

Institutional Design and Formal Autonomy: Political versus Historical and Cultural Explanations

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ABSTRACT

This article tests two competing hypotheses in the study of the institutional design of regulatory agencies. Political explanations consider the degree of institutional design of regulatory agencies as a function of political factors, such as the degree of policy conflict and political uncertainty. By contrast, historical-cultural explanations of institutional design claim that the design of regulatory agencies is a function of path dependency and national administrative traditions. In this article, we test these hypotheses on a data set of 293 regulatory agencies that were created between 1945 and 2000 in Sweden, the Netherlands, and Denmark. We find strong support for historical-cultural explanations, while our findings suggest that political factors play almost no role in the institutional design of regulatory agencies within parliamentary regimes.

INTRODUCTION

Regulatory reform and the opening of markets for competition have been key topics in comparative analysis of public policy and public administration in recent years. Analyses in these fields pay considerable attention to the creation of regulatory agencies. Some scholars even claim that changes are so many and radical that they have been speaking of the “Advent of the Regulatory State” (Majone 1994). Central in this argument is policy makers’ demand for organizational forms that ensure a credible commitment to their reforms of regulatory policy. Parallel to this interest in the implementation of regulatory reform, other scholars have dealt with the causes of delegation to the administration and in particular to agencies enjoying certain autonomy from the political executive. Hence, during the past two decades or so, US studies have produced a wealth of insights into the politics of delegation. The literature offers rich and multiple (partial) explanations for

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the degree of independence politicians delegate to regulatory bodies. Perhaps the main finding within these studies is the pivotal role that political factors play in processes of regulatory design, with variables of policy conflict and political uncertainty as the usual suspects (Epstein and O'Halloran 1999; Huber and Shipan 2002; Lewis 2003; Moe 1995).

The US-based studies on regulatory design and delegation have been replicated for European parliamentary systems (Bertelli 2006a, 2006b; Elgie and McMenamin 2005; Gilardi 2002, 2005; Jordana and Levi-Faur 2005; Van Thiel 2004). The problem with these studies is that they have produced mixed results. For example, the finding of Gilardi (2002) that the number of veto players has an effect on the degree of formal autonomy of regulatory agencies could not be corroborated by Elgie and McMenamin (2005). These findings, in turn, can neither be substantiated nor refuted by Bertelli, who measured policy conflict on the basis of political parties' attitudes toward regulation, devolution, and administrative efficiency (Bertelli 2006a). Van Thiel (2004), by contrast, found that political factors were not that significant at all; instead, she found that the creation of independent agencies is a path-dependent trend: politicians create independent agencies because their predecessors created independent agencies. Finally, Jordana and Levi-Faur (2005) and Gilardi (2005) claim that the creation of regulatory agencies in both developing and developed economies is caused by diffusion and emulation of the independent agency model.

The disparity in findings between these scholars clearly shows the following: although US scholars have made substantial inroads toward explaining and understanding the determinants of institutional design, students of European regulatory administration are still confronted with a number of contradicting observations. In this article, we will address what we believe is one of the main problems in the study of regulatory administration in European political systems. At the heart of the matter, according to us, lies the lack of a systematic analysis of two alternative explanations for the creation of regulatory agencies: political versus historical and cultural explanations. Political explanations consider the degree of formal autonomy of regulatory agencies as a function of political factors, such as the degree of policy conflict and political uncertainty. European studies of regulatory administration, we believe, have too literally replicated US studies of institutional design. They have neglected the fundamental differences between the institutional logics of the presidential US and parliamentary European systems. Whereas political factors may be important in the US separation of powers setting within which the consent of multiple institutional and partisan veto players is needed for designing (independent) regulatory agencies, within European parliamentary systems, consensus seeking and compromise building are the more prominent modes of political decision making (Lijphart 1999; Moe and Caldwell 1994).

In addition, these studies have neglected the potential impact of national historical legacies and political-administrative cultures on the politics of institutional design in parliamentary systems. Although one may argue that the neglect of historical variables is potentially problematic for US studies as well, it is empirically and theoretically detrimental for comparative analyses of regulatory administration in European parliamentary systems. Empirically, whereas US studies of regulatory administration are confined to a single state and context, comparative analyses of institutional design in a European setting need to be controlled for institutional and historical variations across these parliamentary systems (Müller and Strøm 2003; Strøm et al. 2003). Theoretically, decisions of European

governments to create regulatory bodies and to delegate authority to them may, thus, be affected by varying “logics of appropriateness” or path dependencies (Robinson and Meier 2006). In a host of historical and institutionalist analyses of public management reforms, historical and cultural legacy effects are found to have exerted a substantial effect on the shape and development of administrative systems (Brunsson and Olsen 1993; Christensen and Laegreid 2003; Knill 2001; Toonen and Raadschelders 1997). It is asserted that specific political and administrative traditions cause administrative systems to evolve along path-dependent trajectories and therewith constrain the actual choices of politicians. By contrast, political models of institutional choice imply that, given certain transaction costs, agency design resembles drawing on a *tabula rasa*, with various designs being selected from a seemingly extensive “delegation menu” (Bendor et al. 2001). In other words, the “usual suspects” of agency design are treated as generic factors working in similar ways across various political-administrative systems.

The core of this article is therefore a test of two alternative explanations for the institutional design of regulatory agencies in European parliamentary systems. We will contrast rather generic political explanations of institutional design and delegation with contingent historical and cultural explanations. In the following section, we will juxtapose political and historical-cultural explanations of institutional design and discuss a number of alternative explanations.¹ The article then continues with a description of the countries and cases that are selected, to be followed by the presentation of this study’s research design. The results are then presented, and the article is ended with a discussion and conclusion.

INSTITUTIONAL DESIGN AND AGENCY INDEPENDENCE: POLITICAL VERSUS HISTORICAL AND CULTURAL EXPLANATIONS

Political Explanations of Agency Design

Political explanations figure prominently within the institutional design literature. The answer to the question why some agencies have more formal independency from political oversight than others is centered around the following two key variables: policy conflict and political uncertainty. The policy conflict hypothesis states that the structure of the public sector reflects the political compromise between political actors at the time that administrative agencies were established (Moe 1995). Compromise is imperative since in democracies it will be in rare instances that an enacting party can unilaterally decide on policy without taking notice of the minority position. Moreover, the losing party or parties will often successfully gain significant influence on the design of an agency (Riker 1986). Moreover, they will manage to preserve some influence on an administrative agency after its creation. The structure of the administrative agencies will therefore reflect the political compromise at the time of agency creation. The problem with the policy conflict thesis thus far, however, is that it has been focused on the politics of structural choice within the American checks-and-balances system (Epstein and O’Halloran 1999; Howell and Lewis 2002; Lewis 2003). There, studies found that the level of policy conflict, which

¹ Thus, it is beyond the scope of this article to test the diffusion thesis that has drawn considerable attention in other parts of the literature.

within the United States is higher during periods of divided government, has a negative effect on the level of formal independence.

When we test the policy conflict thesis for parliamentary systems, we not only have to reckon with the institutional differences between the United States and parliamentary systems, which requires a different measurement of policy conflict, we also must realize that within parliamentary systems a consensual style of policy-making prevails. Within parliamentary settings, policy conflict may not be such an important factor for predicting agency design as it is in the United States. The findings of Elgie and McMenamin (2005) and Van Thiel (2004) seem to provide some empirical foundation for this perspective. On the other hand, there are empirical studies that present clear evidence for the influence of policy conflict. Huber and Shipan (2002) estimated the effects of degrees of policy conflict, measured as government size and cabinet durability within parliamentary systems, on degrees of bureaucratic discretion. They found significant and positive relationships between policy conflict and an increase in the level of policy detail in labor statutes. They infer that an increase in the level of policy conflict induces legislatures to enact detailed laws, that is, rules that curb the autonomy of civil servants. Confronted with contradictory findings, we will not a priori know which side within this debate we should support. Given the number of US studies and the number of European studies that point toward the impact of policy conflict on formal agency independence, we choose to posit the following hypothesis.

- H₁ Agencies established under increasing levels of policy conflict are more insulated from political oversight by the executive than those established during lower levels of policy conflict.

Politics is rife with uncertainty. Elections and regime changes may bring political opponents of those who enacted the policy to power. With the risk of being ousted from power, governments face the uncertainty that the agencies they created will be terminated under the regime of their opponents. Political uncertainty should therefore motivate politicians to “design their creations so that they have the capacity to pursue its policy goals in a world in which its enemies may achieve the right to govern” (Moe 1995, 136). As in the case of policy conflict, here too we are confronted with contradictory findings. Elgie and McMenamin (2005) tested the political uncertainty variable for Independent Administrative Authorities in France but found no significant relationship between uncertainty and agency independence. By contrast, Gilardi (2005) found a positive and significant effect of political uncertainty on agency independence. He found that the higher the risk of being replaced by an opponent, the higher the level of autonomy will be that an enacting government delegates to a new agency. For the United States, Lewis’s findings also support the uncertainty thesis. Testing the relationship between the length of time a majority in the US Congress has been in power and agency insulation from presidential oversight, he found that the longer the majority has been in power in unified government, that is, when uncertainty is low, the lower the probability that newly created agencies were insulated from presidential oversight (Lewis 2003, 60). Again, given these contradictory findings, we will for the time being side with studies where significant relationships between uncertainty and institutional design were reported.

- H₂ Agencies established by governments that face political uncertainty are more insulated from political oversight than those established under stable regimes.

Historical and Cultural Explanations of Agency Design

Studies in public policy and public administration repeatedly stress the importance of “administrative tradition” (Knill 2001), “national styles of regulation” (Vogel 1986), or “historical trajectories” (Pollitt and Bouckaert 2000) as key factors in explaining policy and administrative choices of politicians and bureaucrats across countries. Or, as Toonen and Raadschelders (1997, sec. 5.5, n.p.) put it, in “trying to arrive in at least a beginning of an explanation of institutional variation, it is clear that various, sometimes very fundamental and historically deeply rooted dimensions and traditions need to be explored.” Underscoring this claim, Pollitt and Bouckaert (2000, 39) write that “some accounts of public management reform say little or nothing of contextual differences” between the countries or policy sectors in which reforms take place. Moreover, the authors “are convinced that a conceptually identical or at least very similar, reform develops differently in one national . . . context as compared to another.” Christensen and Yesilkagit (2006a), finally, found strong support for a claim that policy makers draw on a limited and nationally distinct repertoire of solutions when deciding how to organize regulatory administration in their comparative analysis of national regulatory administrations.

H₃ The level of formal independence of a regulatory agency significantly differs across various countries.

Historical or time-related factors, such as path dependency, may be playing a significant role in constraining choices regarding agency design, as well. Van Thiel (2004, 196), for example, found support for path dependency in her study of agency creation in the Netherlands, as “quango [quasi non-governmental organization] proliferation turns out to be a *trend*.” She argues that prior decisions to establish an agency, instead of political or economic conditions, were decisive factors in agency creation. We expect that agency design follows distinct patterns in different countries.²

H₄ The probability that within each country a newly created agency has a high level of formal independence increases with the number of previously created independent regulatory agencies.

Alternative Explanations

The institutional design of regulatory agencies, that is, their formal level of autonomy, may be affected by other factors than either political or historical and cultural variables. In order to control for potentially omitted variables, we will test a number of alternative explanations. A first alternative explanation is the functional argument of credible commitment (cf. Horn 1995; Majone 1994). For private parties to invest in (newly opened up) markets, the argument goes, private parties need to be reassured that politicians will not intervene in the functioning of markets and thereby put their investments under risk. To be credible, politicians must irreversibly bind themselves.³ In support of this hypothesis, the studies of

² Lewis (2003) and Epstein and O’Halloran (1999) have tested the effects of a trend and previous delegations of authority to agencies, respectively. These goals served as control variables instead of main effects, however.

³ This argument ties in well with the problem of time inconsistencies in politics. Time inconsistency occurs when politicians at time t_{n+1} renege on their policies they set on t_n . Long-term policy learning processes, shifts in public opinion, or sudden and unforeseen changes in the environment of policies may alter the preferences of political actors (Shepsle 1992). Hence, credible commitment may solve time inconsistency problems.

Gilardi and Elgie and McMenamin found that politicians create independent agencies because “the main problem for governments is attracting private investments in freshly opened markets [and] they need to persuade investors that market functioning will not be biased by the nationalization legacy” (Gilardi 2002, 877; see also Coen and Thatcher 2005). However, it is important to note that in these studies the credible commitment argument only applies to regulatory agencies created within areas of *economic* regulation (i.e., regulation of financial markets, utilities, and more general corporate governance) and not within areas of *social* regulation (i.e., workers’ health and safety, environment, food, and pharmaceuticals). This literature leads us to expect that agencies responsible for the regulation of economic policy areas have more formal independence than agencies created for the regulation of other policy areas. Following this logic, we should expect to find that the formal degree of independence of economic regulators, when compared to social regulators, is partially explained by the politicians’ need to credibly commit themselves.⁴

A second potentially omitted variable is the ideology of the enacting government (Bertelli 2006b). The creation of regulatory agencies from about 1980s occurred in tandem with the global diffusion of neoliberalism. In addition, Western European public administrations were exposed to the spread of New Public Management (NPM). The advocates of neoliberalism and NPM propagated the creation of new markets and the marketization of the public sectors, respectively. These movements had close affinities with right of center parties, and therefore, we may expect that the probabilities for the creation of independent agencies under rightist governments were higher than under leftist governments.

A third alternative explanation is the legal instrument by which regulatory agencies were created. Although legal traditions may vary across parliamentary systems, regulatory agencies can be grouped between those that were established by primary law and those that were created by secondary law. Within parliamentary regimes, primary laws are coproduced by the legislature and executive but can only be approved by a legislative majority; secondary law is delegated law and is the prerogative of the executive (i.e., the cabinet or minister). In parliamentary settings, where the executive is supported by a majority of parliament, the executive is dominant vis-à-vis the legislature (Gallagher et al. 2001; Lijphart 1999). In these settings, we expect that the legal instrument through which the agency is created should have no effect on the institutional design of regulatory agencies: the executive dominates the legislature and can choose to create agencies either by primary or secondary law. In either case, the executive remains the sole principal of the agency. However, in settings with minority governments, the legal instrument may play a role in the politics of institutional choice. There the executive does not dominate the legislature as it confronts a majority opposition. We should, therefore, find that agencies created by primary law under minority governments are less independent than those created by secondary law; second, we expect that this effect is stronger under minority governments than under majority governments.

4 As can be seen, the European literature on institutional design exclusively focuses on regulatory policy and administration. We also exclusively focus on regulation, although we acknowledge that the governments in all three countries strongly engage in the provision of welfare services as well. However, the role of central government in these three countries in welfare service provision is very different because there the provision of services is mainly the task of local governments and third sector organizations financed by government transfers.

A final alternative explanation we want to test is that the sectoral context within which agencies are created is a predictor for the degree of formal autonomy of agencies. Van Thiel (2006) found different styles of agency creation across various policy sector and ministries. Whereas the term “regulatory agencies” suggests uniformity in the implementation of a single-agency model (see also Pollitt 2001), closer inspection of various contexts embedded within the national state revealed that there were significant differences in the types of agencies created across policy sectors. We shall therefore also control for the policy areas within which regulatory agencies were created.⁵

AGENCY INDEPENDENCE IN DENMARK, SWEDEN, AND THE NETHERLANDS

Selection of Countries

Denmark, Sweden, and the Netherlands are small states located at the northwestern part of Europe. Their cultures and levels of welfare are fairly similar. All three are members of the European Union. As regards their institutional outline, all three countries are part of the family of parliamentary democracies. Moreover, all three are corporatist-consensus democracies with similar characteristics along a variety of dimensions of neocorporatism (Lijphart 1999; Siaroff 1999). In spite of these similarities, there are several subtle differences between the political systems of these countries.

There is a basic distinction between Swedish central government and central governments in Denmark and The Netherlands. This is a distinction between a dualist system of government that rests on constitutional separation of policy and administration (Sweden) and a monocratic system of government, where ministers are political executives with the authority to decide any matter within their portfolio (Denmark and the Netherlands). In Sweden, decisions in any specific case are delegated to the agencies, and departmental ministers are not allowed to interfere in specific cases. The government can only influence policy implementation through general prescriptions to the agencies (Premfors et al. 2003, 51–58). Hence, even if Sweden like Denmark and The Netherlands has a system of parliamentary government, the constitutional provisions for the organization of central government implies that Swedish departmental ministers unlike their Danish and Dutch colleagues are not political executives in the strict sense of parliamentary government. This marks a clear and important difference between Sweden and the two other countries. At the same time, the Danish and Dutch traditions vary too. In the Danish tradition, departmental ministers are consistently seen as political executives who are accountable to parliament. They have full formal control over both their departments and agencies reporting to them. The exception to this rule is the existence of an extensive network of corporative boards that are organizationally and legally distinct from both ministerial departments and their agencies. The Dutch tradition rests on the same principles, but due to this country’s pillarized

5 As we already mentioned in the introduction, there exists a considerable and important literature on the role of international diffusion in regulatory reform (Levi-Faur 2006; Levi-Faur and Jordana 2005). The main causal linkages that are examined are those between globalization and worldwide liberalization, on the one hand, and the creation of independent regulatory authorities within both the developing and developed countries, on the other hand. The geographical diffusion of generic regulatory models raises interesting analytical issues, but at the same time, it involves considerable challenges for both the analytical design and the collection of data. These problems increase if the ambition is to study regulatory administration in multiple policy sectors. Therefore, this article does not include an analysis of the potential effects of international diffusion.

past, the existence of agencies with a governing board accommodates for the representation of various minorities in civil society. The implication is that should historical and cultural tradition turn out as important causal factors then it is more likely that traditions positively covary with high levels of agency autonomy in Sweden, to some extent in the Netherlands, and less in Denmark.

There are also apparent but much more subtle differences between the organization of Danish and Dutch central governments. In Danish central government, there has always been a distinction between ministerial departments reporting directly to ministers and agencies (*direktorat* or *styrelse*) reporting to ministers through the department. However, these agencies are subject to political supervision through the department. Eventually, the line of demarcation between departments and agencies at any time has varied strongly from department to department and from agency to agency (Christensen 1980, 199–247; Christensen et al. 2006, 80–95). Compared to Denmark—but also to Sweden—Dutch central government has a variety of agency forms. One type of agencies, that is, *agentschappen*, resemble the Danish agencies; they are located outside the departmental hierarchy but enjoy certain but still limited delegated discretion in the areas of public policy, personnel, and financial management (Pollitt et al. 2004; Smullen et al. 2001). The implication is a limited delegation where departmental ministers are fully accountable for agency decisions and keep the right to interfere into their substantial decision making. A second category of agencies is functionally decentralized bodies. This type of agency is independent from political oversight. One form of such bodies is the group of Independent Administrative Bodies (*zelfstandige bestuursorganen*). This form of central government agency is so old that they even precede the Dutch centralized nation-state (established in 1795; see also Van Thiel 2004). More recently established functionally decentralized bodies are statutory trade associations (*publiekrechtelijke bestuursorganen*) (Dijkstra, van der Meer, and van der Meer 1995; Van Waarden 2002). These are agencies with corporatist bipartite governing boards. Like in the Swedish case, functionally decentralized bodies do not fall under direct ministerial responsibility and are entirely independent while making decisions in specific cases.

Agencies: Definitions, Selection Criteria, and Data

Comparing agency creation and design between different administrative systems requires clear criteria for what is to be counted as an agency in the three countries. In general, we gathered data on all regulatory administrative agencies in Sweden, Denmark, and the Netherlands that were created between 1945 and 2000. Data have been collected from the official government handbooks in Denmark, The Netherlands, and Sweden. Information on national legislation has been retrieved both from printed statute books and modern legal databases that have been set up in all three countries. We applied four specific selection criteria. First, we coded an administrative unit as an agency if the unit was a separate administrative body outside a ministry and was headed by a director who (1) either reported directly to the departmental minister, (2) to a collegiate board, or (3) a board of directors.

Second, we selected agencies that formally performed one or several regulatory tasks. Under “regulation,” we understand “the public administrative policing of a private activity with respect to rule prescribed in the public interest” (Mitnick 1980, 7). Our research shares the focus on regulatory administration with both the US literature on delegation and the European regulatory reform literature. But an exclusive focus on regulatory administration necessitates a selection of agencies that do not mix regulatory with nonregulatory tasks.

This would present a problem at the level of ministerial departments. Agencies, to the contrary, are so specialized that in most cases either regulatory, as defined above, or nonregulatory tasks are preponderant in their portfolio. This is the case throughout the period.

Third, a regulatory task had to be founded on a formal-legal instrument. So, agencies created for the purpose of pure self-regulatory tasks with no founding on a legal instrument are not included in the database. Finally, only agencies created for the first time are included; agencies whose names, tasks, or structures altered during the course of their lifetime are not considered as new agencies (Lewis 2003). Information on agency birth was derived from national governmental handbooks that have information on the establishment of agencies. To distinguish between newly created organizations and agencies being renamed during the course of their lifetime, the information was cross-checked in the national archives that offer online facilities for the retrieval of historical information.

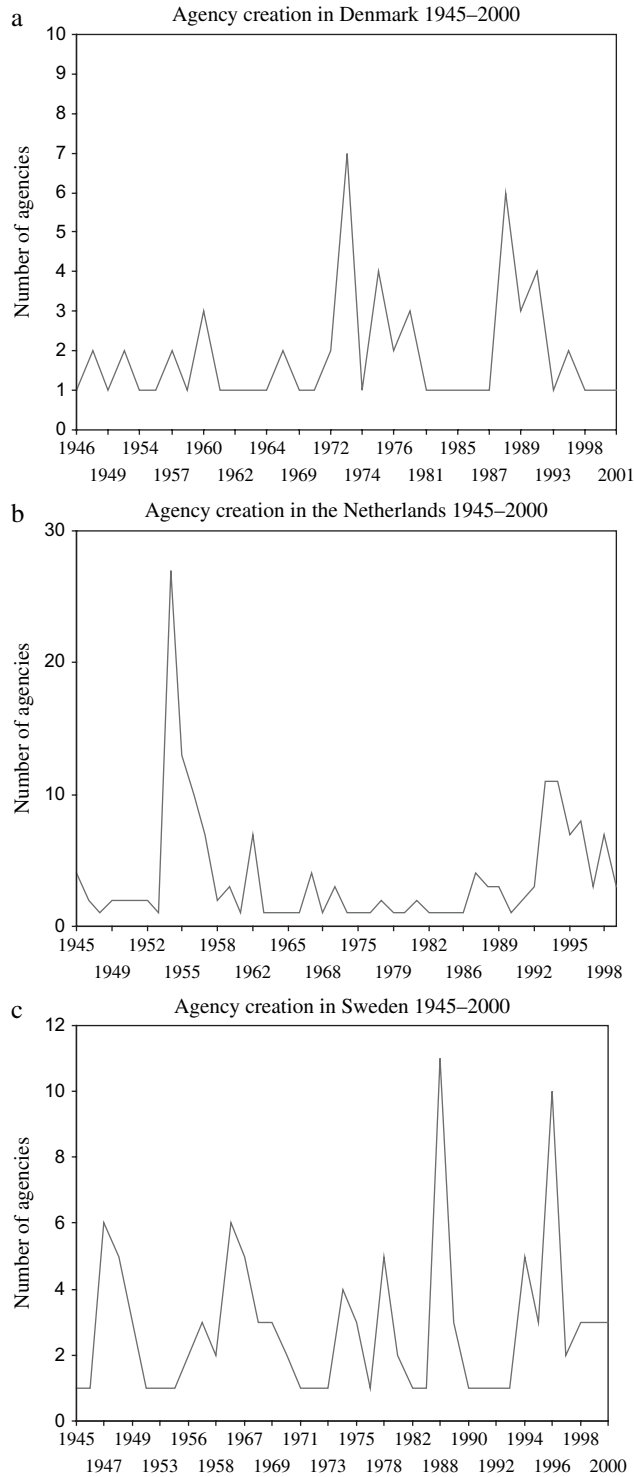
In the end, we coded 354 agencies: 64 Danish agencies, 178 Dutch agencies, and 112 Swedish agencies. Figure 1 shows the agency creation records in the three countries. The figures show that all three countries followed different paths. In Denmark, 60% of all agencies were created between 1970 and 1990. Even if Denmark has a strong agency tradition, the creation of new agencies creation was dormant until the 1960s, high during the 1970s and 1980s, and was dormant again in the 1990s. The Dutch pattern shows two remarkably high peaks of agency creation. During the 1950s, about 70 new agencies were created; about 40 years later, agency creation reached another peak with 57 agencies created during the 1990s. The creation of new agencies has in Sweden followed a relatively steady pace with peaks at almost equivalent intervals. The difference lies in the location of the peaks that occurred during the 1980s and 1990s.

On closer inspection we discard 58 agencies in the Netherlands that have been established between 1952 and 1958 from our empirical tests because these agencies were not created independently from each other. These cases are namely statutory trade agencies (STAs) that have been created within the framework of an enabling act, that is, the 1950 Law on Industrial Organization. This act defined the formal features, including the governance structure, of statutory trade associations whereas the actual creation of individual STAs occurs on the initiative of industrial or agricultural employers, employees', or producers' organizations. A statutory trade organization for the regulation of agricultural commodity markets, for example, is established after the initiative of farming organizations. Then parliament approves of the creation of the individual STA by formally creating it by law. Finally, STAs are not part of a ministerial portfolio, but they fall directly under the tripartite Social and Economic Council, the neocorporatist advisory council of the government. For these reasons, we decided not to count the individual agencies but to code the enabling act as one delegation decision. All STAs have the same form, and this is a consequence of the specific design laid down in the Law on Industrial Organization. The total number of cases for the Netherlands is herewith reduced to 120 agencies (119 agencies and the enabling act for STAs).

This analysis only covers agencies as defined above. However, delegation also takes place to boards, not least boards having tasks within regulatory administration. These boards are collegiate bodies that are by definition removed from the executive hierarchy. Their decision-making authority is defined by law, mostly primary, and their jurisdiction is in most cases narrowly and precisely defined. Very often they are served by an agency set up within the executive hierarchy. They are found in all three countries but play a particular role in Denmark (Christensen and Yesilkagit 2006a).

Figure 1

(a) Agency Creation in Denmark 1945–2000 (b) Agency Creation in the Netherlands 1945–2000 (c) Agency Creation in Sweden 1945–2000



RESEARCH DESIGN: VARIABLES AND METHODS

Agency Independence: The Dependent Variable

We focus on only one dimension of agency design: its degree of structural independence. However, different measures and concepts for agency independence are on offer. In the American literature, one measure of agency independence (sometimes also referred to as “insulation”) is the location of an agency within the (federal) administrative organization (Epstein and O’Halloran 1999; Lewis 2003; Moe 1995). This measure is based on the distinction that exists in the United States between administrative agencies inside the cabinet and those placed outside of it, with agencies placed outside the cabinet being more insulated than those within it. Such a distinction, that is, agencies inside or outside the cabinet, does not exist within parliamentary systems. The “formal exemption of an agency heads from political oversight,” or “formal bureaucratic autonomy,” is a “European” measure for agency independence (Christensen 2001).

Furthermore, formal bureaucratic autonomy is a multidimensional concept (Christensen 2001; Gilardi 2002; Verhoest et al. 2004). Although Christensen only distinguishes between formal structural, financial, and legal autonomy, Verhoest et al. (2004) also distinguish between the autonomy to manage personnel affairs (HRM autonomy) and the autonomy to decide on the use of policy instruments (policy autonomy). More specific indicators of formal autonomy are captured in Gilardi’s study on the design of independent regulatory bodies (Gilardi 2002; but see also Christensen and Yesilkagit 2006a).⁶

We measure agency independence by the governance structure of agencies.⁷ The measure we chose is whether the agency reports to a departmental minister or a governing board with decision-making power. This is a simple indicator and applies across time and countries. At the same time, it gains validity through the consistent importance that politicians and civil servants place on reorganizations and formal structure. By using this indicator, we measure the formal distance between the agency head and the minister or department. An agency head is formally exempted from full political supervision by the departmental minister if an extra layer of hierarchy is inserted between the agency head and the minister. This usually takes the form of a governing board. The formal independence of an agency increases if an alternative or competing level of political supervision is inserted between the agency and the departmental minister. We only include governing boards, which all possess decision-making authority. Such governing boards are responsible for the appointment of the agency head, for the preparation of the budget, and the agency head is accountable to the board both when it comes to the implementation of policy and the management of the agency. It is important to note that the head of the agency is not subjected to direct oversight by the minister but is answerable only to the governing board. In turn, these boards are endowed with decision-making authorities, which exempts them too from direct ministerial oversight, even when (some of) the members may have been appointed by the minister (often after consultation of societal interest groups or branch organizations). Boards with

⁶ Gilardi’s measure of formal autonomy is an aggregate index containing the following dimensions of agency design: the agency head’s status (e.g., terms of office, dismissal), the status of the members of the management board, the formal-legal basis of agency autonomy, regulatory competences, and the dimensions of financial and organizational autonomy (e.g., source of agency budget, decisions on internal agency organization).

⁷ Later, we will test additional models with a slightly adjusted measure for formal structural autonomy; we will adjust this variable by combining it with the type of legal instrument by which the agency is created.

advisory authority have been excluded from the study. Governing boards break the formal line of hierarchy and accountability. We use a dummy variable: agencies whose head reports to a governing board are coded “1” and others are coded “0.” Figure 2 shows the variation in formal structural autonomy in Denmark, the Netherlands, and Sweden.

Overall, only 4 (6%) out of 64 agencies in Denmark is an agency whose head reports to a governing board; the directors of the 60 other agencies directly report to the minister and/or his department. Of a total of 178 agencies created in the Netherlands between 1945 and 2000, 118 (66%) have a governing board inserted between the agency head and the minister. In Sweden, finally, 81 (72%) against 31 agencies have a governing board. If we disregard the STAs, we see that the Netherlands created the majority of its agencies with a governing board in between 1990 and 2000. This contrasts with the decade between 1950 and 1960 where we observe two subsequent peaks that indicate the creation of agencies without a governing board. In Sweden, the creation of agencies with a governing board is dispersed over five or six peaks during the entire period under study. Every decade has its peaks, but the largest peak occurred during the first half of the 1980s. Although the Netherlands outnumbers Sweden in the creation of independent agencies in sheer absolute terms, in Sweden, the creation of independent agencies occurred on a more regular basis than in the Netherlands. This is further emphasized by the much broader mandates of Swedish agencies, a trait that is equally conspicuous for Danish agencies, even though they are fully integrated into the ministerial hierarchy.

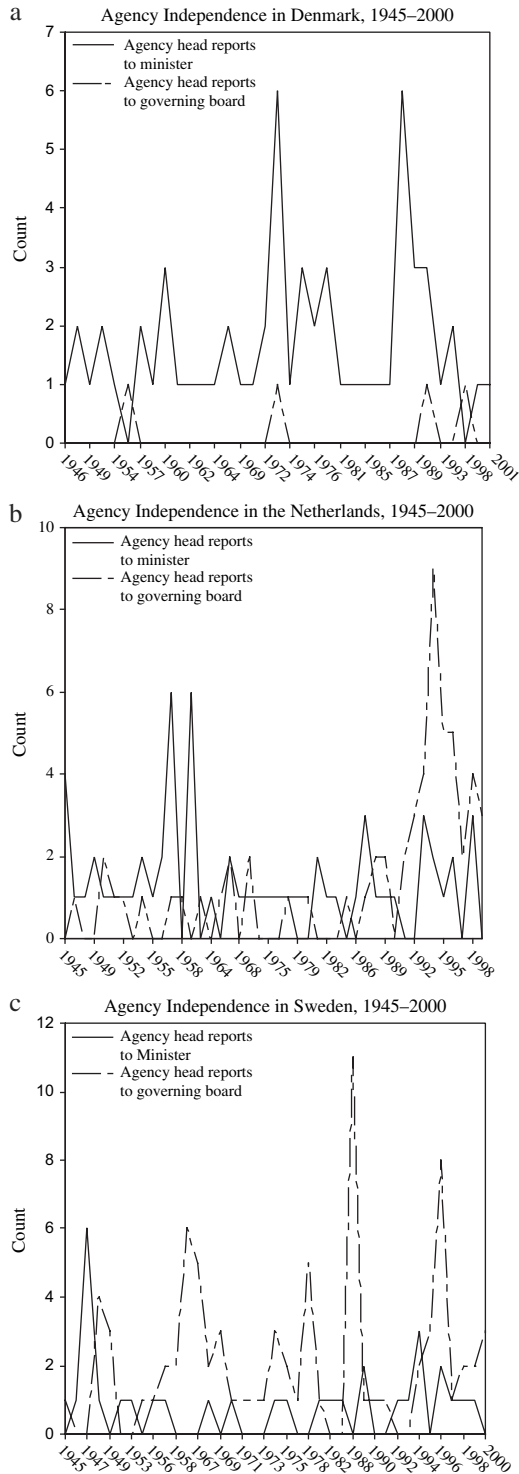
Explaining Agency Independence: The Independent Variables

The first explanatory variable is degree of policy conflict and we employ two proxies for it. Both variables are basically measures of the barriers that governing coalitions must overcome when they aim to change existing policies or to introduce new ones. Both measures have in common that they take the preferences of political institutions and the actors within them as the basic unit for calculating the degree of policy conflict. The first measure, *political constraints* (POLCON), measures the feasibility of a change in policy given the number of effective government branches in combination with the distance between the preferences of political actors within each branch (Henisz 2002). An alternative measure of policy conflict is the *ideological distances* measure developed by Tsebelis (2002). This variable, here called CMRANGE,⁸ measures the degree of policy conflict in political systems as the distance between the relevant veto players’ ideological position on a scale from 0 (extreme left) to 10 (extreme right). CMRANGE is in many respects similar to POLCON, but it differs in one important respect. Whereas in POLCON, the partisan alignments *per* institutional branch are calculated, in CMRANGE, only the distance between the preferences of the two most extreme parties in government is measured. Still, if hypothesis 1 is true, we should expect negative signs for both proxies’ coefficients.⁹

⁸ We employed the ideological distances index that is based upon the left-right political scale by Castles and Mair (1984), hence CMRANGE.

⁹ The data for both measures is adapted from their creators’ Web sites. Measures for POLCON came from Henisz’ Political Constraints Index Database (http://www-management.wharton.upenn.edu/henisz/_vti_bin/shtml.dll/POLCON/ContactInfo.html). The values for CMRANGE were adapted from Tsebelis’ Veto Players data set (available at http://sitemaker.umich.edu/tsebelis/veto_players_data).

Figure 2
 (a) Agency Independence in Denmark, 1945–2000 (b) Agency Independence in the Netherlands, 1945–2000 (c) Agency Independence in Sweden, 1945–2000



The second explanatory variable examines the effects of *political uncertainty* on agency independence. Several measures of political uncertainty are in use. Often, political uncertainty is measured in terms of politicians' expectations about cabinet stability. One measure for this is the duration of a cabinet in power measured in days (Lijphart 1999). The longer a cabinet stays in power the lower the level of uncertainty becomes. Another measure is portfolio turnover: the number of reshuffles at given ministerial posts. With this measure, Huber and Shipan (2002, 197) estimated the "expectations about how likely it is that a given minister's relationship with civil servants will be severed." They assumed that high turnover rates cause insecure relationships between ministers and civil servants increasing possibilities of obstruction of ministers by civil servants. Given the long time period and the large number of policy areas our study covers, we have not used portfolio turnover rates as a measure of cabinet instability. Instead we chose to measure political uncertainty by looking at the *replacement risks* faced by governments in power. Following Gilardi (2005, 91), we measure REPLISK as the product of the standard deviation (SD) of the partisan center of gravity over 7 years and of the inverse of the actual duration of governments.¹⁰ Taking the changes of the ideological orientation of incumbent governments over a period of 7 years, we measured the governing politicians' general perceptions of the risk to be replaced by their opponents in a given time period. This is a rough measure of uncertainty as it tries to grasp politicians' subjective judgments of the level of volatility within their system. We expect a positive sign: governments facing high risks of being replaced by their opponents will more likely design agencies with a higher degree of formal autonomy, so that their successors will exert less control over the agency.

To measure the historical and cultural variation between the countries, we use two variables. In order to capture the impact of the context within which agencies are created, we use country dummies for assessing the probability that an independent agency will be created within a country. This measure does, however, not cover potential changes in national administrative tradition or culture over time. It is not problematic as we are only interested in cultural differences between various countries. (Should variations over time exist, however, due to the historical continuity of national discourses about politics and administration in these countries, we feel confident that such changes over time have remained within a limited bandwidth.) We expect a positive sign for the dummy coefficients. Our historical measure is the number of times an agency with a high level of autonomy (i.e., agency with a governing board) was established before the creation of a new agency. Should path dependency exist, we should find that when more agencies of a certain

¹⁰ The actual duration of government was measured in days, months, as well as years and was tested for each time unit—with the same results. The center of gravity of governments was measured on the basis of the "ideological complexion of government" measure by Woldendorp et al. (1998). Ideological complexion measures the relative dominance of leftist, centrist, or rightist parties in a ruling government (1 = rightist, 2 = center-rightist, 3 = centrist, 4 = center-leftist, 5 = leftist). We then calculated the SD of ideological complexion over a 7-year period. Higher levels of SD indicate more frequent changes in the ideological orientation of governments over a period of 7 years. The product of the inverse of government duration and the SD of the partisan center of gravity is then a proxy of the perception of an incumbent government of the risk of being replaced by the opposition. We assume bounded rationality: a government in power does not exactly calculate its risk of being replaced before its term ends on the basis of the exact number of days, months, or years its predecessors were in power. Assuming that politicians obtain their insight concerning their chances to stay in power once they assume it, we calculated replacement risks over the following fixed years: 1945–51, 1952–58, 1959–65, 1966–72, 1973–79, 1979–85, 1986–92, and 1993–2000. An alternative way was to take the years preceding the creation of the agency. We then would have had problems for agencies created during the 5 or 6 years following 1945 as the data set of Woldendorp et al. is left censored for 1945.

Table 1
Description of Variables

Variable name	Description	Source
Dependent variable		
Formal agency autonomy	Dummy variable for agencies with a governing board	
Covariates		
Policy conflict	(a) Ideological distance between veto players and (b) political constraints	(a) Tsebelis (2002) and (b) Henisz (2002)
Political uncertainty	Replacement risk	Gilardi (2005) (Franzese 2002)
Historical-cultural legacies	(a) country dummies and (b) number of times that agencies with a governing board were previously established	
Control variables		
Credible commitment	Dummy for agencies created within economic policy areas	
Ideology	Ideological position of the enacting government	Woldendorp, Keman and Budge (2000)
Legal instrument	Dummy for agencies created by primary law	
Policy area	Dummies for policy areas within which agencies were created (trade, agriculture, labor, environment, justice, social policy)	

type are established the more politicians will choose the institutional design of the majority of the agencies that were created before.

Now we turn to the measurement of our control variables. Since it is widely claimed that independent regulatory agencies are more likely to be created within economic policy areas than within social policy areas we use a dummy for agencies created for the regulation of economic policy areas (positive sign). To measure ideology, we employ the *ideological complexion* measure of Woldendorp, Keman, and Budge (2000): 1 = rightist, 2 = center-rightist, 3 = balanced situation, 4 = center-leftist, and 5 = leftist. The *legal instrument* by which an agency is created is measured by a dummy variable, which is coded 1 if the agency is created by primary law, 0 when otherwise. Finally, in order to control for the various agency styles across ministries, we coded the policy area within which the agency is created. Policy area is an aggregate measure for ministerial portfolio, which would have been a more accurate measure for ministerial departmental styles. However, ministerial portfolios are regularly rearranged and renamed. Therefore, we decided to aggregate individual portfolios within a number of policy areas that are stable over time (tables 1 and 2).

RESULTS

Using binary logistic regressions,¹¹ we estimated a base model with only the political and historical-cultural variables included and a full model where we added the control variables to the base model. Table 3 reports the logistic coefficients. A quick scan shows that political

¹¹ All models are calculated with Intercooled Stata 9.0.

Table 2
Summary Statistics

	<i>N</i>	Mean	SD	Minimum	Maximum	Prediction
Dependent variable						
Formal structural Autonomy	293	.49	.50	0	1	
Independent variables						
Replacement risk (logged years)	293	.18	.21	0	1.12	+
Political constraints	293	.51	.07	0.39	.66	-
Ideological distances	285	1.66	1.64	0.0	4.80	-
Cumulative count of previously established agencies with board	293	25.49	24.40	0	81	+
Control variables						
Economic regulation	293	0.46	0.50	0	1	+
Ideological complexon of government and parliament	293	3.29	0.84	2	4	-
Primary law	293	0.75	0.44	0	1	+

determinants fail to explain the probability of the creation of an independent agency. By contrast, historical and cultural determinants turn out to be highly significant, even when we control for alternative explanations.

When we formulated the conflict and uncertainty hypotheses, we were quite agnostic towards what the causal effects of political factors on formal autonomy would be. If we had

Table 3
Logistic Regressions for Formal Structural Autonomy

	Base model		Full model	
	<i>B</i> (SE)	<i>B</i> (SE)	<i>B</i> (SE)	<i>B</i> (SE)
Political constraints	1.33 (1.80)		2.43 (1.87)	
Ideological distance		-0.09 (0.15)		-0.15 (0.13)
Replacement risk	-1.22 (1.00)	-1.05 (1.05)	-1.18 (1.16)	-1.11 (1.33)
The Netherlands	2.10** (0.57)	2.30** (0.66)	2.60** (0.63)	2.94** (0.74)
Sweden	2.64** (0.62)	2.58** (0.64)	2.64** (0.66)	2.54** (0.65)
Previously established agencies with governing board	0.03** (0.01)	0.03** (0.01)	0.03** (0.01)	0.03** (0.01)
Economic regulation			0.47 (0.44)	0.40 (0.49)
Ideological complexon			0.44 (0.25)	0.41 (0.26)
Primary law			0.50 (0.48)	0.37 (0.49)
Trade			1.86* (0.81)	1.99* (0.83)
Agriculture			1.72* (0.86)	1.65 (0.85)
Labor			2.18** (0.84)	2.27** (0.86)
Environment			2.67** (0.81)	2.67** (0.82)
Justice			0.82 (0.88)	0.87 (0.89)
Social			1.42 (0.85)	1.40 (0.86)
Constant	-3.22** (1.03)	-2.44** (0.59)	-7.68** (1.57)	-6.15** (1.31)
<i>N</i>	293	285	293	285
Chi square (df)	53.80** (5)	50.98** (5)	86.24** (14)	64.79** (14)
Pseudo <i>R</i> ²	.244	.244	.304	.304

p < .05, ***p* < .01. Robust SEs adjusted for clustering on date of creation are in parentheses.

followed the consensualist logic of parliamentary politics, we could have expected that neither policy conflict nor political uncertainty would play a decisive role in the creation of agencies. Our findings support this reasoning: institutional design in parliamentary systems tends to be more or less independent from political factors.

In order to be more confident about this result, we conducted a robustness test by testing each model for each country separately. The results of these tests (not reported here) point at the same direction as the findings reported in table 3. Of the measures for policy conflict, political constraints turned out positive and significant in Denmark and Sweden. Ideological distance, Tsebelis' range variable, remained nonsignificant throughout all models. Given the fact that political constraints were not significant in the Netherlands, we may infer that policy conflict has somewhat more often effect on institutional design in parliamentary regimes with frequent minority governments than in systems with majority coalition governments. This points at the direction of Huber and Shipan's findings, but the basis for making the same inference from our observations remains weak.

We find full support for historical and cultural explanations. The country within which an agency is created is a strong predictor of the degree of formal autonomy. A shift from another country to the Netherlands, that is, a shift from 0 to 1 in the Netherlands dummy, increases the probability of the creation of an agency with a governing board with 48% in the base model with political constraints and 52% in the base model with ideological distance. For Sweden, these percentages are 58% and 57% respectively. (In both full models, the percentages in probable changes are between 56% and 63%.) By contrast, the impact that the number of previously established independent agencies has the likelihood that each following agency will be independent as well is very small: each single independent agency previously established increases this probability by just 0.6%.

We tested the path dependency variable also for each country separately. Path dependency is strongest in the Netherlands but not stronger than what is found in our main analysis. In Denmark, path dependency is only weakly significant in the model with political constraints as conflict measure; in Sweden, path dependency is significant in none of the models. This means that the impact of the number of previously established independent agencies in the main model can largely be attributed to the strength of path dependencies in the Netherlands. This finding corroborates the findings of Van Thiel (2004): path dependency is a significant and strong predictor of subsequent delegations, but its effect is substantially small.¹²

The findings for our main hypotheses do not change when we test for alternative explanations. All variables of the base model retain their strength and direction. A close inspection of the alternative factors reveals the following. One of the core theses within studies of regulatory administration, that is, the credible commitment thesis on the administration of economic regulation, is here rejected. The assertion that agencies created for the administration of economic regulation will be given more formal autonomy than agencies administering noneconomic regulation is not supported by our study.¹³ Two additional

12 There may exist a risk of overestimating the effect of path dependency. Other variables that we have not included in the analysis might be important here, the implication being that change over time is partly endogenous.

13 Economic regulation is measured as an aggregate variable containing all agencies created within the following policy areas: business, financial markets, utilities (telecom, gas, electricity), and competition policies. As a robustness check, we additionally tested for dummies for each of these distinctive economic regulatory areas: none of the dummies was significant. Closest to significance came the dummy for *reg_finance* with $p = .064$.

controls for the impact of politics, ideological complexion and primary law, turn out to be nonsignificant as well. These findings further underscore the minor role political factors play within the creation and design of regulatory agencies.¹⁴ Of the alternative explanations, we find that only policy areas within which agencies are created are good predictors of the level of formal autonomy of agencies. The policy areas most predictive are labor and environmental policies. As for labor, this is a highly corporatist sector where in both Sweden and the Netherlands most policy making goes through agencies with bipartite governing boards.¹⁵ The number of environmental agencies has strongly risen after 1980 (Christensen and Yesilkagit 2006a, 228), and they have been increasingly given more autonomy from political oversight from the executive than others. It is within this area where perhaps the credible commitment problems of governments are strongest.¹⁶

Finally, until now, we tested the hypothesis for one single measure of formal autonomy. The existence of an extra layer between the political executive and the agency is a clear-cut and cross-nationally applicable measure for formal autonomy. Other measures are possible, such as the degree of financial autonomy and policy-making autonomy, but they are difficult to collect for this amount of agencies and time period: levels of legal discretion and financial and budgetary rules have changed throughout the period of study. If they could be collected, they would either require a simplification in the coding scheme such that the data collected for all three countries at different time periods would become comparable or they would require some effort in their correct interpretation. Still we wanted to be sure that our findings would not solely depend on this measure of formal autonomy alone. Therefore, we constructed a ranking of formal autonomy through combining structural autonomy with the legal instrument through which the agency was created.¹⁷ We tested the same models using ordered probit estimations. The findings of these analyses, which are not reported in this article, corroborated our findings with above described models.

DISCUSSION AND CONCLUSION

This article has put two competing theories to the empirical test: political versus historical and cultural theories of agency design. Hitherto, studies on regulatory administration have treated their key variables as if they were not affected by the wider context in which they operated. The study has convincingly demonstrated that factors such as national

14 Primary laws are coproduced by the legislature and the executive and were employed as an indicator for the possible conflicts that may have emerged between the two branches of government. We suggested that the level of potential conflict at the time of agency creation may have been higher during minority governments than during majority governments. We generated the interaction term primary law \times minority and included it within both full models. The effect of the interaction term was not significant.

15 For Denmark, bipartite representation is equally strong, but it is found in nonexecutive boards with advisory or decision-making authority which are attached to either ministerial departments or more likely agencies.

16 These findings corroborate the study of Van Thiel (2006) on “quangos—creation-styles” that exist across policy areas in the Netherlands. Her and our findings strongly suggest that policy areas have their own sectoral cultures and pasts practices.

17 We created two slightly different additional dependent variables, COMPOSITE1 and COMPOSITE2. The categories for COMPOSITE1 are (from least to most autonomous): (1) agencies without a governing board created by secondary law, (2) agencies without a governing board created by primary law, (3) agencies with a governing board created by secondary law, and (4) agencies with a governing board created by primary law. In COMPOSITE2, the middle categories swap positions.

administrative context, for example, traditions, styles, and historical trajectories, should become integrated into models of agency design if we are to appreciate the political and economic causes of institutional choice in the public sector better. It was our database that enabled us to assess these country-specific factors. In contrast to other agency databases, ours contains observations over a longer time period for each country. We were able to examine a multitude of agencies created in three different countries.

This conclusion raises two important questions to be discussed. The first concerns the importance of historical and institutional context for policy makers deciding how to design regulatory administration. It is striking to what extent solutions with deep roots in the administrative tradition of each country are preferred. In our interpretation, policy makers are constrained by vested interests within specific policy fields even when they decide to create new agencies. By choosing types of administrative structures that are already in operation and well known to policy makers, they have certainty as to how they will affect these interests. The reason is that policy makers in government and parliament make these design decisions in situations with considerable uncertainty as to the arrangement will work. In order to reduce this uncertainty, they are attracted by institutional blueprints that are known by them and in addition tried out in national practice.

The second concerns the role of the political factors of policy conflict and political uncertainty. The hypotheses on which this analysis was based points back to literature whose original focus has been on the scope for institutional design in the American separation of powers system. The insights gained in this research have naturally led to questions as to their relevance for parliamentary systems. Therefore, a logical first step has been to look for parallels to political phenomena assumed to be important in American policy on agency design. This accounts for the strong interest in the difference between divided and unified government. However, when translating these phenomena to the context of parliamentary government, it is easy to overlook the institutional subtleties involved. So, parliamentary government is both a system of executive dominance and a system of parliamentary accountability. This fundamentally changes the political conditions under which agencies are designed as well as the decisions concerning agency status (Christensen and Yesilkagit 2006b).

Another conclusion that follows from this article is that economic regulation and credibility might not be that tightly linked to each other as studies of regulatory administration and policy have suggested until today. The past two decades or so have been designated as the advent of the Regulatory State in Western Europe. Nothing less than a paradigm shift from “government” to “governance” was predicted. It is irrevocably true that major transformations have taken place within former state-directed areas, such as utilities, financial markets, and industrial policy making. Public monopolies have been abolished, markets have been liberalized, and a host of regulatory agencies have been created. These new bodies have reshaped the administrative landscape of European parliamentary systems. However, the explanation for the creation of these agencies lies not in the functional argument of credibility or the nature of regulation. There is, according to our analysis, perhaps, not a substantial break with agency forms chosen in the past than is claimed within the broader literature.

A third question concerns the generalizations allowed from this study. We have analyzed only three countries that are similar in important respects but vary as to the role played by agencies in central government. This comes close to a classical most similar systems design. In this comparative analysis, the Swedish system is distinct because

a dualist principle distinguishing between government policy and policy implementation permeates not only central government organization but also has been inherent in the constitution ever since the 17th century. The Danish and Dutch systems are equally distinct, even though central government and agency organization in either case is a matter of political choice, entirely unconstrained by constitutional provisions. The latter systems, thus, conform to a general West European pattern. The question still remains whether our political variables would have been significantly more important if more countries had been included in the analysis. It would have been of particular interest to include countries into the analysis that have either majority government (like Britain and the Westminster system) or a semi-presidential system like France. The studies that have been done mostly rely on either case studies or single country analyses, but in our reading, they basically concur with our findings that administrative change finds place within a historical and political framework and that political conflict and uncertainty is of limited importance to design decisions (Elgie and McMenamin 2005; Richards and Smith 2006).

The ambition in this article has been to analyze the potential for insights gained in the literature on agency design when applied to parliamentary systems with low levels of political conflict and when taking into consideration that these design decisions are not made in a historical void. Our conclusions point to the need for more analysis within the field that both take into consideration administrative tradition and delve more explicitly with the subtle logic of the relations between the executive and the parliament in parliamentary systems.

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