

## Article

# 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 formally shielded from direct political influence and thus enjoy high levels of legal autonomy. While granting formal independence to an agency may erect some institutional barriers to politicization, it also generates a strong incentive to appoint ideologically likeminded individuals to the agency leadership. An analysis of about 700 top-level appointments to over 100 RAs in 16 West European countries between 1996 and 2013 shows that individuals with ties to a government party are much more likely to be appointed as formal agency independence increases. Higher levels of legal independence are thus associated with greater party politicization—a finding that casts doubt on the effectiveness of formal independence as a tool to reduce political influence in RAs.

## 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.<sup>1</sup>

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 and 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 first sketches the credibility argument and how it relates to agency independence more broadly. It then argues that, while higher levels of formal independence may make it more difficult or more costly for elected officials to politicize agencies, reducing the government's formal control over regulatory policy may also prompt politicians to respond by

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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.

primarily appointing affiliates of governing parties, in order to exert influence through informal means.

The empirical section examines the relationship between the politicization of top-level appointments and agencies' legal independence with data on about 700 appointees from over 100 RAs in 16 West European democracies between 1996 and 2013. The findings show that party politicization increases markedly with legal independence. The credibility gains from creating agencies with high formal autonomy may thus be partly offset by the higher levels of party politicization that such institutional independence engenders.

## 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 and Lægveid 2006; Levi-Faur 2005; Majone 1994; Thatcher 2002; Thatcher and Stone Sweet 2002). Today, RAs 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, and Fernández-i-Marín 2011).

One of the most prevalent theoretical explanations for the rise of RAs 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 (Kyddland and 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 policy course 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 policy making.

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 (Epstein and O'Halloran 1999).

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 (Rogoff 1985). 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, and Eijffinger 2001; Cukierman 1992; Klomp and 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 RAs with high levels of independence (Gilardi and 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 and Lægveid 2007; Maggetti 2010; Mair 2008, 228; Majone 2001). To be sure, especially in parliamentary systems, the governing majority can at any time alter the status of an agency by passing legislation (Moe and Caldwell 1994). In that sense, no agency can ever be fully independent from the political sphere. Yet, formal independence still creates obstacles that make it more difficult to interfere in the day-to-day operation of an agency.

Empirically, legal independence has been measured by examining laws and agency statutes with the goal of aggregating information on the rules for appointments and dismissal of senior agency officials, 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 and Koop (2012a), and Bianculli, Fernández-i-Marín, and Jordana (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 and 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. As is true for all bureaucratic entities, RAs are created through the political

process and political considerations hence play a decisive role (Moe 1990). 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 and Rittberger 2010). Also, some administrative traditions have embraced the concept of formal agency independence much more enthusiastically than others (Bianculli, Fernández-i-Marín, and Jordana 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 RAs, 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 (Enns-Jedenastik 2015).

In a related study, Thatcher (2005) has shown that a number of RAs 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 RAs, 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 (Aberbach, Putnam, and Rockman 1981; Peters and 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 usually associated with the promotion of co-partisans to public sector positions by government politicians (or, by the same logic, the removal of people with ties to the “wrong” party). While bureaucratic appointments of opposition-affiliated personnel are not uncommon in consensus-oriented political systems ([Dahlström and Niklasson 2013](#), 899; [Schröter 2004](#), 70; [van Thiel 2012](#)), the more relevant phenomenon for the credibility of an independent agency is whether the government complies with the independence imperative or uses the appointment of co-partisans as an informal device in order to undermine the agency’s formal autonomy. Empirically, the question thus becomes whether party politicization increases or decreases with higher levels of legal agency independence.

On the one hand formal independence could be expected to reduce politicization by institutionally isolating agencies from the direct interference of government politicians. By this logic, we should see less politicization in agencies with high degrees of legal independence, and the appointment of co-partisans should be a less common occurrence in highly independent RAs.

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 in practice. 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 nonpolitical institutions (e.g., the respective agency itself), this may lower the chances of government loyalists 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 reduced influence on regulatory matters. Seeking not to jeopardize these benefits by undermining the credibility of formally independent RAs, the appointing actors may refrain from nominating individuals with political ties to the government. This argument has been put forward by [Thatcher \(2005, 366–368\)](#) as a possible explanation for why

RAs in his analysis have not experienced large-scale interference by political decision makers. For example, given that many governments have raised significant revenues from privatization and liberalization efforts in 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.

On the other hand, it could be argued that higher levels of de jure independence generate incentives for elected officials to politicize agencies with appointees loyal to the government. 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, and Hammond 2001](#); [Huber and Shipan 2002, 2006](#); [Huber, Shipan, and 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 chain of command between the elected official and the agency bureaucrat.<sup>2</sup>

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 reclaim 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 a branch of the literature on new public management (NPM). The managerialist impetus of NPM-type reforms usually promotes the removal of control mechanisms from the politician’s toolkit in order to “let the managers manage” ([Kettl 1997](#)). Yet, elected officials are often still held accountable for the quality of public service delivery, even though they may have little direct influence over the institutions that are tasked with policy

2 To be sure, politicians may even prefer to appoint individuals with more extreme preferences to offset the influence of outside actors (e.g., organized interests) on agency policy ([Bertelli and Feldmann 2007](#)).

implementation. This discrepancy between formal powers and (perceived) accountability creates strong incentives to exert some degree of control through politicization (Lewis 2008, 3–4; Niklasson 2013; Peters and Pierre 2004, 7; Pollitt and Bouckaert 2011, 181).

Politicization could, of course, also be driven by correlates of formal independence not related to the quest for policy control. In administrative systems with central bureaucracies that are (relatively) more difficult for politicians to penetrate, agencies may provide a valuable alternative resource for partisan appointments. Also, independent agencies may be less visible or salient to the public than the central bureaucracy, thus awarding politicians more opportunities for patronage without consequences. Yet it should be noted that some highly independent agencies also draw a great deal of media attention and public scrutiny (Maggetti 2012).

Moreover, recent research on the extent and purpose of politicization and patronage in state institutions indicates that the control motivation has become central. In a comparative study of 15 European democracies, Kopecký, Mair, and Spirova (2012) find that the principal reason to employ party patronage 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 organizational adaptation by parties faced with a state apparatus that can no longer be steered effectively with a top-down approach.

### Empirical Strategy and Data Overview

In order to explore the relationship between legal agency independence and politicization empirically, the analysis draws on an original dataset that combines existing measures of formal independence with information on the partisan background of over 700 high-level bureaucrats appointed to over 100 RAs in 16 Western European countries<sup>3</sup> 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—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 heads and board

members are used. Agencies are considered more independent when their top-level appointees have longer and nonrenewable 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 the [Supplementary Appendix](#).

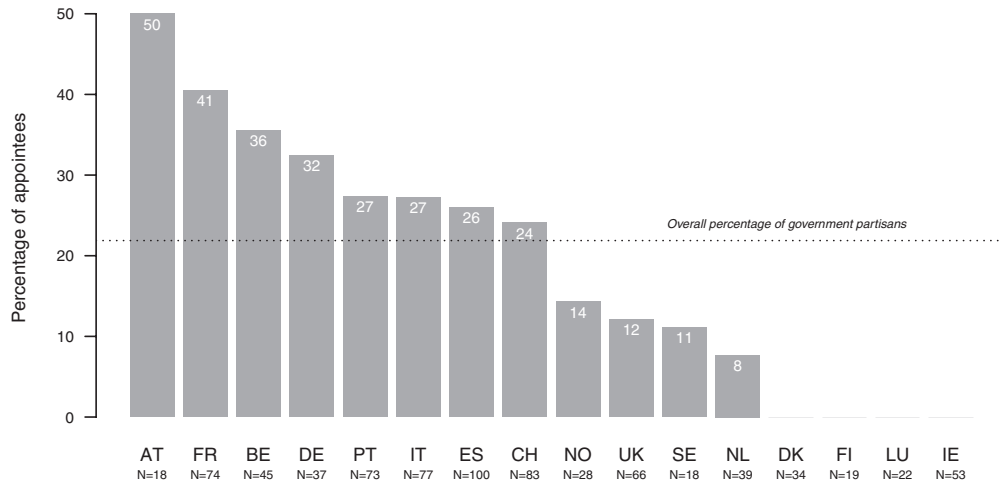
While Hanretty and Koop (2012a) have provided an empirical critique of these data, their improved measure of independence correlates highly with Gilardi's data ( $r = 0.83$ ). Another reason to use Gilardi's data is that they are relatively easy to supplement in cases where agencies were created after 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 regulatory domains: competition, financial markets, telecommunication, energy, food safety, medicines, and the environment. Through extensive archival research in over 1,100 annual reports, hundreds of press releases, government documents, and websites, 786 high-level bureaucrats appointed between 1996 and 2013 were identified. These individuals cover (1) the chief executives, (2) deputy chief executives, and (3) board members for agencies 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](http://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 (similar operationalizations of politicization can be found in Dahlström and Niklasson 2013; Ennser-Jedenastik 2014a, 2014b, 2014c; Lewis 2007, 2008; Niklasson 2013). As discussed above, affiliation with a government party 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 ministeriel* 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 reference 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,

3 Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom.



**Figure 1.** Party affiliation by country.

Note. Bars denote share of appointees with affiliation to a government party at the time of the appointment.

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, Mair, and Spirova 2012; Müller 2006).<sup>4</sup> 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 presents the share of appointees with party ties to the government by country. There is large variation in the extent to which appointments are politicized. Among the 16 countries, some of the “usual suspects” when it comes to politicization score high, for example Austria, Italy, or Belgium. Yet, countries such as France and Germany also display high levels of party affiliation (which is in accordance with research on elite bureaucrats there, see Derlien 2003; Mayntz and Derlien 1989; Rouban 2004; Sawicki and Mathiot 1999). The Nordic countries are toward the bottom of the list, with low-to-moderate politicization levels in Sweden and Norway, and 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, and 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. RAs 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 (Enns-Jedenastik 2015). 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).

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).<sup>5</sup> All constituent items of the indices A and B refer to “de jure” characteristics as laid down in laws and agency statutes (see Supplementary Appendix).

5 The two dimensions 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 Supplementary Appendix). Since these two dimensions correlate highly ( $r = 0.84$ ), a simple average of A and B is taken as the independence measure for the analysis. However, the Supplementary Appendix also reports models estimated with an alternative independence measure based on a principal components analysis of Gilardi’s five dimensions (A to E). The results are very similar to those reported in the original analysis.

4 The correlation of the percentages shown in figure 1 with Kopecký, Mair, and Spirova (2012) patronage index is 0.71; the rank correlation coefficient (Spearman’s rho) with the classification provided by Müller (2006) is 0.62.

There are, of course, alternative explanations for politicization in RAs. 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.<sup>6</sup> 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. Alternatively, it may be that, over the years, agencies drift from the public's view and are therefore scrutinized less carefully. This may decrease the costs of politicization.

*Appointment type.* An indicator differentiating between the position of the agency chief executive officer (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 expectation here is that it is more difficult to politicize public sector institutions on a larger scale in political systems with many veto points. This is because appointments may require the consent of veto players, who—if from a different party than the appointer—may not be willing to let their political competitors have their way.

*Rule of law.* An indicator for the rule of law taken from [Kaufmann, Kraay, and Mastruzzi \(2009\)](#) is included. The assumption here is that countries with a stronger rule of law exhibit lower overall levels of politicization.

*Year of appointment.* A series of year dummies controls for the possibility of time trends in the appointment of government affiliates.

6 Another possibility is to use agency budgets as predictors. Yet there is an extremely close correlation between staff and budget numbers ( $r = 0.88$ ), since personnel costs are by far the largest budget item in most RAs. To make use of these data, missing staff numbers have been imputed for cases where budget figures were available. Imputation was done using linear regression with staff (logged) as dependent variable, agency budgets (logged) and country and domain dummies as predictors (adjusted  $R^2$ : 0.883).

Moreover, controlling for country-level heterogeneity addresses a potential endogeneity problem in the analysis. Since countries with a culture of strong politicization in the public sector are in greater need of signaling credible commitment, legal independence could be higher there because of politicization, rather than the other way round. This concern is mitigated by showing that the probability of partisan appointments also correlates with within-country variation in formal independence.<sup>7</sup>

Domain-level controls are used because independence levels vary systematically between utility, other economic and social regulators ([Gilardi 2008](#)). [Table 1](#) presents the summary statistics for all independent variables.<sup>8</sup>

## Analysis

Before turning to the multivariate analysis, a bivariate breakdown of the relationship between politicization and agency independence is presented in [figure 2](#).

Whereas only 14% of the appointees in the quintile with the lowest levels of agency independence (Q1, with values of 26 or lower) are government allies, this number rises to around 20% in the three middle quintiles, and then jumps to 35% in the top quintile (Q5, with an independence index of 64 or higher). [Figure 2](#) thus strongly suggests that there is a positive relationship between formal independence and the appointment of government-affiliated individuals to top-level positions in RAs.

While the bivariate breakdown shown above is very much compatible with the view that politicians' use of the appointment channel to influence regulatory policy increases with legal independence, 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 is a simple dichotomous measure of whether an appointee is affiliated with a government party or not. The reference group comprises mostly nonpartisan appointees, yet a small fraction also has ties to the opposition (47 out of 537, or 8.8%). To assess the robustness of the results shown below, the [Supplementary Appendix](#) reports the same set of statistical models with the group of opposition-affiliated appointees removed. The substantive

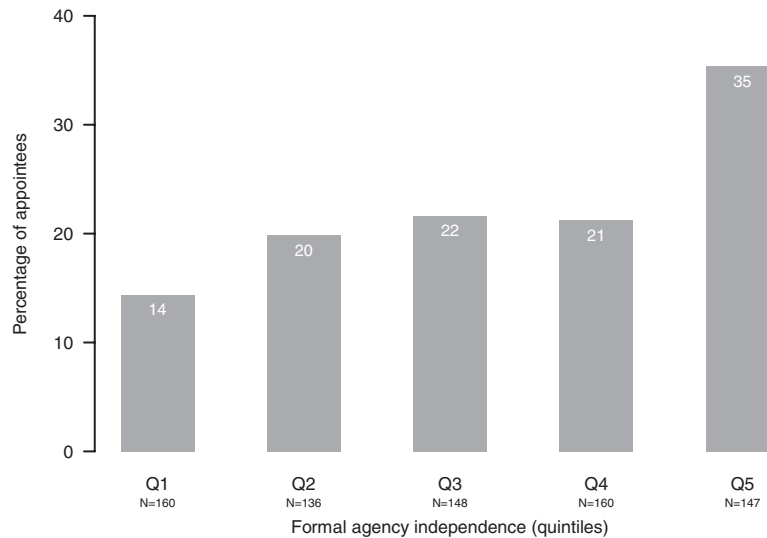
7 To be sure, this argument requires one to accept that the degree of party penetration in the public sector is largely a country-level phenomenon, with little within-system variation. Using the data provided by [Kopecký and Mair \(Kopecký and Mair 2012, 371\)](#) for nine policy sectors nested within fifteen countries to run a variance component model suggests that more than 60% of the variation in party patronage is, indeed, between rather than within countries. This suggests that controlling for country-level effects can mitigate the endogeneity problem.

8 The models below report random effects at the group level. Fixed effects models can be found in the [Supplementary Appendix](#).

**Table 1.** Descriptive Statistics of the Independent Variables

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

*Note:* About 100 observations were dropped 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.

**Figure 2.** Affiliation with government party by formal agency independence (quintiles).

*Note.* Bars denote share of appointees with affiliation to a government party at the time of the appointment; formal independence categorized into quintiles; 35 observations were dropped due to missing information on independence.

conclusions for the relationship between legal independence and the appointment of government affiliates remain the same.

Table 2 presents two hierarchical mixed-effects models with appointees nested in agencies and agencies nested in countries (model I) or regulatory domains (model II).

The coefficients for agency independence are positive and significant in both iterations, suggesting that even after controlling for agency resources, agency age, CEO appointments, political constraints, the rule of law, time trends as well as unobserved variation at the level of countries, domains, and agencies, there is still a positive correlation between legal independence and the appointment of co-partisans.

Taking the exponential of the raw coefficients yields odds ratios of around 1.03. With every one-point increase in the formal agency independence index the odds of a government partisan being appointed thus rise by about 3%. While this may sound like a small effect, recall that the empirical range of the independence

index is from 0 to 87. The effects reported in table 2 are thus not only statistically significant, but also substantively important.

In order to illustrate how the appointment patterns change with legal independence, figure 3 plots the predicted probabilities calculated from models I and II, with all other covariates held constant at their means (continuous variables) or modes (categorical variables). Across the empirical range of the independence index (from 0 to 87), the probability of a government ally being appointed raises from 3% to 26% according to model I and from 3% to 28% according to model II.

Again, these results show substantial differences in party politicization emerging between non-independent and highly independent agencies. We can therefore conclude that the analysis is very much in line with the assumption that higher levels of de jure independence create incentives for party politicization, thus potentially lowering de facto independence. The appointment of government-affiliates to senior positions is thus a much more common occurrence in highly



independent agencies than in those with low levels of formal autonomy.

A look at the control variables in the regression models indicates that most of these predictors do not have much of an impact. One important exception is

**Table 2.** Predicting Government Ties Among Top-Level Agency Appointees

	I	II
Fixed part		
Formal agency independence	0.0310** (0.00982)	0.0290*** (0.00567)
Agency staff (log)	0.201 (0.166)	0.119 (0.0770)
Agency age (log)	0.0709 (0.114)	-0.0459 (0.110)
Agency CEO	1.101*** (0.269)	1.016*** (0.207)
Rule of law (exponentiated)	-0.217 (0.229)	-0.198** (0.0766)
Political constraints	-0.241 (1.810)	0.777 (1.302)
Year dummies	Yes	Yes
Constant	-4.393* (2.094)	-3.979** (1.296)
Random part		
Variance component (country/domain)	1.839* (0.916)	1.57e-32 (3.71e-32)
Variance component (agency)	0.508* (0.230)	1.472*** (0.242)
N (individuals)	684	684
N (agencies)	92	92
N (countries/domains)	16	7
Log likelihood	-307.9	-328.5

Note. Entries are raw coefficients from hierarchical mixed-effects logistic regression models with appointees nested within agencies and agencies nested within countries (model I) or domains (model II); SE (in parentheses) clustered on agencies.

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ .

the finding that politicization is much more likely for CEO appointments than for other types of top-level positions. The coefficients from models I and II translate into odds ratios between 2.7 and 3. The odds of a government partisan being nominated thus increase by a factor of (almost) three when the position in question is the one at the very top of the agency.

This result is hardly surprising, and it chimes with the underlying premise of the findings above. In both cases, politicians seek to exert influence over regulatory policy by politicizing appointments to agencies. The incentive to politicize is a function of how much control any individual appointee can be expected to have. The expected level of control is certainly greater in highly independent agencies, but also for agency CEOs.

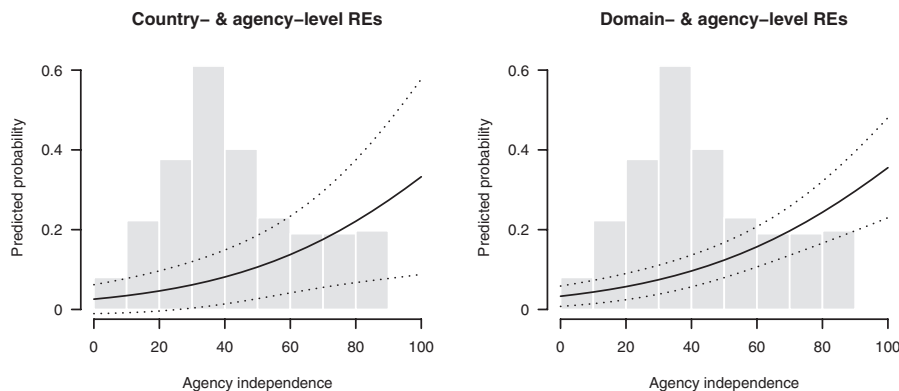
Agency resources (operationalized with staff numbers) do not seem to matter a great deal. Both coefficients are positive and thus suggest that politicization increases with agency resources, yet none of them comes with a  $p$  value smaller than .1. Nor does agency age seem to play any role in explaining politicization. The assumption that younger agencies are more likely to see politicized appointments is thus not borne out by the data.

The rule of law coefficient is significant only in model II. In model I, the country-level effects absorb the impact of this predictor (which, unsurprisingly, varies mostly between countries rather than over time). The veto player structure does not appear to have an impact.

Finally, the random components of the two models suggest that there is substantial unobserved variation at the agency- and the country-level, yet little at the level of the seven regulatory domains.

### Discussion and Concluding Remarks

The analysis above shows that politicization—operationalized as the appointment of co-partisans to senior



**Figure 3.** Predicted probabilities of appointing government-affiliated individual to agency.

Note. Predicted probabilities with 95% confidence intervals, assuming random effect is zero; calculations based on models I (left panel) and II (right panel), with all other variables held at typical values (means or modes); histograms indicate frequency distribution of formal independence variable.

positions in RAs—is positively correlated with legal agency independence, even after controlling for a series of other predictors as well as variation across agencies, countries, and policy domains. The findings are consistent with the proposition that politicians respond to high levels of formal agency independence with greater efforts at appointing political allies to the agency leadership.

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 the normative debate on the role of non-majoritarian institutions in democratic governance.

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. This constitutes an important qualification of the effectiveness of legal independence as a commitment device. It also shows that, while some measures of de facto independence are positively correlated with legal independence (Hanretty and Koop 2012b), others are inversely related to it.

On the other hand, the results also give some reason for optimism to those scholars of party government who are 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. Appointments of co-partisans can thus be understood as an organizational resource that amplifies the governing capacities of a party (Flinders and Matthews 2010; Kopecký, Mair, and Spirova 2012; see, however, Lewis 2007).

As the statistical analysis implies, legal agency independence makes the appointment of government-affiliated individuals more likely. 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 absolutely contribute is to point out which assumptions 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.

Hence, the idea that legal independence protects agencies from party politicization—whether by

creating institutional barriers or by strengthening the norm of non-interference—is clearly challenged by the results presented above. The descriptive evidence and the multivariate analysis plainly show that co-partisanship with the government is more prevalent among appointees to highly independent agencies.

As a final note, the results also 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 organizational transformations in the public sector. A more dispersed state apparatus requires a more network-like party organizational approach (Kopecký, Mair, and Spirova 2012). While the present analysis strongly suggests that parties act to some degree strategically in response to the increased levels of formal independence of RAs, it will be up to future research to investigate whether such strategies do, indeed, have an impact on regulatory policy outcomes.

### Supplementary Material

Supplementary material is available at the *Journal of Public Administration Research and Theory* online ([www.jpart.oxfordjournals.org](http://www.jpart.oxfordjournals.org)).

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