The Politicization of Regulatory Agencies: Between Partisan Influence and Formal Independence

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Abstract. The past decades have seen a dramatic increase in the number of regulatory agencies (RAs) across countries and policy domains. To establish credible regulatory regimes, many RAs are shielded from direct political influence and enjoy high levels of formal independence. Yet, how formal independence relates to politicization empirically is still unclear. This paper develops four scenarios for the link between formal independence and party politicization, depending on whether independence is correlated with an increase or a decrease in partisan appointments, and whether partisan appointees are affiliated with government or opposition parties. An analysis of about 700 top-level appointments to over 100 regulatory agencies in 16 West European countries between 1996 and 2013 shows that the probability of both government- and opposition-affiliated individuals being appointed increases with formal agency independence. Higher levels of legal independence are thus associated with politicization – but not exclusively to the benefit of the governing parties.

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Introduction

One of the most significant transformations that the public sector in European democracies and elsewhere has undergone during the past decades is the outsourcing of regulatory tasks from the core bureaucracy to agencies that often operate at arm’s length from elected politicians (Majone, 1994). While there are multiple causes for this development, one of the most prevalent theoretical explanations is the need to establish credible policy regimes through limiting political interference in regulatory matters (Gilardi, 2002; Majone, 1996, 1997). To that end, many regulatory agencies (RAs) enjoy high levels of formal independence.1

While the theoretical logic behind this argument is obvious, it is less clear that de jure independence also leads to a greater degree of de facto independence (Hanretty & Koop, 2012b; Maggetti, 2007). As a contribution to this debate, this paper presents the first large-N study of the relationship between formal independence and the party politicization of top-level appointments to RAs.

The theoretical section develops four scenarios for the relationship between formal independence and politicization, depending on (1) whether higher levels of formal independence lead to an increase or a decrease in partisan appointments, and (2) whether partisan appointees are affiliated to the government or the opposition: Whereas it is plausible that higher levels of formal independence make it more difficult or more costly for elected officials to politicize agencies (compliance), it could also be argued legal independence creates incentives to appoint individuals embedded in political and party networks – irrespective of their ideological congruence with the appointers – as they may be more sensitive to the political implications of regulatory decision-making (cross-party politicization). Of course, higher levels of legal independence reduce the government’s formal control over regulatory policy, to which politicians may respond by primarily appointing affiliates of governing parties (compensation). Yet politicians may also choose to stress their commitment to formal independence and non-interference by appointing individuals affiliated with the opposition (reinforcement).

Before outlining the four scenarios the theoretical section sketches the credibility argument and how it relates to agency independence more broadly. The relationship between the politicization of top level appointments and agencies’ legal independence is then examined with data on about 700 appointees from over 100 regulatory agencies in 16 West European democracies between 1996 and 2013.

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1 The terms ‘formal’, ‘legal’ and ‘de jure’ independence are used synonymously throughout the paper, as are ‘actual’ and ‘de facto’ independence.
Theoretical framework

The credibility argument

Over the past decades, the agency model has become the standard institutional choice in Europe (and beyond) to deal with regulatory matters in a variety of policy areas (Christensen & Lægreid, 2006; Levi-Faur, 2005; Majone, 1994; Thatcher, 2002; Thatcher & Stone Sweet, 2002). Today, regulatory agencies are ubiquitous across policy areas as diverse as utilities, environmental and consumer protection, competition, or financial markets. Their spread has happened in countries around the globe (Jordana, Levi-Faur, & Fernández-i-Marín, 2011).

One of the most prevalent theoretical explanations for the rise of regulatory agencies is the need for credible commitment as a tool in policy-making (Gilardi, 2002; Majone, 1996, 1997, 2002). The credibility argument starts from the proposition that governments often find it difficult to credibly commit to a specific policy course of action in the future (Kydland & Prescott, 1977). This is because governments usually have the discretion to deviate from earlier stated plans and introduce new policies if they so wish. The anticipation (justified or not) that a government will stray from its previously stated policies leads other actors to adapt their behavior not to what the government originally announced as its plans but to whatever they expect the future policy regime to be. This change in behavior may then in itself be incentive enough to sway the government away from its original plans, turning the whole exercise into a self-fulfilling prophecy. The discretion that governments have over policy thus makes it difficult for them to credibly bind themselves for the future. As a result, the expectation that governments have time-inconsistent preferences severely compromises their capacity for effective policymaking.

As Shepsle (1991) argues, commitments can be either motivationally or imperatively credible. Motivational credibility implies that the government’s announced plans are believed by other actors to be in line with what its preferences are going to be at a later stage. If there are no reasons to believe that the government’s preferences may be time-inconsistent, the commitment is ‘incentive-compatible and hence self-enforcing’ (Shepsle, 1991: 247).

If motivational credibility cannot be achieved, it is possible to make a commitment imperatively credible by limiting the government’s discretion to deviate from the originally stated policy. The most prominent institutional mechanism is to delegate the implementation to an agent who is not bound directly by the instructions of the government.

This is the theoretical argument that underpins the rise in central bank independence. Governments can credibly commit to a non-expansionary monetary policy by delegating authority to an independent central bank that emphasizes price stability over economic output.
Empirically, inflation indeed tends to be lower on average in countries with higher levels of central bank independence, although the effect is sensitive to the choice of countries and time period (Berger, de Haan, & Eijffinger, 2001; Cukierman, 1992; Klomp & de Haan, 2010).

The very same argument has been applied to the realm of regulatory politics more generally (Majone, 1997). In areas where governments cannot rely on coercion to produce desired policy outcomes (e.g. when trying to attract foreign investors or encouraging competition in newly liberalized markets), credible commitment becomes an essential tool for effective policy-making (Gilardi, 2002, 2008). These credibility pressures require that elected politicians cede some of their discretion to bureaucratic agents with high levels of formal independence. The role envisaged for these agents is to ensure that a specific policy course of action will be followed, even if the government’s preferences change over time.

A prime example is when processes of liberalization and privatization create new market opportunities, but potential competitors face uncertainty about the government’s relationship with former state monopolists (e.g. in the energy, telecommunications, or transport sector) or the extent to which a level playing field will be guaranteed through the regulation of natural monopolies. However, outsourcing tasks to non-majoritarian and specialized agencies may also help to restore consumer confidence and credibility among the wider public after crises or scandals (e.g. in areas such as food safety, pharmacovigilance, environmental protection, or financial markets), when governments are vulnerable to accusations of negligence or even complicity with the perpetrators.

**Formal agency independence as a commitment device**

The most common mechanism to award bureaucrats with the necessary freedom from political interference required to establish credibility is to create regulatory agencies with high levels of independence (Gilardi & Maggetti, 2011). Independence comes in two forms, de jure (i.e. legal or formal) and de facto (i.e. actual). Whereas de facto independence refers to ‘the self-determination of agencies’ preferences, and their autonomy throughout the use of regulatory competencies’ (Maggetti, 2007: 272), formal or legal independence means that agencies are in some form institutionally placed outside the bureaucratic chain of command and thus not bound to follow directives from the government. This requires a weakening of the chain of delegation that typically links voters to elected officials, and elected officials to the bureaucracy (Müller, 2000) – a fact that has not been lost on scholars who anticipate a waning of democratic
accountability as a result of this process (Christensen & Lægreid, 2007; Maggetti, 2010; Mair, 2008: 228; Majone, 2001).

Empirically, legal independence has been measured by examining laws and agency statutes with the goal of aggregating information on the rules for appointments to lead positions, accountability requirements, autonomy over budget and staff, and the extent to which an agency shares its regulatory powers with other bodies. Quantitative measures on a larger scale have been assembled by Gilardi (2002, 2008), Hanretty & Koop (2012a), and Bianculli et al. (2013).

Equipped with these (and other) data, research on agency independence has found good empirical support for the credibility rationale. Most importantly, it has been demonstrated that levels of formal agency independence are higher in those areas where the need for credible policy arrangements is especially pronounced, for instance, in utilities regulation (Gilardi, 2008: 59) or economic regulation more generally (Wonka & Rittberger, 2010: 744). Also, formal agency independence tends to be higher in political systems with a smaller number of veto players (Gilardi, 2002: 882). This result chimes with the idea that credibility deficits are larger in countries where the potential for sweeping changes in the government’s preferences (and thus greater time-inconsistency) is higher.

Even though the theoretical logic and empirical evidence for the credibility thesis are solid, it is important to note that there are other potential determinants of legal agency independence. Higher levels of political uncertainty, for instance, may create incentives for politicians to insulate policies by delegating them to formally independent agencies (Gilardi, 2005, 2008; Wonka & Rittberger, 2010). Also, some administrative traditions have embraced the concept of formal agency independence much more enthusiastically than others (Bianculli et al., 2013).

Linking formal independence and politicization
Whereas much of the empirical evidence is consistent with the credibility argument, it is less clear whether such de jure independence also leads to de facto independence. In an in-depth study of 16 regulatory agencies, Maggetti (2007) finds that the link between formal and actual independence is rather indirect. Formal independence is neither a necessary condition for de facto independence, nor is it in itself sufficient.

Working with a very different empirical approach, Hanretty and Koop (2012b) show that the executive turnover and agency heads’ vulnerability to government change is lower in agencies with high levels of legal independence. Furthermore, it has been demonstrated that higher levels of de jure independence protect agency executives with political connections to
parties of the opposition, whereas such party ties are likely to reduce the chances of survival in office for executives in low-independence agencies (AUTHOR, forthcoming).

In a related study, Thatcher (2005) has shown that a number of regulatory agencies in four large European economies have not been subject to large-scale politicization attempts – although the analysis does not examine specifically whether this result can be attributed to legal independence as an explanatory factor.

These studies notwithstanding, we still do not know a great deal about the link between formal independence and the politicization of regulatory agencies, especially the party politicization of high-level appointments in RAs. The purpose of this paper is to provide one of the first systematic empirical examinations of this relationship.

Politicization is a very broad term, covering a wide range of practices at the politics-bureaucracy nexus (Peters & Pierre, 2004: 2). As Rouban (2003) outlines, it is most typically understood as the appointment, retention, promotion, or dismissal (if possible) of bureaucrats based on political criteria rather than merit. Yet it is important to stress that, in theory if not always in practice, politicization is perfectly compatible with the rule of law and a highly professional civil service. For the purpose of this paper, politicization is treated as a purely empirical concept, and not assumed to come at the expense of bureaucratic competence (although such worries are sometimes warranted, see Lewis, 2007).

The analysis below focuses on the more specific phenomenon of party politicization, which explicitly refers to the criterion of partisanship in shaping civil service careers (as opposed to the milder forms of ‘open’ and ‘bounded’ politicization, see Meyer-Sahling, 2008). Party politicization is often understood to denote the promotion of co-partisans in public sector positions by government politicians (or, by the same logic, the removal of people with ties to the ‘wrong’ party). Yet, it is important to note that a broader understanding of party politicization also entails the appointment or promotion of individuals with party ties to the opposition. While such non-majoritarian practices may appear irrational at first glance, they are a common feature of many political systems, especially consociational democracies (Dahlström & Niklasson, 2013: 899; Schröter, 2004: 70; van Thiel, 2012), and therefore need to be accounted for in any theoretical argument about the link between formal agency independence and party politicization.

Based on the distinction between government-affiliated and opposition-affiliated appointees, this relationship can be characterized along two dimensions: changes in the share of government-affiliated appointees and changes in the share of opposition-affiliated appointees.
Table 1 presents a simple typology of possible relationships (assuming that there is one). The rationales behind the four scenarios will be fleshed out in the next paragraphs.

**TABLE 1 ABOUT HERE**

*Scenario 1: Compliance*

The credibility argument posits that policy effectiveness can be enhanced by making regulatory agencies formally independent and thus isolating them from the direct interference of government politicians. By this logic, we should see lower levels of politicization in agencies with high degrees of legal independence. Partisanship should be lower among appointees to highly independent RAs, irrespective of whether their party ties are with the government or the opposition.

There are essentially two mechanisms through which this result could come about. One is that the institutional barriers erected to isolate agencies from political influence make the appointment of partisans more difficult. For instance, if appointment powers are removed from the hands of individual ministers, distributed between a number of actors or put in the hand of parliament or even involve non-political institutions (e.g. the respective agency itself), this may lower the chances of partisans being selected for high-level positions.

The other mechanism is more indirect. The level of formal independence may act as a signal about the extent to which political interference is legitimate. When legal independence is high, politicians may arrive at the calculation that its benefits (higher credibility but also the potential for blame avoidance) exceed the costs of establishing control through politicization. Seeking not to jeopardize these benefits by undermining the credibility of formally independent RAs, the appointing actors may refrain from naming individuals with political ties. This argument has been put forward by Thatcher (2005: 366-368) as a possible explanation for why RAs have not experienced large-scale interference by political decision-makers. For example, given that many governments have raised significant revenue from privatization and liberalization efforts in the utility markets, allowing not only for de jure but also for de facto independence of energy, railway, and telecom regulators may be a price well worth paying.

*Scenario 2: Compensation*

The compensation argument runs counter to the compliance scenario. It posits that higher levels of de jure independence generate incentives for elected officials to politicize agencies with
appointees loyal to the government, and, by the same logic, remove those affiliated with the opposition.

The underlying rationale is that politicians will try to compensate their loss of formal powers over regulatory matters by using informal channels of influence – such as the appointment of political allies. This idea is basically a reversed version of the ally principle, a well-established theoretical concept within the principal-agent approach to delegation (Bendor, Glazer, & Hammond, 2001; Huber & Shipan, 2002, 2006; Huber, Shipan, & Pfahler, 2001). The ally principle holds that, ceteris paribus, a principal is more likely to grant a high level of discretion to an agent if the two have similar preferences. The smaller the policy distance between principal and agent, the less likely it is that the latter will use his or her discretion to the detriment of the former.

Reversing this argument, it can be conjectured that greater levels of agency autonomy will incentivize politicians to appoint likeminded individuals to the head of an agency. The ideological or partisan link between politician and appointee then (partly) replaces the diluted bureaucratic connection between the elected official and the agency administrator.

Of course, attempts at overtly politicizing agencies through the appointment of co-partisans may jeopardize any credibility gains accrued from legal independence. Politicians seeking to re-claim control over formally independent institutions through informal means thus walk a fine line. However, it is not difficult to imagine a scenario where the optimal trade-off between credibility and control is perceived to be a combination of high formal independence and high informal control through political appointments.

This argument resonates with recent findings on the extent and purpose of politicization and patronage in state institutions. In a comparative study of 15 European democracies, Kopecký et al. (2012) find that the prime motivation to employ party patronage mechanisms is no longer to reward loyalty among party supporters, but to exercise control over an increasingly fragmented and decentralized public sector. Politicization is thus an adaptation by parties faced with a state apparatus that can no longer be steered effectively with a top-down approach.2

Scenario 3: Reinforcement

If the appointment of government loyalists to formally independent regulators has the potential to undermine their credibility, the reverse argument may also be true. Instead of simply

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2 See also the discussion about the influence of New Public Management in the public administration literature (Niklasson, 2013; Pollitt & Bouckaert, 2011: 161-181).
appointing non-partisan individuals, the selection of an opposition-affiliated candidate could serve a signal to reinforce the credibility of an agency.

Appointing a top-level bureaucrat with a divergent ideological profile indicates that the government is not just refraining from imposing its policy preferences on the agency. It signals that the appointing politicians are even willing to accept significant divergence from their own preferred course of action by the agency for the sake of its credibility. This argument has first been made by Rogoff (1985) who argues that governments can make monetary policy commitments credible by appointing central bankers with more hawkish preferences. Majone (2001: 66) suggests that this logic ‘may be extended to other areas of public policy, such as economic and social regulation.’ Arguably, picking an appointee who is well-known to hold different preferences than the government sends an even stronger signal than the appointment of a non-partisan candidate.

In addition, such a step would remove much of the uncertainty about the political preferences of the selected individual. Whereas it is plausible to suspect that non-partisans share the government’s ideological outlook even in the absence of a party label, the political leanings of an opposition-affiliated appointee are much less unclear.

Rather than exhibiting behavior that undermines or merely conforms to the imperative of autonomy, this strategy thus reinforces the legal independence awarded to the agency. Empirically, this implies that the share of opposition-affiliated appointees increases with agency independence, whereas the percentage of government-affiliated appointees declines.

Scenario 4: Cross-party politicization

The fourth scenario is one in which political experience, a network of contacts within the political sphere, and high sensitivity to the political implications of regulatory policy-making are valued more than partisan loyalty by the appointing actors. This is what Goetz (1997) has termed the demand for ‘political craft’. Senior bureaucrats are thus not only expected to possess technical expertise within their policy area and be able to navigate administrative procedures effortlessly. They are also required to consider the effects of bureaucratic decisions on the wider political process, the media response to a specific policy, and anticipate the political ramifications for their departmental superiors.

This implies that political skills in and of themselves become an asset for administrative elites (Meyer-Sahling, 2008: 6-7). As Allern (2012: 288) notes in her study of public sector appointments in Norway, it is plausible that ‘having political experience has increasingly become relevant for top-level civil servants’.
If appointees with political experience, networks, and skill are highly sought after, there are good reasons to believe that the demand for these qualities will only increase for positions in highly independent agencies. Since high levels of formal independence limit the possibility of elected politicians to micro-manage the operations of an agency, they will be all the more inclined to select insiders to the political process to run such institutions.

Importantly though, the specific party label attached to an appointee will be less relevant than the fact that someone is a partisan and can thus be expected to be sensitive to the political dimension of regulatory policy and well-acquainted with a multitude of actors in the political sphere. Empirically, this implies that higher formal independence will be correlated with increased shares of both, government- and opposition-affiliates.

**Empirical strategy and data overview**

The analysis draws on an original dataset that combines existing measures of legal agency independence with information on the partisan background of over 700 high-level bureaucrats appointed to over 100 regulatory agencies in 16 Western European countries\(^3\) between 1996 and 2013. Since the main explanatory variable in the analysis is legal independence, the starting point for the data collection was the set of agencies covered in Gilardi’s (2008) study. Gilardi’s data are the most comprehensive publicly available set of quantitative indicators of formal independence. The core variable is a composite index of independence that can be broken down into five equally weighted component indices (referring to the status of agency heads and the management board, the relationship with government and parliament, autonomy over budget and staff, and regulatory powers). For the purpose of this paper, the two indices on the status of agency board members are used. Agencies are considered more independent when their board members have longer and non-renewable terms, when they are appointed by the legislature or actors within the agency rather than directly by individual ministers or governments, when it is more difficult to remove them, when they cannot hold political office simultaneously, and when independence is a formal requirement for the appointment. Details about the calculation of the index are presented in Appendix A.

While Hanretty and Koop (2012a) have provided an empirical critique of these data, their improved measure of independence correlates highly with Gilardi’s data \((r=0.83)\). Another reason to use Gilardi’s data is that they are relatively easy to supplement in cases where

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\(^3\) Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom.
agencies were created or reformed after the original data had been collected. This was done for a handful of cases through the coding of regulatory legislation and agency statutes.

Gilardi’s data cover RAs in seven domains: competition, financial markets, telecommunication, energy, food safety, medicines, and the environment. Through extensive archival research in over 1100 annual reports, hundreds of press releases, government documents and websites, 786 high-level bureaucrats appointed between 1996 and 2013 were identified. These individuals include (1) chief executives, (2) deputy chief executives, and (3) board members in cases where agencies are steered by a commission or committee (often with a quasi-judicial character).

Another round of research in government and agency documents, biographical databases, professional networking websites (e.g. www.linkedin.com), media archives, and other online resources was then conducted to obtain biographical information on these individuals. This information collection was used to determine whether individuals have ties to a particular political party (examples of similar data collection processes can be found in Dahlström & Niklasson, 2013; Ennser-Jedenastik, 2014a, 2014b, 2014c; Lewis, 2007, 2008; Niklasson, 2013). As discussed above, party affiliation serves as an indicator for politicization and was coded according to the following criteria: (1) having held public or party office (e.g. minister, member of parliament, party leader), (2) having stood as a party candidate in elections, (3) having worked as aide to party politicians (e.g. in a cabinet ministeriëel or as an aide to parliamentary party group), (4) being a party member, (5) being portrayed in media accounts as ‘close to a party’. While the latter criterion is less objective, it applies only to a handful of cases. Recoding these cases to the non-partisan category has no impact on the results reported below.

To be sure, it is possible – even likely – that not all instances of party affiliation can be observed, because such information is not always in the public domain. However, the figures presented below correspond closely to conventional expectations and earlier research about the level of politicization across West European democracies (Kopecký et al., 2012; Müller, 2006). Also, it is likely that individuals who keep a low profile with respect to their party affiliation (and therefore cannot be identified as party affiliates) are less closely associated with the party than, for instance, appointees with a life-long career in elected public office.

FIGURE 1 ABOUT HERE

4 The correlation of the percentages shown in Figure 1 with Kopecký et al.’s (2012) patronage index is 0.71; the rank correlation coefficient (Spearman’s rho) with the classification provided by Müller (2006) is 0.62.
Figure 1 presents the share of partisan appointees by country. There is large variation in the extent to which appointments are politicized. Among the 16 countries, several ‘usual suspects’ score high, such as Austria, Italy, or Belgium. Yet, countries such as France and Germany also display high levels of party affiliation (which is in accordance with earlier research, see Derlien, 2003; Mayntz & Derlien, 1989; Rouban, 2004; Sawicki & Mathiot, 1999). The Nordic countries are towards the bottom of the list, with low-to-moderate politicization levels in Sweden and Norway, and (almost) complete absence of partisan appointments in Denmark and Finland. The same goes for the United Kingdom and Ireland, where politicization has arguably decreased in the recent past (Flinders, 2009; O’Malley, Quinlan, & Mair, 2012) – especially for executive positions in government agencies (as opposed to board memberships).

Note, however, that there is also large variation in the number of appointees. This is mostly due to differences in the organizational structure and overall size of the agencies, as well as variation in executive turnover. Regulatory agencies in smaller countries such as Austria, Finland, or Luxembourg have very lean organizations, with only one or two people at the top. In addition, the average tenure for top-level appointees in these countries is higher than in most other countries (AUTHOR, forthcoming). Other countries, such as France, Switzerland, or Spain, prefer different types of organization (such as ‘commissions’ or ‘committees’ comprising a larger number of members at the top of the agency), and combine these with shorter overall tenures (due, in some cases, to age or term limits).

Figure 1 also reveals that many, but by far not all, appointees with a party background have ties to a party that is represented in government at the time of the appointment. In most countries, a non-trivial share of all partisan appointees is affiliated with the opposition. Only Austria and Switzerland deviate from this pattern.

The implication of the numbers shown in Figure 1 for the empirical analysis is to control for cross-national variation, since national political cultures appear to vary dramatically in tolerating party politicization of the civil service.

The central explanatory variable is Gilardi’s index of formal agency independence. Since the analysis focuses on appointments of top-level personnel, a simple average of the two component indices A and B which capture features of the appointment and dismissal process of agency managers will be used (Gilardi, 2008: 144-6). All constituent items of the indices A and B refer to ‘de jure’ characteristics as laid down in laws and agency statutes (see appendix).

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5 The two indices A (referring to agency CEOs) and B (referring to board members) have a theoretical range from 0 to 1 and include information on term length, renewability, and rules for dismissal, as well as compatibility requirements and the appointing institution (see Appendix
There are, of course, alternative explanations for politicization in regulatory agencies. The statistical models try to capture some of the most important ones by specifying a number of control variables.

*Agency resources.* The urge to exert some form of political control may be greater for larger agencies than for smaller ones. Therefore, the number of agency staff at the time of the appointment will be included in the analysis. The expectation is, of course, that agencies with more resources are more likely to see party-affiliated personnel appointments at the top.

*Agency age.* Politicization may also vary systematically with agency age. Long-established institutions have usually acquired a reputation over time. Politicians thus face lower uncertainty about their inner workings and likely policy output. By contrast, agencies that have only recently been established may be given closer scrutiny and therefore see higher levels of politicization.

*Appointment type.* An indicator differentiating between the position of the agency CEO and other positions will be included in the models. The expectation here is that appointments at the very top are more likely to be politicized than those in the second tier.

*Political constraints.* Following Hanretty and Koop (2012b), the analysis also includes Henisz’ (2002) updated measure of political constraints (which is very similar to the concept of veto players). The expectations here could go either way. On the one hand, it may be more difficult to politicize public sector institutions on a large scale in political systems with many veto points. On the other hand, such an institutional environment may foster ‘consociational’ patterns of appointment which require the representation of many political forces in the public sector and thus increase politicization.

*Rule of law.* An indicator for the rule of law taken from Kaufmann et al. (2009) is included. The assumption here is that countries with a stronger rule of law exhibit lower overall levels of politicization.

Finally, random effects will be used to capture between-country heterogeneity and variation across regulatory domains, as it has been found that independence levels vary systematically between utility, other economic, and social regulators (Gilardi, 2008). Table 2 presents the summary statistics for all independent variables.

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<td>A). Since the two component indices correlate highly (r=0.84), a simple average of A and B is taken as the independence measure for the analysis.</td>
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<td>6 Another possibility is to use agency budgets as predictors. Yet there is an extremely close correlation between staff and budget numbers (r=0.88).</td>
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Analysis
Before turning to the multivariate analysis, a bivariate breakdown of the relationship between politicization and agency independence is presented in Figure 2.

FIGURE 2 ABOUT HERE

Whereas only 20 percent of the appointees in the quintile with the lowest levels of agency independence (Q1, with values of 26 or lower) have a partisan background, this number rises slowly in the three middle quintiles (25 to 28 percent) and then jumps to almost half in the top quintile (Q5, with an independence index of 64 or higher). The increase is present for both, government- and opposition-affiliated appointees, though it appears to be more pronounced for the former. The share of opposition-affiliated appointees only jumps to a higher level in the top quintile. This suggests that agency independence is linked to higher overall levels of party politicization, without necessarily discriminating between government allies and nominally ‘hostile’ partisans.

While the bivariate breakdown of partisan appointments and legal independence supports the cross-party politicization scenario, it is not clear that this relationship holds once other factors are controlled for. To that end, a multivariate analysis is required.

The dependent variable in this analysis indicates whether an appointee is affiliated with a government party (N=151), an opposition party (N=47), or no party (N=487). The categorical nature of this second dependent variable demands the use of multinomial logistic regression which assesses the probability that a case will be in a specific category relative to a reference group. Non-partisan appointees are used as a reference category, so that the coefficients should be interpreted as comparing the two types of party-affiliated appointees against this baseline.

The models thus estimate the following two equations:

\[
\ln \frac{\Pr(y = \text{gov})}{\Pr(y = \text{non})} = \beta_{0,\text{gov}|\text{non}} + \text{independence} * \beta_{1,\text{gov}|\text{non}} + x_k \beta_{k,\text{gov}|\text{non}}
\]

\[
\ln \frac{\Pr(y = \text{opp})}{\Pr(y = \text{non})} = \beta_{0,\text{opp}|\text{non}} + \text{independence} * \beta_{1,\text{opp}|\text{non}} + x_k \beta_{k,\text{opp}|\text{non}}
\]
In these models, the log odds for government or opposition ties (compared with no party ties) are assumed to be a linear function of agency independence and a series of other predictors (denoted $k$). Random effects capture variation across countries and regulatory sectors.\(^7\)

### Table 3

Table 3 reports raw coefficients from the random-effects multinomial logit models. The coefficients for agency independence are positive and significant in all specifications, although the p-value in Model 2 (with sector-level random effects) is only 0.080 for the comparison between opposition-affiliated and non-partisan appointees.

The raw coefficients can be transformed into relative risk ratios (RRRs) by exponentiation. For instance, the RRR for the first formal independence coefficient is $\exp(0.0265) = 1.027$, indicating that a one-point increase in formal independence is associated with a 2.7 percent rise in the odds of an opposition-affiliate vs. a non-partisan being appointed. All coefficients for formal independence yield RRRs between 1.02 and 1.03. While this may not sound like a huge effect, remember that the empirical range of the independence predictor is from 0 to 87. Hence a change of one in this variable covers only a very small space between the least and the most independent agencies.

We can therefore conclude that, even after controlling for a number of agency and country characteristics as well as variation by policy sector, higher levels of formal independence are associated with a substantial increase in the probability of partisan appointments to lead positions in regulatory agencies.

Figure 3 plots predicted probabilities for the two types of appointment as a function of agency independence, with all other covariates held constant. Across the empirical range of the independence index (from 0 to 87), the probability of a government ally being appointed raises from 4 to 23 percent according to Model 1 (8 to 27 percent for Model 2), and the probability of an opposition-affiliate being appointed increases from 3 to 15 percent (3 to 10 percent in Model 2). The graphs suggest that the effect of independence on the probability of a government-affiliated appointment is more substantial than for opposition-affiliates. This assertion is supported by the fact that the sector-level fixed effects model (see Appendix B) reports a non-significant effect for agency independence and opposition-affiliated appointments.

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\(^7\) The random effects models were estimated with Stata’s `gsem` command. Appendix B reports fixed effects models with similar results. Differences are discussed in the text.
Yet, this conclusion is not warranted when using Wald tests to compare the two regression coefficients for formal independence ($p = 0.98$ and $p = 0.90$ for Models 1 and 2, respectively). The effect sizes are thus similar (also in the fixed effects models). While we cannot conclude thus that formal independence has a larger effect on the probability of appointments of government-affiliates than on opposition-affiliates, we can have somewhat higher confidence in the former finding than in the latter.

Even so, the results from the regression models clearly support the prediction that formal agency independence is a driver of party politicization, yet that this increased politicization does not necessarily favor partisans with ties to the government. This becomes even clearer when considering that the probability of a non-partisan being appointed shrinks from 93 to 53 percent (89 to 57 percent according to Model 2) across the empirical range of the formal independence predictor.

Yet when interpreting this result it is equally important to keep in mind that 3 out of 4 partisans in the sample are affiliated with a government party at the time of their appointment. Thus, while the overall pattern of politicization clearly tilts towards the parties in power, the relationship between formal agency independence and politicization does not favor government-over opposition-affiliates. Rather, it appears to promote the appointment of partisans at the expense of non-partisans.

This finding is consistent with the *cross-party politicization* scenario discussed in the theoretical section, according to which the demand for political craft among top-level appointees to regulatory agencies leads to a positive correlation between partisanship and formal independence. Thus, politicians seem to care not so much about party congruence in making appointments, but rather seek to nominate individuals with a good understanding of the political process and a network of contacts in the political sphere.

A cursory look at the control variables in the regression models suggests that partisans of all affiliations are more likely to be appointed to larger agencies. Opposition-affiliates have smaller chances of being appointed to long-established agencies, suggesting that such appointments may also serve as a strategy to generate political legitimacy for newly created agencies. Also, individuals with ties to the government are more likely to be made CEOs, indicating that government parties sometimes seek control over the day-to-day operations of RAs. The predictors for political constraints and rule of law yield significant coefficients only in the specifications with sector-level random effects. Given that most variation in these variables
is between rather than within countries, this is not surprising. In Model 2, government-affiliation is positively correlated with higher political constraints (i.e. more veto players), and stronger rule-of-law regimes appear to see fewer partisan appointments. Yet, both effects disappear in Model 1.

**Discussion and concluding remarks**

While reasonable people can surely disagree about the relative merits of responsiveness through party control versus credibility through formal independence (Mair, 2009; Scharpf, 1999), the empirical analysis presented above clearly has implications for this normative debate.

On the one hand, it suggests that – partly contradicting Thatcher’s (2005) observation – party politicization is a salient phenomenon in regulatory politics, and that the institutional mechanism to establish credibility creates an incentive structure that can motivate politicians to undermine the norm of non-interference – albeit that interference does not necessarily imply the appointment of co-partisans. This constitutes an important qualification of the effectiveness of legal independence as a commitment device. It also shows that, while some forms of de facto independence are positively correlated with legal independence (Hanretty & Koop, 2012b), others are not.

On the other hand, the results also give some reason for optimism to those worried about the extent to which partisan governments can still produce policy outcomes in line with their democratic mandates (Mair, 2008). While the dispersion of authority in the public sector has made it more difficult for government politicians to implement their agenda, political parties can partly compensate for this by coordinating and controlling policy through more dispersed networks that include appointees loyal to a specific political cause. Partisan appointments can thus be understood as an organizational resource that amplifies the governing capacities of a party (Flinders & Matthews, 2010; Kopecký et al., 2012; see, however, Lewis, 2007).

As the statistical analysis shows, agency independence makes the appointment of party-affiliated individuals more likely. The results of the analysis are consistent with the cross-party politicization scenario. Politicians value appointees who are sensitive to political questions and have a network of contacts in the political sphere. The proposition that formal independence discourages partisan appointments (the compliance scenario) is most clearly refuted by the data.

To be sure, any such interpretation must happen with great caution, since the analysis of observational data can hardly ever establish causal relationships. Yet, what it can do is to point out which theoretical scenarios are not consistent with the data – a crucial task, given that this is
the first large-N study to look at the relationship between formal agency independence and party politicization.

Of all four scenarios, the compliance hypothesis – politicization decreasing with rising formal independence – can be ruled out most unambiguously. The descriptive evidence and the multivariate analysis clearly show that partisanship is more prevalent among appointees to highly independent agencies.

The compensation and reinforcement scenarios are, at best, only partly consistent with the empirical findings. To be sure, if compensation were the true motivation for some appointments (primarily those of government-affiliates) and reinforcement the true driver behind some others (of mostly opposition-affiliated appointees), the aggregate picture would look similar to the results presented above. While this is not an implausible idea, it must be left to future research to examine the conditions under which higher levels of formal independence are correlated with partisan appointments of one type or the other.

Finally, the results speak to the debate about the relationship between the governing capacity of democratic governments and the fragmentation of the public sector. The use of party patronage and party politicization thus need not necessarily be an evil, but can also be understood as an adaptation of political parties to the transformation of the public sector. A more dispersed state apparatus requires a more network-like party organizational approach (Kopecký et al., 2012). While the present analysis strongly suggests that parties act to some degree strategically in response to the increased levels of formal independence of regulatory agencies, it will be up to future research to investigate whether such strategies do, indeed, have an impact on regulatory policy outcomes.
References


Table 1: A typology of relations between formal independence and party politicization

<table>
<thead>
<tr>
<th>Formal independence correlates with...</th>
<th>Fewer government-affiliated appointees</th>
<th>More government-affiliated appointees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer opposition-affiliated appointees</td>
<td>Compliance</td>
<td>Compensation</td>
</tr>
<tr>
<td>More opposition-affiliated appointees</td>
<td>Reinforcement</td>
<td>Cross-party politicization</td>
</tr>
</tbody>
</table>
Table 2: Descriptive statistics of the independent variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal agency independence</td>
<td>684</td>
<td>44.208</td>
<td>21.421</td>
<td>0</td>
<td>87</td>
</tr>
<tr>
<td>Agency staff (log)</td>
<td>684</td>
<td>5.255</td>
<td>1.256</td>
<td>1.863</td>
<td>9.393</td>
</tr>
<tr>
<td>Agency age (log)</td>
<td>684</td>
<td>2.345</td>
<td>1.057</td>
<td>0</td>
<td>4.511</td>
</tr>
<tr>
<td>Agency CEO</td>
<td>684</td>
<td>0.365</td>
<td>0.482</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Political constraints</td>
<td>684</td>
<td>0.466</td>
<td>0.124</td>
<td>0.120</td>
<td>0.720</td>
</tr>
<tr>
<td>Rule of law (exponentiated)</td>
<td>684</td>
<td>4.774</td>
<td>1.634</td>
<td>1.405</td>
<td>7.691</td>
</tr>
</tbody>
</table>

Note: About 100 observations drop due to missing information on staff and agency independence. The original agency independence index has been multiplied by 100 to enable better interpretation of regression coefficients. Logarithmic and exponential transformation have been applied to staff numbers, agency age, and the rule of law index in order to reduce the skewness of these predictors.
Table 3: Predicting government and opposition ties among top-level agency appointees

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1 Country-level REs</th>
<th>Model 2 Sector-level REs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Opp. vs. non-part.</td>
<td>Gov. vs. non-part.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Opp. vs. non-part.</td>
</tr>
<tr>
<td>Formal agency independence</td>
<td>0.0265***</td>
<td>0.0267***</td>
</tr>
<tr>
<td></td>
<td>(0.009)</td>
<td>(0.006)</td>
</tr>
<tr>
<td>Agency staff (log)</td>
<td>0.539***</td>
<td>0.270**</td>
</tr>
<tr>
<td></td>
<td>(0.152)</td>
<td>(0.124)</td>
</tr>
<tr>
<td>Agency age (log)</td>
<td>-0.563***</td>
<td>-0.115</td>
</tr>
<tr>
<td></td>
<td>(0.161)</td>
<td>(0.109)</td>
</tr>
<tr>
<td>Agency CEO</td>
<td>0.0512</td>
<td>1.005***</td>
</tr>
<tr>
<td></td>
<td>(0.361)</td>
<td>(0.238)</td>
</tr>
<tr>
<td>Political constraints</td>
<td>0.226</td>
<td>0.00536</td>
</tr>
<tr>
<td></td>
<td>(1.499)</td>
<td>(1.276)</td>
</tr>
<tr>
<td>Rule of law (exponentiated)</td>
<td>-0.198</td>
<td>-0.220</td>
</tr>
<tr>
<td></td>
<td>(0.126)</td>
<td>(0.195)</td>
</tr>
<tr>
<td>Constant</td>
<td>-4.502***</td>
<td>-3.403**</td>
</tr>
<tr>
<td></td>
<td>(1.545)</td>
<td>(1.473)</td>
</tr>
<tr>
<td>Variance (country)</td>
<td>0.000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Variance (sector)</td>
<td></td>
<td>0.195</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.238)</td>
</tr>
<tr>
<td>N</td>
<td>684</td>
<td>684</td>
</tr>
<tr>
<td>Log likelihood</td>
<td>-458.0</td>
<td>-475.3</td>
</tr>
</tbody>
</table>

Note: Entries are raw coefficients plus standard errors (in parentheses) from multinomial logistic regression models with random effects at the country or sector level. * p < 0.1, ** p < 0.05, *** p < 0.01.
Figure 1: Party affiliation by country

Note: Light grey bars denote share of appointees with affiliation to a government party at the time of the appointment, dark grey bars denote opposition-affiliated appointees. Small numbers below country abbreviations denote N.
Figure 2: Party affiliation by formal agency independence (quintiles)

Note: Light grey bars denote share of appointees with affiliation to a government party at the time of the appointment, dark grey bars denote opposition-affiliated appointees. Small numbers denote N. Formal independence categorized into quintiles. 35 observations drop due to missing information on independence.
Figure 3: Predicted probabilities of appointing government- and opposition-affiliates

Note: Predicted probabilities of appointing government-affiliate (left) and opposition affiliate (right) with 95 percent confidence intervals (dashed lines). Calculations based on Models 1 (top) and 2 (bottom), with all other variables held at typical values (means or modes). Histograms indicate frequency distribution of formal independence variable.