

Credible commitment, political uncertainty, or policy complexity?
Explaining variations in the independence of non-majoritarian institutions
in France

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Abstract

A common feature of contemporary political systems is the increasing amount of delegation from governments to non-majoritarian institutions. Governments may decide to delegate authority to such institutions for reasons relating to credible commitments, political uncertainty, and policy complexity. This article focuses on Independent Administrative Authorities (*Autorités administratives indépendantes*) in France. We demonstrate that these institutions enjoy varying degree of independence. We find that the degree of independence varies as a function of two factors: the need to make a credible commitment in areas subject to market opening and the complexity of policy in particular areas.

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A common feature of contemporary political systems is the increasing amount of delegation from governments to non-majoritarian institutions, or 'governmental entities that (a) possess and exercise some grant of specialised public authority, separate from that of other institutions, but (b) are neither directly elected by the people, nor directly managed by elected officials'.ⁱ These institutions include courts, central banks, regulatory authorities, quasi-government agencies and so forth. There are various reasons why governments may decide to delegate their authority in this way. For example, they may want to make a credible commitment in order to pursue certain policy objectives more efficiently. Alternatively, in a context of political uncertainty, they may choose to delegate power and insulate their policies from reforms by political opponents. Equally, they may need to delegate decision making to technical experts in areas of policy complexity.

This article asks the following question: why does the degree of independence vary from one non-majoritarian institution to another? This question is addressed by focusing on the delegation of authority from governments to so-called Independent Administrative Authorities (*Autorités administratives indépendantes* - AAIs) in France. In order to explore the research

question, a number of hypotheses were derived from the existing literature on delegation. These hypotheses centred on motivations relating to credible commitments, political uncertainty and policy complexity. Then, an index of independence was constructed and the degree of independence of each AAI was calculated. This served as the dependent variable. In turn, various explanatory variables were identified and a multiple regression was carried out. The results showed that the degree of AAI independence varied as a function of two factors: the need to make a credible commitment in areas subject to market opening and the complexity of policy in particular areas. By contrast, the results also showed that the degree of independence was not related to the need to make a credible commitment as a function of the numbers of veto players in the system or as a response to the problem of political uncertainty.

These findings are significant in a number of ways. Firstly, whereas the literature often suggests that the number of veto players and the degree of political uncertainty is instrumental in the decision to delegate, we find that this is not so in the case of AAIs. This casts doubt on the generalizability of such arguments. Secondly, up to now the academic literature has tended to focus on the creation of non-majoritarian institutions and the reasons why they are established in some areas rather than others. In our study, we examine institutions that already exist, but that vary in terms of the degree of independence that has been granted to them. Thus, we suggest that the

existing literature can be extended to include studies of existing agencies, rather than simply focusing on the issue of whether or not an act of delegation has taken place.

There are three main parts to the article. The first part briefly outlines the existing literature on delegation and identifies the hypotheses to be tested. The second part describes the set of AAIs in France and measures the degree of independence that each institution enjoys. The third part tests the hypotheses and presents the findings of the multiple regression model. There is a brief conclusion.

DELEGATION TO NON-MAJORITARIAN INSTITUTIONS

There is an increasingly large body of work on delegation. The earliest studies of this sort focused overwhelmingly on the US and the relationship between Congress and executive agencies. Here, the main issue was whether, by delegating, Congress had abdicated power to such agencies or whether it was still able to control their actions.ⁱⁱ More recently, studies of the US have shifted the emphasis somewhat, focusing on the design of legislation or the choices of political actors at the delegation stage.ⁱⁱⁱ In a European context, attention has also focused on the issue of government control. Here, the usual assumption is that delegation to non-majoritarian institutions has reduced the decision-making capacity of national governments. So, for example, it has been argued

that delegation has ‘reconfigured the architecture of the state and the EU ...’^{iv} and that non-majoritarian institutions ‘have become powerful participants in policy making and may now constitute a ‘fourth branch of government’ in Europe’.^v In addition to this work, there is now a growing body of literature that has applied the more recent US work to the European policy-making process. For example, Majone has explored the various logics of delegation, focusing on delegation as a response to the problems of credible commitment and fiduciary relations.^{vi}

This article builds on the more recent US and European work. It examines the reasons why political actors delegate different degrees of independence to non-majoritarian institutions. In so doing, it focuses on the strategic choices of actors at the point of delegation, so avoiding the problem of observational equivalence.^{vii}

There are various reasons why political actors may decide to delegate decision-making authority to non-majoritarian institutions.^{viii} The classic reason is that it helps to establish a credible commitment and solve the problem of time-inconsistency.^{ix} Here, the basic problem is that while it may be rational to do a certain thing at a particular point in time, it may not be rational to do it over time. As Kydland and Prescott put it: “We find that a discretionary policy for which policymakers select the best action, given the current situation, will not typically result in the social objective function being

maximised" (1977, pp. 473-74).^x Or, as Shepsle states, rather more succinctly: 'Discretion is the enemy of optimality, commitment its ally'.^{xi}

In the context of non-majoritarian institutions, the literature on credible commitments has taken two main forms. Firstly, there is the argument that the problem of credible commitment affects some policy areas more than others. In particular, it affects sectors that are more internationally interdependent, or that have recently been subject to market opening. So, for example, the desire to establish a credible commitment is the basic motivation behind the decision to create independent central banks. Only by delegating authority to such an institution can governments convince the public that they are serious about wanting to reduce inflation and, thus, reduce the level of inflationary expectations among the public. More generally, it is also the motivation behind the decision to establish Independent Regulatory Agencies (IRAs) in areas that have recently been the subject of privatisation or market-opening, such as telecommunications, electricity, transport and so on.^{xii} From this work, we can construct the following hypothesis:

H1 The degree of independence granted to non-majoritarian institutions will be greater in policy sectors that have been subject to market opening

Secondly, there is a further argument that the problem of credible commitment is greater when the number of veto players is smaller.^{xiii} In cases where there is a very small number of actors, perhaps only a single actor, whose agreement is necessary to change the status quo, then the potential for policy consistency is reduced. In this case, there is a greater need for governments to make a credible commitment in order to address the resulting time-inconsistency problem. On the basis of this logic, it can be hypothesized that there is an inverse relationship between the number of veto players and the degree of independence granted to non-majoritarian institutions. This leads to a second hypothesis:

H2 The degree of independence granted to non-majoritarian institutions will be greater in cases where the number of veto players is smaller

Another reason that has been put forward to explain the motivation for delegation relates to the problem of political uncertainty. As Moe puts it, political actors 'know that whatever policies and structures they put in place today may be subject to the authoritative direction of other actors tomorrow, actors with different interests who could undermine or destroy their hard-won achievements'.^{xiv} This uncertainty may be a function of the process of regular electoral competition that, as Horn notes, 'makes it very likely that the current enacting coalition will eventually be replaced by one representing

different interests and with quite different policy preferences'.^{xv} Alternatively, uncertainty may simply be caused by the standard McKelvey-like situation where the preferences of a principal composed of multiple actors shift because of majority-rule instability.^{xvi} Whatever the cause, the effect is the same. Incumbent political actors have an incentive to transfer power to independent institutions. As Moe states: 'The group's task in the current period ... is to build agencies that are difficult for its opponents to gain control over later ... this often means building agencies that are insulated from public authority in general—and thus from formal control by the group itself'.^{xvii} Likewise, Horn argues that the legislature is likely 'to favor a regulatory agent that is relatively independent from the incumbent legislature' (1995, p. 53).^{xviii} In this context, we can propose a third hypothesis:

H3 The degree of independence granted to non-majoritarian institutions will be greater when the level of political uncertainty is high

Another reason put forward to explain why political actors delegate authority to non-majoritarian institutions is that it resolves problems of information asymmetry. In recent years, policy making has become more complex. This is not merely because of the growth of government and the interaction between issues in seemingly different policy areas, it is also because policy making has become more technically complex. In this

situation, political actors are at a disadvantage. They require the support of policy experts. They do not have the resources or the incentive to develop such expertise for themselves. As Thatcher notes: 'Increased information requirements made it more difficult for elected politicians to produce clear benefits for voters from their regulatory decisions. Even issues that were more directly relevant to voters became increasingly linked to arcane matters that were incomprehensible to non-specialists'.^{xix} In other words, highly technical policy areas will require the attention of an independent rather than a political body. In this context, a fourth hypothesis can be proposed:

H4 The degree of independence granted to non-majoritarian institutions will be greater when the level of policy complexity is high

The rest of this article focuses on the delegation of authority from governments to Independent Administrative Authorities in France. France is a particularly appropriate country to examine. As noted above, to date, the literature on delegation has focused overwhelmingly on the US. The US-centric studies have produced supposedly generalizable arguments. In this context, while in recent times there has been an increasing focus on cross-national studies, France is an extremely interesting test case. This is because France is often considered to be exceptional in comparative terms largely because of its commitment to a strong centralized state. Thus, France is a

tough test for the literature on delegation. If we find that any of the US-derived hypotheses are verified, then we can reasonably conclude that the theory is strengthened. If not, then either French exceptionalism is alive and well or the theory is flawed.

By the same token, AAIs are particularly appropriate institutions to study. To date, the literature on delegation has tended to focus on the decision to create institutions. In other words, there is a dichotomous variable: why is there an independent institution in some areas rather than others? In our study, we focus on a set of institutions that have already been created and have varying degrees of independence. Therefore, we are studying a continuous variable: why does the degree of independence vary from one institution to another? If we find that the theory helps us to answer this question, then we will have demonstrated that there is the potential for the theory to be extended beyond its usual domain. The next section defines the concept of an AAI, identifies the AAIs that can be found in contemporary France and measures the independence of each of these institutions.

INDEPENDENT ADMINISTRATIVE AUTHORITIES IN FRANCE

The concept of an Independent Administrative Authority has been present in France since 1978 with the creation of the National Commission for Information and Civil Liberties.^{xx} All the same, even though AAIs have now

been explicitly recognized in law for more than a quarter of century, no standard definition of the concept has emerged. Instead, more often than not, writers choose to identify what they consider to be the main characteristics of such institutions, even if such a description often falls short of a formal definition in the strict sense of the term.^{xxi} In this context, the Council of State (*Conseil d'État*), which is the highest court of administrative law in the land, has provided the benchmark definition of an AAI. The Council of State declared that AAIs are institutions that 'act on behalf of the State without being subordinate to the Government and that, in order to carry out their tasks properly, benefit from guarantees which allow them to act with complete autonomy, such that their actions may not be influenced or sanctioned except by the courts. In order to fulfil this mission, they have varied sets of powers which, in some cases, give them the power of regulation, individual authorisation, control, injunction, sanction and, indeed, even appointment, but which, in other cases, is merely one of influence, even if this power is couched in fairly formal terms so that it gives them a genuine moral authority'.^{xxii} Even though this definition hardly trips off the tongue, it is at least fairly comprehensive and, certainly, it means that AAIs can be classified as non-majoritarian institutions.^{xxiii} In terms of the list of such institutions, as before, it is reasonable to treat the recent Council of State's report as the definitive study on the topic to date. This report identified 34 institutions that could be classified as AAIs.^{xxiv} (See Table 1).

AAIs come in all shapes and sizes and they operate in many different areas.^{xxv} There is a concentration of organisations in the economic and financial sectors, including the Banking Commission and the Financial Markets Council. There are also a number of organisations that are designed to protect citizens from abuse by either public officials or politicians. These include the Commission for Access to Administrative Documents, the National Commission for the Control of Telephone Tapping and the National Commission for Campaign Finance and Political Contributions. That said, the set of AAIs is very diverse, ranging from institutions such as the Competition Council to the Council for the Prevention of and the Fight against Doping in Sport and the National Evaluation Committee for Universities.

For the purposes of this study, two aspects of the set of AAIs are particularly noteworthy. Firstly, they actually exist. We are examining institutions that have been set up, but which vary in the degree of decision-making authority that has been granted to them. Secondly, while the list of AAIs does include a number of classic IRAs, including the Higher Council of Broadcasting, the Telecommunications Regulatory Authority, the Electricity Regulatory Commission^{xxvi} and the Stock Exchange Commission, it includes many other types of institutions as well, such as the Opinion Poll Commission, the Commission for Consumer Safety and the National Ethical Commission for Law and Order. In most of the literature on delegation, writers have confined themselves to the study of IRAs and little more. One of

the topics we wish to investigate is whether the literature on the motivations behind the delegation process can be applied to non-majoritarian institutions generally, rather than just a subset of such institutions, namely IRAs alone.

Table 1 about here.

In order to proceed with the analysis, the first task was to establish the degree of independence granted to each AAI, or a measure for the dependent variable. To this end, an index of agency independence was constructed.^{xxvii} In order to avoid the problem of observational equivalence, it is important to focus on the instruments of control that exist in law rather than the post-delegation behaviour of the agency in question. Thus, the index is based on the most up-to-date statutes relating to the institution in question. There are two basic elements to the index: indicators relating to the head of the agency and the board of managers; and indicators relating to the powers of the agency.

Firstly, eight indicators were identified relating to the head of the agency and the governing board. These are: the term of office of the head and the agency and the board of managers respectively; the procedure by which they are appointed and dismissed; and whether or not their term of office can be renewed. For each of these indicators, a range of scores from 0 (no independence) to 1 (full independence) was identified. For example, if the president's term of office was less than three years, then a score of 0 was assigned because the turnover would be too great for incumbents to gain any

independent decision-making authority; if the term was three years, then the score was 0.2; four years was 0.4; five years was 0.6; six was 0.8; and eight years and over was 1. In terms of appointments, if the head was appointed by a single elected representative, then a score of 0 was assigned; by more than one elected representative, then 0.25; by a complex mix of elected representatives and non-elected actors, 0.5; by one or more non-elected actors, 0.75; and if the appointment was made by the board of the agency itself, then a score of 1 was assigned. In terms of dismissal, if the power to dismiss the head was at the appointer's discretion, then a score of 0 was assigned; no specific provisions for dismissal scored 0.33; dismissal only for reasons not related to policy scored 0.67; and complete security of tenure scored 1. Finally, if the appointment was renewable more than once, then a score of 0 was assigned; no specific provisions scored 0.33; a once-off renewal scored 0.67; and no renewability scored 1. After all the scores had been assigned, the mean of the scores for the head of the agency and the board respectively were calculated. The mean of these means was then calculated. This figure is referred to as 'mean 1 appointments'.^{xxviii}

In relation to these calculations, a number of points of clarification need to be made. Article 13 of the 1958 Constitution indicates that a person who is permanently employed in the civil service, such as a member of the Council of State or another of the so-called *grands corps*, has to be appointed to another public-sector post, like an AAI, by a decree. Depending on the case,

the decree may have to be signed by the President or the Prime Minister or both, and it may or may not have to be approved in the Council of Ministers. What score should be assigned in this case? For example, if the Vice President of the Council of State proposes an appointment, but the proposal has to be confirmed by a presidential or prime ministerial decree, should a score of 0 be assigned because the decree has been signed by an elected representative or should a score of 0.75 be recorded because the nomination has been made by a non-elected actor? Here, the latter score was considered more appropriate. This is because the President of the Republic or the Prime Minister is merely obliged, by law, to issue a decree. Thus, in effect the elected representative has not made the appointment. Indeed, even if the proposal were to be rejected by either the President or Prime Minister, the Vice President of the Council of State would still be able to propose another person who may be equally objectionable. Furthermore, it might be added that there is no evidence to indicate that either the President or Prime Minister has ever rejected such a proposal. Thus, it is reasonable to assume that a score of 0.75 is appropriate in this case and others like it.

A similar issue concerns the case where, for example, the Prime Minister appoints someone who is recommended by another institution, or where the Prime Minister has to choose one person from a list of people nominated by such an institution. Again, here, a score of 0 was not considered to be appropriate in these cases. This is because, even though, especially in the

latter case, the Prime Minister may have a degree of discretion in the appointment, it may also be the case that, say, a left-wing Prime Minister is faced with four right-wing nominations. Another difficult issue was the case where a political appointee to one institution is a member *ex officio* of another institution. Once more, here, a score of 0 was not assigned, but was treated as a complex mix and a score of 0.5 was recorded. By contrast, there were two problematic cases where for the purposes of this study a score of 0 was assigned. The first was where an elected representative is obliged in law to choose a 'suitably-qualified' candidate. This was assigned a score of 0 because, for example, a right-wing President has free rein to appoint a suitably-qualified right-wing person. The second was where an elected representative makes an appointment following the advice of another person or institution. Here, it was assumed that any such advice can be freely ignored and the elected representative has the right to appoint whomsoever s/he chooses. Thus, a score of 0 was appropriate. This was different from the case where an elected representative appoints someone who is recommended by another institution because in that case the refusal by, say, a right-wing President to accept a left-wing recommendation may simply have the result that another left-wing name is recommended by the institution concerned.

To illustrate how this element of the index of independence works, let us take the example of ART, the telecommunications regulator. The head of ART is appointed by the President of the Republic and so scores 0. The board

members are appointed by the President of the Republic and by the Presidents of both the National Assembly and the Senate. Thus, the appointment score for the board is 0.25. The term of office of both the head and the board members is six years and so both score 0.8. The terms of the head and the board members are non-renewable and so both score 1. Moreover, they cannot be dismissed during their term, so both the head and the board members score 1 in this respect as well. On the basis of these scores, the mean for the head is 0.7, the mean for the board is 0.76, and the overall score, the mean 1 appointments, score, is 0.73.

Secondly, five indicators were identified relating to the powers of the AAI in question. These comprised, firstly, the power to give advice, make recommendations, or present proposals to the government. Most AAIs had this power. However, the Consultative Committee on National Defence Confidentiality and the Higher Council of Agence France Press had only this power. Secondly, there was the power to hold an official investigation into a particular topic, to request that a representative of the body under investigation to appear before the AAI, or to make an on-site inspection. A number of institutions only had these first two powers. These included the Ombudsman, the Commission for Consumer Safety and the Commission for Access to Administrative Documents. Thirdly, there was the power to issue a decree (*règlement*). Such a decision may have potentially important repercussions. However, usually, it has to be counter-signed by a political

representative. Thus, it is a circumscribed power. Fourthly, there was the power of appointment, the power to authorize a contract, or approve an agreement. For example, the Higher Council for Broadcasting has the power to appoint the heads of the public-sector radio and television organisations. Equally, ART has the power to issue licences to telecommunications operators. Finally, there was the power to impose sanctions or even cease the activity of a particular organisation in the area in question. A number of institutions enjoyed this power, including the Stock Exchange Commission and the Authority for the Control of Airport Noise. In this context, rather than trying to weight the relative importance of these powers, each was considered to be equally important. Thus, if an AAI enjoyed a certain power, then it was given a score of 1. Otherwise, a score of 0 was recorded. The mean of these five scores was then calculated. This figure is referred to as 'mean 2 power'. Three institutions had a mean score of 1 in this category: the broadcasting and telecommunications regulators and the Stock Exchange Commission.

The overall score for independence was then calculated simply by taking the mean of mean 1 appointments and mean 2 powers. These calculations resulted in a good range of scores for the dependent variable. The most independent institutions were found to be the broadcasting regulator and ART, which both scored 0.87. The least independent institution was the Cinema Ombudsman, which registered 0.17. The score for each institution is reported in Table 2.

Table 2 about here.

EXPLAINING AGENCY INDEPENDENCE

In the introductory section, three competing arguments were presented to explain why political actors might wish to delegate decision-making authority to non-majoritarian institutions: to establish a credible commitment; to insulate policy choices from opponents in the context of political uncertainty; and to address the problem of policy complexity. What is more, two versions of the credible commitment argument were identified: the decision to delegate may be required in the context of market opening, or as a function of the number of veto players in the system. Thus, four hypotheses were identified that might explain the varying degree of independence that has been granted to AAIs in the French case. Let us now test these hypotheses. We do so by identifying five explanatory variables and by applying a multiple regression analysis.

The first explanatory variable aims to test the first element of the credible-commitments hypothesis, namely that the degree of independence will be greater in policy sectors that have been subject to market opening. In order to test this hypothesis we identified the institutions that had been established to regulate newly privatized or marketized policy areas. To this

end, we decided to take the institutions identified in a recent book on financial and economic AAIs.^{xxix} This meant that the following institutions were included in the category of market-opening AAIs for the purposes of our study: the Competition Council, The Stock Exchange Commission, the Banking Commission, the Committee for Credit Establishments and Investment Firms, the Insurance Control Commission, the Commission for the Control of Mutual and Provident Institutions, the broadcasting, telecommunications and electricity regulators, the Commission for Shareholding and Share Transfers, the Commission for Consumer Safety, and the National Commission for Commercial Building.

The second explanatory variable aims to test the second element of the credible-commitments hypothesis, namely that the degree of independence will be greater in cases where the number of veto players is small. In one sense, this variable is extremely straightforward to operationalize. This is because George Tsebelis has calculated the number of veto players for each government during the Fourth and Fifth French Republics. (See <http://www.polisci.ucla.edu/tsebelis/>). For each AAI, we entered the veto-players score for the government in power at the time when the AAI was established. So, for example, the Higher Council for Broadcasting was set up during the government of Michel Rocard from 1988-91. According to Tsebelis's calculations, there was one veto player during this period. So, a

score of one was recorded for the broadcasting regulator. The veto-players scores for each AAI are set out in Table 2.

The third explanatory variable also aims to test the veto-players element of the credible-commitments hypothesis. While the veto-players variable may at first sight seem straightforward, it might be argued that Tsebelis's data constitute an inappropriate measure for veto players in the case of AAIs. This is because these data are designed to capture the general features of political systems, such as the number of political parties, policy distance, the political composition of the coalition and so forth. These data may suit cross-national macro- or meso-level studies very well. However, they may not be so relevant to the study of one set of government agencies in one particular country. Therefore, we decided to identify another variable to test the veto-players element of the credible-commitments hypothesis. To this end, we focused on corporatism. To the extent that all AAIs will be concerned with public policy in one form or another, it seems reasonable to suggest that political actors may have been motivated by extent to which a particular policy area is associated with corporatist-like arrangements. Huber and Shipan have also focused on corporatism as a proxy for veto players.^{xxx} Following the general logic of the veto-players argument, there should be an inverse relationship between the legislature's perception that there are private-sector veto players operating within the policy area in question and the degree of independence granted to AAIs. For example, the higher the

level of private-sector actors on the board and, hence, the higher the number of veto players, the less need there is for AAI to be independent in order to ensure a credible commitment.

This variable was operationalized by calculating the percentage of non-state actors on the governing council of the various AAIs. These actors include representatives of interest groups, professional associations, private companies, trades unions, employees' organisations and so forth. In some cases, the presence of non-state actors is clearly indicated. For example, some AAIs, such as the Financial Markets Council, make explicit reference to the appointment of 'representatives' of particular institutions or groups of people. So, the 16-member board includes six members representing financial intermediaries (two from investment companies and four from the banks), one member representing the trading markets' intermediaries, three members representing the issuers of listed financial instruments, and three people representing investors. Equally, the boards of some AAIs, among them the Commission for Consumer Safety, include appointees who are 'members' of equivalent organisations, or people chosen by such institutions. Here, the 16-member governing council includes three people chosen by the members of the national consumer organisations and three by the national professional organisations in this area.

In other cases, the situation was less clear-cut. For example, appointees who are members of the Economic and Social Council (*Conseil économique et*

social) are counted as non-state actors because, by and large, the Council is a corporatist body. However, when the President of the Economic and Social Council makes an appointment, then the appointee is not counted as a corporatist appointment because the President has the power to appoint whomsoever s/he wishes. This is the case for the Stock Exchange Commission. Equally, when a Minister chooses someone from a list of people drawn up by a representative institution, as in the case of the Commission for Consumer Safety, then this was considered to be a corporatist appointment. This is because the Minister's room for manoeuvre is very small. By contrast, and consistent with the logic of the 'complexity' variable below, when the law states that a person is appointed 'on the advice of' a representative institution, or if such an institution merely 'proposes' the name of an appointee to the Minister, then this was not considered to be a corporatist appointment because the Minister has free rein to ignore any such advice or proposals. The 'corporatism' scores are given in Table 2 below.

The fourth explanatory variable is called the 'political uncertainty' variable. Earlier, it was hypothesized that the degree of independence granted to non-majoritarian institutions will be greater when the level of political uncertainty is high. In their comparative study, Huber and Shipan operationalize political uncertainty by taking the average duration of cabinets on a country-by-country basis. Obviously, this approach is not appropriate in

the case of a single-country study. As a result, we operationalized this variable by developing an 'index of political uncertainty'.

The uncertainty index was calculated only for AAIs created during the Fifth Republic. In our opinion, it is impossible to come up with a measure of uncertainty that is meaningful across the very different constitutional and party-political contexts of the Fourth and Fifth Republics. So, for the Parity Commission for Publications and Press Agencies and the Higher Council of Agence France Press we have simply entered the mean score from the other 31 AAIs. The uncertainty index is composed of three separate measures. Firstly, we calculated the number of days from the date of the creation of the AAI until the next mandatory presidential or parliamentary election: the fewer the days, the greater the level of uncertainty, as the prospect of the incumbent government being replaced by a challenger increases. Secondly, we calculated the number of actual presidential and parliamentary elections per annum for the ten years before the foundation of the AAI: the greater the number of elections, the greater the level of uncertainty. This measure was included to account for the fact that elections do not always take place when they are meant to do so. For example, in 1997 President Chirac dissolved the National Assembly a full year before the scheduled election was due to take place. (We did not extend these calculations back into the Fourth Republic, so the figure is calculated on the basis of shorter periods for the National Commission for the Control of the Presidential Election Campaign. Thirdly,

we calculated the likelihood of the left and right alternating in power over the ten years prior of the creation of the AAI: the greater the likelihood of alternation, the greater the uncertainty. We did so by calculating the mean of the percentage of presidential and parliamentary alternations during this period. For the purposes of this measure, we assumed that there were alternations in power in 1981, 1986, 1988, 1993, 1997 and 2002. (The same caveat regarding the above institution applies). Finally, the three measures were standardized and added together. The scores for this indicator are recorded in Table 2 below.

To illustrate how the index works, let us take the example of the telecommunications regulator, ART. In terms of the first element of this indicator, ART was founded on the 26 July 1996. A parliamentary election had last been held on the 21 March 1993 and a presidential election on the 24 April 1995. Therefore, a parliamentary election was due first, at the latest on the 21 March 1998. So, there were 604 days until the next constitutionally-mandated election. This number of days was 0.57 standard deviations below the mean for the sample of 33 AAI. (The sign on this figure is reversed because fewer days mean more uncertainty). In terms of the second element, there had been four actual elections in the ten years prior to the foundation of the ART. Parliamentary elections had been held on the 5 June 1988 and the 21 March 1993. Presidential elections had been held on the 23 April 1995 and the 24 April 1988. This figure is 0.22 standard deviations below the mean. In terms of

the third element, both of the above parliamentary elections and in the 1995, but not the 1988, presidential election, there had been alternations in power between left and right. Therefore, the probability of an alternation is 0.75, which is 0.42 standard deviations above the mean. Adding the three together ($0.56 - 0.22 + 0.42$) provides the ART's uncertainty score of 0.77.

The final explanatory variable is called the 'complexity' variable. This variable aims to test the hypothesis that the degree of independence will be greater when the level of policy complexity is high. It is based on the idea that the degree of core executive control will be less extensive in issue areas that are more complex, or technical. Here, the degree of issue complexity is associated with the notion of 'expertise': the greater the issue complexity, the greater the need for policy experts.

The legislative perception of policy complexity can be established by calculating the percentage of people with policy-specific qualifications who sit on the governing council of each AAI. In some cases, such as the National Commission for Information and Civil Liberties, the legislation explicitly states that a number of "qualified" people must be appointed. In this case, the governing council includes two people qualified for their knowledge of the application of information technology. In other cases, such as the Insurance Control Commission, there is mention of the need for people to be chosen "because of their experience" in a certain area, in this case "insurance and financial matters". Thus, any time when mention is made of the need for

“competence”, “experience”, or “qualifications”, the appointee is classed as an ‘expert’.

In most cases, this logic allows the percentage of experts to be calculated for each AAI very easily. That said, as with the corporatism variable above, one difficult matter needs to be addressed. In some cases, decision makers may have decided that a representative of a particular organisation should be included because that organisation is the undisputed expert body in the area in question. In this case, there may be no explicit mention of any required qualification or competence, because any such mention might be considered superfluous. An example in this regard may be the National Commission for Campaign Finance and Political Contributions. This body oversees the declaration of political donations by elected representatives. In this case, the fact that three members of the Court of Accounts (*Cour des comptes*) are included on the governing council of the body is hardly a coincidence. After all, the Court of Accounts is the highest public-sector auditing institution in the land. Even so, in this study, the three members of the Court of Accounts on the governing council of the National Commission for Campaign Finance and Political Contributions are not classed as ‘experts’. There are two reasons for this decision in both the case of the National Commission for Campaign Finance and Political Contributions and more generally. Firstly, it would be impossible to try to second-guess decision makers and judge whether or not someone from, say, the Court of

Accounts was included on a governing council for reasons of expertise or for another reason entirely. Secondly, on various occasions, even when someone from the Court of Accounts, or a similar body, is included on a governing council, there are other appointees of whom it is explicitly required that they have demonstrated competences or expertise in the area concerned. In other words, the presence of someone from what might be considered to be an 'inherently expert' body does not mean that the legislation will not require the appointment of other people who are explicitly classed as 'suitably-qualified'. For both reasons, therefore, an appointee is only recorded as an 'expert' when there is an explicit reference made to the need for an appointee to have specific "competences", "experience", or "qualifications" in a particular domain. The 'expertise' scores for all AAIs are provided in Table Two below.

We tested the hypotheses by means of an ordinary least squares (OLS) regression. A dependent variable which is a proportion may be inappropriate for OLS regression. However, if the dependent variable is appropriately transformed an OLS model is unproblematic. Since our dependent variable is effectively a proportion, we performed a logit transformation before estimating the OLS regression model. The disadvantage of this procedure is that predicted scores on our index of independence cannot be computed by merely multiplying concrete values of the independent variables by the regression coefficients. Fortunately, this is not necessary for the theoretical purposes of the paper. Rather than demanding exact predictions, we only

seek to assess whether independent variables are influential and in what direction.

The regression produces a useful model.^{xxxi} Its R^2 is 0.36 and the model is significant at the one per cent level. The uncertainty, veto players and corporatism variables do not approach statistical significance. The issue area variable is significant at the one per cent level and the expertise variable at the ten per cent level. Both variables affect the level of independence in the manner hypothesized. The level of independence is much greater for regulatory as opposed to non-regulatory agencies. Agency independence also increases with the level of legislative perception for the need for expert board members. The effect of issue area is considerably more substantial than that of expertise. The results of the model are set out in Table Three.

Table 3 about here.

These findings raise the question of why the veto players and uncertainty hypotheses fail to make any impact on the independence of AAIs. In other words, why is it that some elements of the existing literature were found to be robust, whereas others were not. One plausible explanation is that the veto players and uncertainty arguments are only relevant when the AAIs are politically salient. Arguably, politicians are likely to be much more concerned about the numbers of veto players and the level of political uncertainty when the issue in question is directly related to electoral

competition. However, when the area is politically insignificant, then these factors are less important. In order to explore this idea, we investigated the coverage that AAI's receive in France's most well-known quality newspapers. Based on the assumption that the issues, which are important to electoral competition are likely to receive relatively high coverage in the media, we calculated the political salience of the various AAI's.

In the French case, the most tractable media source is the press. This is because the three most well-known daily national newspapers, *Le Figaro*, *Libération* and *Le Monde*, have on-line archives. Of these three sources, *Le Figaro* supports the right, *Libération* supports the left, while *Le Monde*, although left-leaning, is the newspaper of repute. Moreover, the correlation between the number of AAI-related articles in *Le Monde* and the other two newspapers was found to be extremely high. For these reasons, *Le Monde* can be treated as the most independent media source available. The political salience variable was measured by recording each occasion when the name of an AAI was mentioned in the headline of a *Le Monde* article by calculating the average number of words per month. The time period goes from 1 January 1987, the starting date for the on-line *Le Monde* archive, to 31 October 2002. In the cases where AAI's were created after 1 January 1987, the time period comprises the number of months from the time of the institution's creation to 31 October 2002.

According to our measure, only two AAs even approached political salience. Articles mentioning the Higher Council for Broadcasting and politicians averaged 209 words per month, while the next highest score was for the National Commission for Information and Civil Liberties with only forty six words per month. The broadcasting regulator has the joint highest level of independence, while the National Commission for Information and Civil Liberties is also highly independent. Excluding these two institutions, the mean visibility of the other thirty-one AAs was only 4.4 words per month. Politicians are hardly interested in this level of coverage. This provides a persuasive, if inconclusive, explanation for the weakness of the uncertainty and veto players variables in our model. A more thorough investigation of this explanation would require a model that included interaction terms between salience and uncertainty and veto players. Unfortunately, in our data this would have made little sense, since we have only two salient cases. Once we had put them in our model, we would have had to take them out again to avoid suggesting that a relationship driven by two cases applies to our sample as a whole.

CONCLUSION

This article has examined the motivations of political actors at the point of delegation? In particular, it has examined the issue of why a greater degree of

independence is granted to some institutions rather than others. In the existing literature, various explanations, mainly derived from US case studies, have suggested why this may be the case. We tested these explanations in the case of Independent Administrative Authorities in France. We found that the degree of independence is much greater for regulatory as opposed to non-regulatory agencies and that agency independence also increases with the level of the perceived need for expert board members. These findings are significant and for three reasons. Firstly, France is a difficult test case. It is not an 'Anglo-Saxon' democracy. In particular, it has a very different political system from the US. In this context, the fact that various elements of the existing literature were found to be robust is important. The theory has crossed a difficult hurdle. Secondly, AAI's do not comprise a list of classic IRAs. They include a very varied set of institutions. Once again, therefore, the fact that various elements of the existing literature were found to be robust is also important. The literature on delegation can be extended to include a wider set of non-majoritarian institutions than has usually been the case. Thirdly, even though the veto players and uncertainty explanations were not found to be convincing, this may be a function of the low level of electoral salience associated with many AAI's. In other words, there may be two different theories of delegation: one for politically salient decisions and one for those which are 'under the radar' of electorally-sensitive politicians. We

provide some evidence to back up this argument, but it needs to be tested more fully. Therefore, we establish an agenda for future research in this area.

Table 1 Independent Administrative Authorities in France

1. Commission nationale de l'information et des libertés	National Commission for Information and Civil Liberties	CNIL
2. Médiateur de la République	Ombudsman	Mediator
3. Comité national d'évaluation	National Evaluation Committee	CNE
4. Conseil Supérieur de l'Audiovisuel	Higher Council for Broadcasting	CSA
5. Commission nationale des comptes de campagne et des financements politiques	National Commission for Campaign Finance and Political Contributions	CNCCFP
6. Commission nationale de contrôle des interceptions de sécurité	National Committee for the Control of Telephone Tapping	CNCIS
7. Commission des Opérations de Bourse	Stock Exchange Commission	COB
8. Autorité de régulation des télécommunications	Telecommunications Regulatory Authority	ART

9. Commission consultative du secret de la défense nationale	Consultative Committee on National Defence Confidentiality	CCSDN
10. Le conseil de prévention et de lutte contre le dopage	Council for the Prevention and the Fight against Doping	CPLD
11. Autorité de contrôle des nuisances sonores aéroportuaires	Authority for the Control of Airport Noise	ACNUS A
12. Le Défenseur des enfants	Children's Ombudsman	Child
13. Commission nationale de déontologie de la sécurité	National Ethical Commission for Law and Order	CNDS
14. La commission centrale permanente compétente pour fixer les éléments à retenir pour le calcul du bénéfice agricole	Commission relating to Earnings from Agriculture	Agric.
15. La commission paritaire des publications et agences de presse	Parity Commission for Publications and Press Agencies	CPPAP
16. Le conseil supérieur de l'Agence France Presse	Higher Council of the Agence France Press	CSAFP

17. La Commission nationale de contrôle de la campagne électorale relative à l'élection du Président de la République	National Commission for the Control of the Presidential Election Campaign	CNCCE P
18. La commission des sondages	Opinion Poll Commission	Sondage s
19. La commission des infractions fiscales	Commission for Tax Violations	CIF
20. Le bureau central de tarification	Central Rating Office	BCT
21. Le médiateur du cinéma	Cinema Ombudsman	Cinema
22. La commission bancaire	Banking Commission	CB
23. Le comité des établissements de crédit et des entreprises d'investissement	Committee for Credit Institutions and Investment Firms	CECEI
24. Commission des participations et des transferts	Commission for Acquisitions and Transfers	CPT
25. Conseil de la concurrence	Competition Council	CC
26. La Commission de contrôle des assurances	Insurance Control Commission	CCA

27. La commission de contrôle des mutuelles et des institutions de prévoyance	Commission for the Control of Mutual and Provident Institutions	CCMIP
28. La Commission nationale d'équipement commercial	National Commission for Commercial Building	CNEC
29. Le conseil de discipline de la gestion financière	Disciplinary Council for Financial Management	CDGF
30. Commission de régulation de l'électricité	Electricity Regulatory Commission	CRE
31. Commission d'accès aux documents administratifs	Commission for Access to Administrative Documents	CADA
32. Commission de la sécurité des consommateurs	Commission for Consumer Safety	CSC
33. La Commission pour la transparence financière de la vie politique	Commission for the Financial Openness of Political Life	CTFVP
34. Conseil des marchés financiers	Financial Markets Council	CMF

Table 2 Scores for Independent Administrative Authorities in France

	Indepe- ndence	Regu- lation	Exp- ertise	Veto- Players	Corp- oratism	Uncert- ainty	Sali- ence
CNIL	.68	0	29.4	2	11.8	-.67	45.8
Médiateur	.35	0	0	3	0	-.67	16.1
CNE	.51	0	16	1	76	.12	0
CSA	.87	1	0	1	0	.12	209.2
CNCCFP	.45	0	0	1	0	.12	9.2
CNCIS	.57	0	.0	1	0	-.14	14.1
COB	.75	1	30	2	10	.12	2.2
ART	.87	1	0	2	0	.12	9.4
CCSDN	.47	0	0	5	0	.38	13.5
CPLD	.74	0	66.7	5	0	.38	0
ACNUSA	.72	0	100	5	0	.38	1.8
Children	.25	0	0	5	0	.38	17.9
CNDS	.50	0	25	5	0	.38	4.2
CPPAP	.34	0	0	4	47.6	0	0
CSAFP	.24	0	0	3	50	0	0
CNCCEP	.28	0	0	2	0	.12	6.6
Sondages	.60	0	18.2	4	0	-.67	0

CIF	.30	0	0	4	0	-.67	0
BCT	.24	0	0	2	90	.21	0
Cinema	.17	0	0	2	0	-.23	0
CB	.56	1	33.3	2	0	.12	10.2
CECEI	.32	1	15.4	2	30.8	.12	0
CPT	.40	0	100	2	0	.21	7.6
CC	.60	1	23.5	2	29.4	.21	18.5
CCA	.72	1	40	1	0	.12	0
CCMIP	.62	1	40	1	20	.12	0
CNEC	.44	0	37.5	1	0	-.14	0
CDGF	.31	0	0	2	11.1	-.14	0
CRE	.72	1	100	5	0	.38	0
CADA	.34	0	0	2	0	-.67	0
CSC	.41	0	37.5	2	75	-.23	0
CTFVP	.39	0	0	2	0	.03	5.5
CMF	.54	1	12.5	2	87.5	.12	0

Table 3 **Regression Model: Logit of Index of Independence**

Variable	B	s.e.
Constant	-0.374	0.349
Regulation	0.986***	0.302
Expertise	0.00821*	0.005
Uncertainty	-0.02576	0.43
Veto Players	-0.00509	0.101
Private Sector	-0.00643	0.005
Adjusted R ²	0.36	
F	4.603***	
N	33	
Notes: Model is Ordinary Least Squares; *** significant at the 1% level, ** significant at 5%, * significant at 10%		

Notes

ⁱ Mark Thatcher and Alec Stone Sweet, 'Theory and practice of delegation to non-majoritarian institutions', *West European Politics* 25:1 (2002), 1-22, p. 2.

ⁱⁱ Terry M. Moe, 'An assessment of the positive theory of "congressional dominance"', *Legislative Studies Quarterly*, 12 (1987), pp. 475-520; Mathew D. McCubbins, Roger G. Noll, and Barry R. Weingast, 'Administrative procedures as instruments of political control', *Journal of Law, Economics and Organization*, 3 (1987), pp. 243-77.

ⁱⁱⁱ John D. Huber and Charles R. Shipan, *Deliberate Discretion? The Institutional Foundations of Bureaucratic Autonomy* (Cambridge: Cambridge University Press, 2002). David Epstein and Sharyn O'Halloran, *Delegating Powers. A Transaction Cost Politics Approach to Policy Making under Separate Powers* (Cambridge: Cambridge University Press, 1999).

^{iv} Thatcher and Stone Sweet, 'Theory and practice of delegation to non-majoritarian institutions', p. 19.

^v *Ibid.*, pp. 15-16.

^{vi} Giandomenico Majone, 'Nonmajoritarian institutions and the limits of democratic governance: A political transaction cost approach', *Journal of Institutional and Theoretical Economics* 157 (2001), pp. 57-78; Giandomenico Majone, 'Two logics of delegation. Agency and fiduciary relations in EU governance', *European Union Politics*, 2 (2001), pp. 103-21.

vii John D., Huber and Charles R. Shipan, 'The costs of control: legislators, agencies, and transaction costs', *Legislative Studies Quarterly*, 25 (2000), pp. 25-52. Mark A. Pollack, 'Learning from the Americanists (again): Theory and method in the study of delegation', *West European Politics*, 25 (2002), pp. 200-19.

viii Other reasons have been proposed as to why the degree of delegation should occur. For example, government may wish to shift the blame for unpopular policies. Equally, there may be a process of institutional isomorphism. (See Thatcher and Stone Sweet, 'Theory and practice of delegation to non-majoritarian institutions'. However, the three basic reasons identified here (credible commitment, political uncertainty and policy complexity) are the ones that are cited most frequently and that are most tractable in terms of positive political analysis.

ix In addition to Majone above, examples of this body of work include Kenneth A. Shepsle, 'Discretion, institutions, and the problem of government commitment', in Pierre Bourdieu and James S. Coleman (eds.), *Social Theory for a Changing Society*, (Boulder CO: Westview Press, 1991) pp. 245-65; Jon Elster, *Ulysses and the Sirens* (Cambridge: Cambridge University Press, 1984); Jon Elster, *Ulysses Unbound* (Cambridge: Cambridge University Press, 2000); Douglass C. North, 'Institutions and credible commitment', *Journal of Institutional and Theoretical Economics*, 149:1 (1993), pp. 11-23; and Douglass C. North and Barry R. Weingast, 'Constitutions and commitment: The evolution

of institutions governing public choice in seventeenth-century England', *The Journal of Economic History*, 49: 4 (1989), pp. 803-32.

^x Finn E. Kydland and Edward C. Prescott, 'Rules rather than discretion: The inconsistency of optimal plans', *Journal of Political Economy*, 85 (1977), pp. 473-91.

^{xi} Shepsle, 'Discretion, institutions, and the problem of government commitment', p. 246.

^{xii} Mark Thatcher, 'Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation', *West European Politics* 25:1 (2002), pp. 125-47.

^{xiii} Fabrizio Gilardi, 'Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis', *Journal of European Public Policy*, 9 (2002), 873-93, p. 877.

^{xiv} Terry M. Moe, 'The politics of structural choice: Toward a theory of public bureaucracy', in Oliver E. Williamson (ed.), *Organization Theory. From Chester Barnard to the Present and Beyond*, (New York, Oxford University Press, 1995), 116-53, p. 124.

^{xv} Murray J. Horn, *The Political Economy of Public Administration*, (Cambridge, Cambridge University Press, 1995), p. 10.

^{xvi} Richard D. McKelvey, 'Intransitivities in multidimensional voting models and some implications for agenda control', *Journal of Economic Theory*, 12 (1976), pp. 472-82.

^{xvii} Moe, 'The politics of structural choice: Toward a theory of public bureaucracy', p. 136.

^{xviii} Horn, *The Political Economy of Public Administration*, p. 53.

^{xix} Thatcher, 'Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation', p. 132.

^{xx} For all French titles and abbreviations, see Table 1.

^{xxi} For example, Benoît Jorion, 'Les autorités administratives indépendantes', in La Documentation française, *Droit administratif et administration* (Paris: La Documentation française, 1998), pp. 41-45.

^{xxii} Conseil d'État, *Rapport Public 2001. Jurisprudence et avis de 2000. Les autorités administratives indépendantes*, Études et documents no. 52 (Paris: La Documentation française, 2001), p. 257. All translations from the French are by the authors.

^{xxiii} Thatcher and Stone Sweet, 'Theory and practice of delegation to non-majoritarian institutions', p. 2.

^{xxiv} Conseil d'État, *Rapport Public 2001*, pp. 300-305.

^{xxv} This study examines 33 of the 34 AAIs identified by the Council of State. The Central Standing Commission relating to Profits from Agriculture (*Commission centrale permanente, compétente en matière de bénéfices agricoles*) was excluded from the data set because it was founded in 1941 during the authoritarian Vichy regime. The radically different political context in which this institution was created made it unsuited to many of the tests that follow. Even so, the data set is still large enough to perform standard statistical

operations. Other institutions could have been included in the data set. Some AAIs had ceased to be operational by the end-2001 cut-off date. For example, the Council of State classed the Monetary Policy Committee of the Bank of France as an AAI from 1 January 1994 to 31 December 1999 when decision-making powers were transferred to the European Central Bank. However, to the extent that it did not have this status at the end of 2001, then it was omitted from the Council of State's own list and from this study as well. Equally, at least one AAI has been established since the end of 2001. In February 2002 a law reorganised the National Commission for Public Debate (*Commission nationale du débat public*) and explicitly granted it the status of an AAI. The inclusion of this organisation would have been relatively uncontroversial in itself, but it would have raised the question of whether other recently created but perhaps more ambiguous examples should also have been included.

^{xxvi} This has since been renamed the Energy Regulatory Commission (*Commission de régulation de l'énergie*)

^{xxvii} This index owes much to Gilardi, 'Policy credibility and delegation to independent regulatory agencies', pp. 880-83.

^{xxviii} In the case of the three single-person institutions – the Ombudsman, the Cinema Ombudsman and the Children's Ombudsman (*Défenseur des enfants*) – no scores could be assigned for governing council.

^{xxix} Nicole Decoopman (ed.), *Le désordre des autorités administratives indépendantes. L'exemple du secteur économique et financier* (Paris: PUF, 2002).

Two institutions identified in this study were not classed as AAI's by the Council of State and so were disregarded.

^{xxx} Huber and Shipan, *Deliberate Discretion?*, pp. 190-91.

^{xxxi} Since our sample size is quite small we conducted a number of sensitivity analyses. Leverage statistics suggested that none of the cases were outliers in terms of independent variables. The studentized deleted residuals showed four cases to be outliers on the index of independence. However, no AAI's were identified as approaching conventional definitions of an influential case, as measured by DFFITS, DFBETA and Cook's distance. Therefore, we can be confident that the model is good representation of general relationships in our sample, rather than just a handful of unusual AAI's.