) rather than the line in the budget indicator. ‡Model 5 includes an index of insulation using four factor scores of insulating characteristics that load on same dimension.