

FUNDAÇÃO GETULIO VARGAS  
ESCOLA DE ADMINISTRAÇÃO DE EMPRESAS DE SÃO PAULO

BERNARDO OLIVEIRA BUTA

**AUTONOMY AND PERFORMANCE OF PUBLIC AGENCIES: the case  
of public defenders' offices**

São Paulo

2020

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Tese apresentada à Escola de Administração de Empresas de São Paulo da Fundação Getúlio Vargas como requisito para a obtenção do título de Doutor em Administração Pública e Governo.

Linha de pesquisa: Governo e Sociedade Civil em Contexto Subnacional

Orientador: Doutor Marco Antonio Carvalho Teixeira.

SÃO PAULO

2020

Buta, Bernardo Oliveira.

Autonomy and performance of public agencies : the case of Public Defenders' Offices / Bernardo Oliveira Buta. - 2020.

139 f.

Orientador: Marco Antonio Carvalho Teixeira.

Tese (doutorado CDAPG) – Fundação Getulio Vargas, Escola de Administração de Empresas de São Paulo.

1. Governança pública. 2. Administração pública. 3. Autonomia. 4. Desempenho. 5. Defensorias públicas - América Latina. I. Teixeira, Marco Antonio Carvalho. II. Tese (doutorado CDAPG) – Escola de Administração de Empresas de São Paulo. III. Fundação Getulio Vargas. IV. Título.

CDU 35(8=6)

Ficha Catalográfica elaborada por: Isabele Oliveira dos Santos Garcia CRB SP-010191/O

Biblioteca Karl A. Boedecker da Fundação Getulio Vargas - SP

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Data de aprovação: 22/12/2020

Banca examinadora:

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Dr. Marco Antonio Carvalho Teixeira (Orientador)  
FGV-EAESP

---

Dra. Alketa Peci  
FGV-EBAPE

---

Dr. Pedro Luiz Costa Cavalcante  
IPEA; ENAP; IDP

---

Dr. Ricardo Corrêa Gomes  
FGV-EAESP

*To Amanda, Lúcia and Paulo.*

## ACKNOWLEDGMENTS

The course of writing a dissertation is largely solitary, but it is impossible to be accomplished alone. Throughout the construction of this dissertation, I was able to count on the generosity of many people and institutions, which helped me in many different ways. I am immensely grateful to everyone who crossed my path in this process.

I express my gratitude to Getulio Vargas Foundation, specifically to the School of Business Administration of São Paulo, which welcomed me as a doctoral student with scholarship and financial aid for participation in academic events. I thank all the professors and employees of the Doctoral Course in Public Administration and Government, as well as my classmates, for providing an environment conducive to learning and professional growth.

I would like to express a special thanks to Professor Marco Antonio Carvalho Teixeira, who supervised and guided me since the beginning of the course. I am happy to have had his guidance not only in specific aspects of the dissertation. With him, I was able to experience teaching on some occasions, which allowed me to develop a humane view at this dimension of academic life.

I would also like to thank Alketa Peci and Ricardo Corrêa Gomes for all the attention and time spent in evaluating the research project. Their recommendations and comments were rich for the development of this work. I also thank them for being part of the evaluation committee of this dissertation, as well as Pedro Cavalcante. I am very grateful for their effort dedicated to the evaluation of this work.

This dissertation also had the help of the Research Group on Administration of Justice, from the University of Brasília. I express my gratitude to all members of the Group and especially to professors Tomás de Aquino Guimarães and Adalmir de Oliveira Gomes. Professor Tomás encouraged me from the beginning to take a PhD at FGV. Besides that, the support of the Group and the patience and attention of dear Tomás and Adalmir were fundamental in conducting important processes of this research.

I feel privileged to have had the opportunity to spend a period as a visiting researcher at the Institute of Public Administration at the Leiden University. On that occasion, I was able to count on the support of a dear host, Professor Kutsal Yesilkagit, from whom I learned a lot. I am very grateful to him and to Kohei Suzuki, for all their attention, hospitality and contributions to my work and my professional development. I also thank professors Frits van der Meer, Gerrit Dijkstra and Vasileios Karakasis for making me feel at home at that University.

During my time in the Netherlands, I was also able to count on the help of extraordinary people, who dedicated their time to receive me and present criticisms and suggestions to my research. I am especially grateful to Professors Sandra van Thiel, Sjors Overman and Philip Langbroek.

I also had the opportunity to attend a course at the Political Science Department at the University of São Paulo. This was the trigger for realizing the research issue addressed in this dissertation and starting to navigate the topic of public organizations' autonomy. I would like to express my thanks to my countryman, Professor Rogério Arantes.

The chapters of this dissertation had the review, criticisms and suggestions of generous souls. I would like to particularly thank Professor André Cavalier Guzzi for his invaluable contributions to the theoretical essay of this dissertation. I also thank my dear friend, Professor Eduardo Monteiro, for his help with statistical analysis, as well as for the tips, suggestions and encouragement throughout the doctoral course. I remember once again the dear professor Adalmir de Oliveira Gomes, who patiently contributed with revisions to the article presented in Chapter 4. I also give special thanks to dear professor Luiz Akutsu, who willingly revised the text presented in chapter 5, in addition to having encouraged me from the beginning to pursue a PhD at FGV. I also thank Professors Pedro Cavalcante and Ricardo Ken Fujihara, who selflessly made suggestions to the article presented in Chapter 5. I was very fortunate to have had the attention and patience of each one of these people during the long period of development of my research.

Especially on the article presented in chapter 5, professionals from public defenders' offices and associations of members of these organizations across Brazil

helped me with data collection. I am especially grateful to Adriane Pimentel, from the Public Defenders' Office of Federal District; Amélia Rocha, from the Association of Public Defenders of the State of Ceará; Francisco Macedo, from the Brazilian Federal Public Defender's Office; Giovanna Burgos, from the Amapá Public Defenders Association; Mariana Sobral, from the Association of Public Defenders of the State of Espírito Santo; and Pedro Paulo Coelho, from the National Association of Public Defenders.

I am also grateful to FGV professors, with whom, even before starting to develop this dissertation, I had the opportunity to learn important concepts of Public Administration and research methodology, Mário Aquino Alves, Nelson Marconi, Nelson Lerner Barth, André Samartini, Cléber Figueiredo, Abraham Laredo Sicsú, Aldy Fernandes da Silva, as well as professors Eloisa Machado de Almeida, Guilherme Casarões and Lara Simielli, under the guidance of whom I was able to experience teaching. I would also like to thank Lidiane Mendes Barbosa and Andressa Munhoes, who are always helpful and willing to assist with any question related to the course. I also thank Professor José Antonio Puppim de Oliveira and CAPES for supporting the revision of the text of this dissertation.

I also highlight the support of the Public Defender's Office (DPU), an organ where I am proud to work. The DPU allowed me to exercise my duties remotely so that I could travel to São Paulo, the Netherlands and other places to fulfill the requirements of the doctoral course. This would not have been possible without the support and understanding of dear Vanessa Meireles Barreto Chervenski, to whom I express deep gratitude.

Last but not least, I thank my family for all the support, especially my wife, Amanda, and my parents, Paulo and Maria Lúcia. They were fundamental for me so I could be able to be absent for so long chasing the dream of becoming a doctor and pursuing an academic career. Undoubtedly, I am privileged for having the family I have, and I lack words to express all the gratitude I feel for all the emotional, moral and even financial support. Amanda supported me from the start, made these four years more pleasant and enjoyable. She also reviewed many of my works and accompanied me on the wanderings of the doctorate course. I also remember dear friends André Cintra and Menyra Loyola, who backed me up during the time I lived in São Paulo, as well as the



gifts that the doctoral course gave me, Mariana Bartos, Vinicius Serpa, Giordano Magri, Marina Novaes, Carolina Cutrupi and Lígia Zagato.

## AGRADECIMENTOS

O curso da elaboração de uma tese é solitário em grande medida, mas é impossível de ser cumprido sozinho. Ao longo da construção desta tese, pude contar com a generosidade de muitas pessoas e instituições, que me ajudaram das mais diversas formas. Sou imensamente grato a todos os que cruzaram o meu caminho nesse processo.

Expresso minha gratidão à Fundação Getúlio Vargas, especificamente à Escola de Administração de Empresas de São Paulo, que me acolheu como aluno de doutorado com bolsa de estudos e auxílio financeiro para a participação em eventos acadêmicos. Agradeço a todos os professores e funcionários do Curso de Doutorado em Administração Pública e Governo, assim como aos meus colegas de curso, por proporcionarem um ambiente propício ao aprendizado e ao crescimento profissional.

Registro um agradecimento especial ao professor Marco Antonio Carvalho Teixeira, quem me orientou e acompanhou desde o início do curso. Fico feliz por ter tido sua orientação não apenas em aspectos específicos da tese. Com ele, pude vivenciar a docência em algumas ocasiões, o que me permitiu desenvolver um olhar mais humano para esta dimensão da vida acadêmica.

Agradeço ainda a Alketa Peci e Ricardo Corrêa Gomes por toda a atenção e tempo dispensados na avaliação do projeto de pesquisa. Suas recomendações e comentários foram valiosos para o desenvolvimento deste trabalho. Agradeço a eles também por integrarem a banca de avaliação desta tese, bem como a Pedro Cavalcante. Sou muito grato pelo esforço dedicado à avaliação deste trabalho.

Esta tese contou também com a ajuda do Grupo de Pesquisa em Administração da Justiça, da Universidade de Brasília. Expresso meu muito obrigado a todos os membros do grupo e especialmente aos professores Tomás de Aquino Guimarães e Adalmir de Oliveira Gomes. O professor Tomás me incentivou desde o início a cursar o Doutorado na FGV. Além disso, o apoio do Grupo e a paciência e atenção dos queridos Tomás e Adalmir foram fundamentais na condução de processos importantes desta pesquisa.

Sinto-me privilegiado por ter tido a oportunidade de passar um período como pesquisador visitante no Instituto de Administração Pública da Universidade de Leiden. Na ocasião, pude contar com o apoio de um querido anfitrião, o professor Kutsal Yesilkagit, com quem aprendi muito. Sou muito grato a ele e a Kohei Suzuki, por toda sua atenção, hospitalidade e contribuições ao trabalho e ao meu desenvolvimento profissional. Agradeço também aos professores Frits van der Meer, Gerrit Dijkstra e Vasileios Karakasis por me fazerem sentir em casa naquela Universidade.

No período que passei nos Países Baixos, pude contar também com a ajuda de pessoas extraordinárias, que dedicaram seu tempo a me receber e apresentar críticas e sugestões a minha pesquisa. Agradeço especialmente à professora Sandra van Thiel, e aos professores Sjors Overman e Philip Langbroek.

Tive ainda a oportunidade de atender a uma disciplina no Departamento de Ciência Política da Universidade de São Paulo. Este foi o gatilho para perceber o problema de pesquisa abordado nesta tese e começar a navegar pelo tema da autonomia de organizações públicas. Registro aqui meu muito obrigado a meu conterrâneo, professor Rogério Arantes.

Os capítulos desta tese contaram com a revisão, críticas e sugestões de almas generosas. Gostaria de agradecer nominalmente ao professor André Cavalier Guzzi pelas valiosas contribuições ao ensaio teórico desta tese. Agradeço também ao querido amigo, professor Eduardo Monteiro, pela ajuda com análises estatísticas, bem como pelas dicas, sugestões e incentivo ao longo do curso. Lembro mais uma vez do querido professor Adalmir de Oliveira Gomes, que pacientemente contribuiu com revisões ao artigo apresentado no Capítulo 4. Dedico ainda um agradecimento especial ao querido professor Luiz Akutsu, que se dispôs a revisar o texto apresentado no capítulo 5, além de ter me incentivado desde o início a cursar o doutorado na FGV. Agradeço ainda aos professores Pedro Cavalcante e Ricardo Ken Fujihara, que abnegadamente apresentaram sugestões ao artigo apresentado no Capítulo 5. Fui muito feliz em ter tido a atenção e paciência de cada uma dessas pessoas durante o longo período de desenvolvimento da minha pesquisa.

Especialmente sobre o artigo apresentado no capítulo 5, pude contar com a ajuda de profissionais de defensorias públicas e associações de membros dessas organizações

em todo o país para a coleta de dados. Agradeço especialmente a Adriane Pimentel, Defensoria Pública do Distrito Federal; Amélia Rocha, Associação das Defensoras e Defensores Públicos do Estado do Ceará; Francisco Macedo, Defensoria Pública da União; Giovanna Burgos, Associação dos Defensores Públicos do Amapá; Mariana Sobral, Associação dos Defensores Públicos do Estado do Espírito Santo; e Pedro Paulo Coelho, Associação Nacional das Defensoras e Defensores Públicos.

Sou grato ainda aos docentes da FGV, com quem, antes mesmo de começar a desenvolver esta tese, tive a oportunidade de aprender conceitos importantes de Administração Pública e metodologia de pesquisa, Mário Aquino Alves, Nelson Marconi, Nelson Lerner Barth, André Samartini, Cléber Figueiredo, Abraham Laredo Sicsú, Aldy Fernandes da Silva, bem como aos professores Eloisa Machado de Almeida, Guilherme Casarões e Lara Simielli, sob a orientação dos quais pude experimentar a docência. Agradeço ainda a Lidiane Mendes Barbosa e Andressa Munhoes, sempre prestativas e dispostas a ajudar em qualquer questão relacionada ao curso. Agradeço também ao Professor José Antonio Puppim de Oliveira e à CAPES pelo apoio à revisão do texto desta tese.

Destaco também o apoio da Defensoria Pública da União, órgão onde tenho o orgulho de trabalhar. A DPU permitiu que eu exercesse minhas atribuições à distância para que eu pudesse me deslocar a São Paulo, aos Países Baixos e a outros cantos para cumprir os requisitos do curso de doutorado. Isso não teria sido possível sem o apoio e compreensão da querida Vanessa Meireles Barreto Chervenski, a quem expresso profunda gratidão.

Por fim, mas não menos importante, agradeço a minha família por todo suporte, especialmente a minha esposa, Amanda, e a meus pais, Paulo e Maria Lúcia, que foram fundamentais para que eu conseguisse estar ausente por tanto tempo perseguindo o sonho de me formar doutor e seguir a carreira acadêmica. Sem dúvida sou privilegiado pela família que tenho, e me faltam palavras para expressar toda a gratidão que sinto pelo apoio emocional, moral e até mesmo financeiro. Amanda me apoiou desde o início, fez com que esses quatro anos de curso fossem mais prazerosos e agradáveis. Além disso, revisou muitos dos meus trabalhos e me acompanhou nas andanças do doutorado. Lembro também dos queridos amigos André Cintra e Menyra Loyola, que me apoiaram pelo tempo que vivi em São Paulo, assim como dos presentes que o curso de doutorado

me deu, Mariana Bartos, Vinicius Serpa, Giordano Magri, Marina Novaes, Carolina Cutrupi e Lígia Zagato.

## ABSTRACT

Public Administration literature still has some open questions about the autonomy of public organizations, especially about the relationship between autonomy and performance. There is still no clear indication about which aspects of autonomy are most relevant to performance, or on how different aspects influence the performance of public organizations. In order to produce evidence to assist the knowledge development on this topic, this dissertation focuses on the case of Public Defenders' Offices (PDOs) in Latin America. PDOs are public agencies responsible for providing legal aid to the vulnerable population. To fulfill this mission, these agencies litigate directly against the State in matters where there are deficiencies in the provision of public services to vulnerable citizens. Therefore, autonomy tends to be necessary for the functioning of those agencies. This dissertation pursues the following issue: how does the relationship between autonomy and performance take place in PDOs? The aim of this dissertation is to explore and test aspects of the relationship between autonomy and performance of PDOs. To this end, four different articles were prepared, each of which represents a step towards achieving the research aim. First, a theoretical model was developed based on the identification of dimensions that explain the autonomy of public organizations. Then, a PDO autonomy measurement scale was built, allowing cross-country comparison of PDOs' autonomy levels. Afterwards, the relationships between autonomy and performance of Latin American PDOs were explored. Finally, the impact of autonomy on the performance of Brazilian subnational PDOs was tested. The results show that the autonomy of the Latin American PDOs is quite varied; there are PDOs with clear hierarchical subordination to the Ministry of Justice of their countries, as well as there are largely autonomous PDOs, with no ties to any of the state branches. The levels of autonomy can be influenced by governments' effectiveness, *per capita* GDP and the number of political parties. Furthermore, there is evidence that the dimensions of autonomy are related to performance in different forms and intensities. It was observed that greater administrative autonomy induces greater efficiency, but loose hierarchical linking to a higher authority leads to lower levels of efficiency. The results also indicated that there are other factors necessary for the performance of PDOs, such as the effectiveness of accountability mechanisms, and the skills of bureaucrats, but accountability does influence performance to a greater degree.

**Keywords:** Public Governance; Autonomy; Performance; Public Organizations; Public Defender's Offices; Latin America

## RESUMO

A literatura de Administração Pública possui ainda algumas questões em aberto sobre a autonomia das organizações públicas, especialmente no que se refere à relação entre autonomia e desempenho. Ainda não há uma indicação clara sobre quais aspectos da autonomia são mais relevantes para o desempenho, ou como diferentes aspectos influenciam o desempenho das organizações públicas. Com o objetivo de produzir evidências que auxiliem o desenvolvimento do conhecimento sobre o tema, esta dissertação enfoca o caso das Defensorias Públicas (PDOs) na América Latina. PDOs são órgãos públicos responsáveis por fornecer assistência jurídica à população vulnerável. Para cumprir sua missão, essas agências litigam diretamente contra o Estado em questões onde há deficiências na prestação de serviços públicos a cidadãos vulneráveis. Portanto, a autonomia tende a ser necessária para o funcionamento dessas agências. Esta tese persegue o seguinte problema: como se dá a relação entre autonomia e desempenho em PDOs? O objetivo desta tese é explorar e testar aspectos da relação entre autonomia e desempenho de PDOs. Para tanto, foram elaborados quatro artigos distintos, cada um representando um passo para o alcance do objetivo da pesquisa. Primeiramente, foi desenvolvido um modelo teórico a partir da identificação das dimensões que explicam a autonomia das organizações públicas. Em seguida, uma escala de mensuração de autonomia de PDOs foi construída, permitindo a comparação dos níveis de autonomia das PDOs em diversos países. Posteriormente, foram exploradas as relações entre autonomia e desempenho de PDOs latino-americanas. Por fim, foi testado o impacto da autonomia sobre o desempenho das PDOs subnacionais brasileiras. Os resultados mostram que a autonomia das PDOs latino-americanas é bastante variada; existem PDOs com clara subordinação hierárquica ao Ministério da Justiça de seus países, bem como PDOs amplamente autônomas, sem vínculo com nenhum dos poderes estatais. Os níveis de autonomia podem ser influenciados pela eficácia do governo, PIB per capita e número de partidos políticos. Além disso, há evidências de que as dimensões de autonomia estão relacionadas ao desempenho em diferentes formas e intensidades. Observou-se que maior autonomia administrativa induz maior eficiência, mas o vínculo hierárquico fraco com autoridade superior leva a menores níveis de eficiência. Os resultados também indicaram que existem outros fatores necessários para o desempenho das PDOs, como a eficácia dos mecanismos de

*accountability* e as habilidades dos burocratas, mas a *accountability* influencia o desempenho em maior grau.

**Palavras-chave:** Governança Pública; Autonomia; Desempenho; Organizações Públicas Defensorias Públicas; América Latina.



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## **Chapter 1**

### **INTRODUCTION**

## **Public Defenders' Offices – PDOs**

The PDOs are the public organizations responsible for promoting access to justice for the socially and economically vulnerable population. These agencies are equipped with lawyers paid by the state for the provision of free legal assistance services (Smulovitz, *Public Defense and Access to Justice in a Federal Context: Who Gets What, and How, in the Argentinean Provinces*, 2014). The activities of such agencies are knowledge-intensive and highly relational, comprehending legal guidance; defense of individual and collective rights in the judicial and administrative spheres; disseminating knowledge about the rights of vulnerable citizens; and conflict reconciliation (Buta & Silva Filho, 2016).

This bureaucratic design for the public policy on legal aid to vulnerable citizens is used mainly in Latin America. Other designs for this policy involve the obligation of lawyers to defend, at no cost, those who cannot hire a lawyer due to their socioeconomic status, as determined by the courts; as well as the provision of legal assistance by professional associations of lawyers or by the organization of independent paid legal services (Smulovitz, *Public Defense and Access to Justice in a Federal Context: Who Gets What, and How, in the Argentinean Provinces*, 2014).

In Latin America, PDOs have spread since the fall of authoritarian regimes in the last century. In that period, there was a transition from an inquisitorial justice system to an adversarial justice system (King, 2017). This new system has PDOs as a key component, thus reinforcing the right to adversarial proceeding and the right to full defense, and consequently the balance between the prosecution and the defense (King, 2017).

Although it tends to balance the prosecution and defense, this system does not always tend to be trusted by the citizens, since the defenders are employees of the state, which also supports the agency in charge of the prosecution (Smulovitz, *Public Defense and Access to Justice in a Federal Context: Who Gets What, and How, in the Argentinean Provinces*, 2014). It is also noteworthy that the PDOs litigate directly against the state in cases of deviations in public policies aimed at socially and economically vulnerable citizens. In this sense, the autonomy of those entities tends to be an important instrument to maintain social well-being, the stability of the democratic

regime, to protect human rights against possible arbitrariness of governments and against discriminatory practices in the application of the law (Madeira, 2014).

With that in mind, the Organization of the American States (OAS) advised member states that official PDOs should have an adequate budget and independence, as well as functional, financial and/or budgetary, and technical autonomy (OAS Resolutions n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014). Although Latin American countries have pursued such advice, irregular levels of capacity and performance in their PDOs have been reported (e.g., Smulovitz, 2014; Fondevilla & Reyes, 2016; Bersch, Praça, & Taylor, 2017; King, 2017; Ávila & Fix-Fierro, 2018).

### ***The example of the Brazilian Federal PDO***

Taking Brazil as an example, until the year 2013, the Federal PDO was linked to the Ministry of Justice, when, through the Constitutional Amendment 74, it gained functional and administrative autonomy, in addition to the capacity to forward its budget proposal directly to the Congress. One year later, the Constitutional Amendment N° 80 expanded the autonomy of the PDO, establishing the functional autonomy as an institutional principle and granting the defender general the power to forward bills related to its structure and operation to the Congress.

The autonomy granted to that agency is quite broad. Currently, that PDO is not linked to any of the republic's branches, being accountable directly to the Legislature. In addition, only career public defenders can compose the board of directors and occupy the position of defender general. There is a two-year term for the positions of defender general and member of the board of directors, with no possibility of removal from the position during that period. The PDO also has its own means for obtaining resources, in addition to the constitutional competence to forward its budget proposal directly to the Legislature. It is also noteworthy that the Brazilian Federal PDO can initiate bills that deal with its structure and operation.

Nevertheless, there is evidence that the performance levels of that agency were reduced after them being granted autonomy (Buta, Gomes, & Lima, 2020). When observing (Figure 1), from a longitudinal perspective (2009 – 2019), the total number of citizens assisted, the budget approved for the PDO, and the number of public defenders,



it can be seen an increase in the availability of resources for the PDO in the period after the granting of autonomy, but a drop in the level of performance in the same period.

Figure 1 presents four plots on the evolution of the performance and capacity of the Brazilian federal PDO from 2009 to 2019. Data were obtained directly from the agency, in management reports and transparency website. The northeast batch shows the number of citizens assisted, which peaked in 2014. The northwest shows the evolution in the number of public defenders, which has increased every two years. The southeast batch shows the budget amount, in millions of Brazilian *reais*, authorized for the PDO each year, corrected by the broad consumer price index (IPCA), Brazilian official inflation index. It is possible to see acceleration in the growth of the budget amount after the year 2013. In 2016, a constitutional amendment was enacted to contain public spending in Brazil (Constitutional Amendment N°. 95/2016). For this reason, the approved budget remained practically constant from 2017 onwards. The south-west batch shows the ratio between the approved budget and the number of citizens assisted, giving an idea of efficiency. There is a significant increase in the cost of each assisted citizen after the year 2013.

Figure 1. Evolution of performance, personnel, budget resources and efficiency of the Brazilian federal PDO.



Source: Brazilian Federal Public Defender's Office.

From the data in Figure 1, it seems that there was an important increase in the budget available for the PDO from 2014 onwards, which was the first year that the PDO was able to send and negotiate its budget proposal directly with Congress. It is possible that this amount is considerably greater, as it may have incorporated expenses previously borne by the Ministry of Justice. It can also be noticed that the workforce, measured by the number of public defenders, maintained the growth trend.

However, the increase in the organization's performance did not occur in the same proportion. In fact, there was even a drop in the level of performance in the period after the granting of autonomy. Figure 1 clearly shows that there was a tendency to increase the number of assisted citizens until 2013. That is, the performance measured by the main output of the PDO had been increasing year by year until the promulgation of the Constitutional Amendment granting greater levels of autonomy. This trend was interrupted in 2013, and after 2015 the performance level even decreased. In the same vein, the cost of legal assistance also increased after the granting of autonomy, indicating a reduction in the efficiency of the PDO.

The reasons for the drop in efficiency levels can be related to the granting of benefits to bureaucracy. In January 2014, the PDO issued the Normative Resolution n° 77/2014 regulating the granting of financial assistance to employees for food. This Resolution allowed for the subsequent increase in food aid, instituted through Ordinance No. 392/2014, which doubled in value, and also established pre-school assistance for employees' children. In the same year, Normative Resolution No. 100/2014 established housing assistance for public defenders. The latter, however, generated media repercussions due to the high amounts of aid and was overruled by the Congress. During this period, bills were also sent to the Congress with the objective of increasing wages for the various PDO employees, as well as creating new posts. The only successful bill (n° 7924/2014) has raised the salaries of public defenders by about thirty percent.

Regarding performance, the most relevant evidence of a strategic action aimed at increasing performance took place just three years after the granting of autonomy. In 2015, Ordinance No. 231 created ten new branches in the interior of the country. Even so, this action did not present an effective result in the overall performance, since the number of people served after this period decreased. This might be due to the fact that

Resolution No. 134, of 2016, reduced the monthly income limit for a person to be considered eligible for assistance by the PDO. This agency is dedicated to serving vulnerable people. To define who these people are, the PDO itself sets limits on family income, above which citizens are no longer eligible to receive legal assistance. Previously, people with a family income of up to three thousand reais per month could be users of the PDO services. The aforementioned Resolution set this limit at two thousand reais per month, which represents a reduction in the potential users of the PDO by more than 60 million people.

As observed in the study presented in Chapter 3, the autonomy level of the Brazilian Federal PDO is quite broad, much higher than similar Latin American agencies. However, it was not accompanied by the creation of accountability mechanisms, as observed in a previous study (Buta, Guimaraes, & Akutsu, 2020).

In short, the Brazilian case is extreme, but it serves to exemplify that the relationship between autonomy and the performance of public organizations tends not to be so obvious, even for an agency that, due to the nature of its activities, deserves to be endowed with some level of autonomy so that it can operate without political interference. This also puts doubt in the effectiveness of the OAS recommendations that the PDOs should be independent.

It is worth mentioning that an appropriate degree of autonomy does not mean that bureaucrats are isolated from society, or that they can make decisions that are not in line with the demands of citizens. In cases where autonomy levels are high, the effects can be perverse, as bureaucracy escapes political control and begins to define its own procedures and objectives (Fukuyama, 2013).

### **Autonomy and Performance of Public Organizations**

Many different studies have tried to explain the autonomy of public organizations in several sectors. In the area of public administration, this issue has been debated since the 19th century, being of greater importance for the democratic system to discover the best principle of delegation (Wilson, 1941). However, most of the studies focus on regulatory agencies in Western Europe and the United States (Overman, 2016).

As presented in Chapter 2, Public Administration literature still has some open questions about the autonomy of public organizations, especially about the relationship

between the autonomy and the performance of those organizations. There is still no clear idea about which aspects of autonomy are most relevant to performance, or how different aspects influence the performance of public organizations.

In fact, evidence on the relationship between autonomy and performance is still fuzzy. There are studies that indicate a direct relationship between autonomy and performance. In other words, greater autonomy would be related to higher levels of performance (Silver, 1993; Braadbaart, Van Eybergen, & Hoffer, 2007; Anand, Exworthy, Frosini, & Jones, 2012; Vining, Laurin, & Weimer, 2015). Other studies indicate an inverse relationship, that is, higher levels of autonomy would lead to lower levels and performance (Kim & Cho, 2014; Overman & van Thiel, 2016; Voorn, Borst, & Blom, 2020). There are also indications that the relationship may be curvilinear, in which organizations with balanced levels of autonomy would tend to perform better (Rainey & Steinbauer, 1999; Fukuyama, 2013). In turn, there are studies that indicate that autonomy is not such a relevant factor in defining the performance levels of public agencies (Verhoest & Wynen, 2016; Han & Hong, 2019), or even that one does not observe a significant relationship between autonomy and performance of public organizations (Yamamoto, 2006; Guidi, 2015).

It is worth mentioning that these relationships may vary depending on the task of the public organization or the institutional context (Overman & van Thiel, 2016). Therefore, it is important to highlight that the PDOs operate differently from the other types of autonomous agencies. PDOs are agencies focused on the provision of public services, not the regulation of sectors of the economy, as regulatory agencies. In addition, the PDOs litigate, in most cases, against the State. These agencies are responsible for acting in matters where there are deficiencies in the provision of public services to vulnerable citizens, such as failures in the payment of social security or assistance benefits, failures in housing policies, defects in policies aimed at traditional communities, indigenous peoples, etc. Consequently, these idiosyncrasies demonstrate the need for studies related to autonomy, capacity and performance of these agencies in the implementation of their policies.

### **Research question and purposes of the dissertation**

In view of the discussion developed above, an important question that remains to be answered is: how does the relationship between autonomy and performance take

place in PDOs? This is the problem to be addressed throughout this dissertation. Therefore, the objective of this dissertation is to explore and test aspects of the relationship between autonomy and performance of PDOs. For this end, the following specific objectives were pursued:

- identify the dimensions that explain the autonomy of public organizations, and provide a research agenda on this topic;
- build an autonomy measurement scale for PDOs, which allows to explore the cross countries variations in the autonomy levels of Latin American PDOs;
- explore the relationship between autonomy and performance of PDOs in Latin America;
- test the impact of autonomy on performance of Brazilian PDOs.

### **Outline of the dissertation**

This dissertation was built so that each one of its chapters has a complete meaning independently of the others; but, taken together, all these chapters add up to a greater purpose: to explore and test aspects of the relationship between autonomy and performance of PDOs. This purpose was pursued through comparative research, one part comparing PDOs of Latin American countries, and the other comparing Brazilian subnational PDOs. In addition to this introduction, this dissertation consists of five more chapters, the content of which is briefly described below.

Chapter 2, “Perspectives on the Autonomy of Public Organizations: a state of the field and a research agenda”, brings a theoretical essay that identifies and discusses the dimensions of the autonomy of public agencies, in addition to proposing a research agenda, which is partly covered in the course of this dissertation. That chapter builds a theoretical framework to understand the autonomy of public agencies, according to which autonomy is expressed through four dimensions: delegation, hierarchy, discretion, and appointment.

Furthermore, Chapter 2 identifies open questions on the topic of bureaucratic autonomy, covering aspects related to both, the causes of granting autonomy to public organizations, and the potential effects of autonomy. In conclusion, Chapter 2 presents three propositions particularly linked to the relationship between autonomy and

performance of public organizations, seeking to bring greater clarity to a relationship that is still very fuzzy in the literature on autonomous agencies. These propositions serve as guidelines for a research agenda that seeks to advance the knowledge on this topic.

Chapter 3, “The Autonomy of Public Defender’s Offices: a systematic comparison between Latin American countries”, presents the development of a scale for measuring the autonomy of PDOs. This scale allowed to access the autonomy of 16 national PDOs from Latin American countries, and then to explore the cross countries variations in the autonomy levels of these PDOs.

The creation of the scale itself stands out as an important methodological contribution. It allowed the design of an original comparative data set of PDOs covering a large amount of Latin American countries. Future studies may use this instrument in order to expand the data set, and/or connect de data set to various topics. It is also worth mentioning important practical implications, since the study was able to characterize the institutional arrangements of most of the Latin American national PDOs, allowing broad comparison between agencies that provide legal aid for the vulnerable population in a region of the world that still suffers from high levels of poverty.

The results found in the study presented in Chapter 2 also bring a theoretical contribution. It is noteworthy that the Public Administration literature favors institutional factors as inducing the level of autonomy of public organizations. These factors include the characteristics of political and administrative systems, such as state structure, decision-making patterns, administrative traditions and the level of democratization (Maggetti, 2007; Eckert, 2010; Bach, 2014; Bersch, Praça, & Taylor, 2017; Mediano, 2018). However, this study presents possible explanations to the variations of the PDOs’ level of autonomy based on the idiosyncrasies of PDOs, whose autonomy is also influenced by variables related to social context, in this case, per capita GDP.

Chapter 4, “Autonomy and Performance of Latin America Public Organizations”, explores the relationship between autonomy and performance of Latin American PDOs. In this case, the sample covered not only national PDOs, but also subnational PDOs from Argentina, Brazil and Mexico. The results show positive associations between autonomy and performance, but it should be taken carefully. The

dimensions of autonomy can be associated with performance in different ways and intensities. Taken together, the results suggest that the expectation of part of the literature, according to which higher levels of autonomy would lead to higher levels of performance and efficiency (Silver, 1993; Braadbaart, Van Eybergen, & Hoffer, 2007; Anand, Exworthy, Frosini, & Jones, 2012; Vining, Laurin, & Weimer, 2015), does not always tend to be confirmed.

The results of the study presented in Chapter 4 weaken the claim that PDOs must be independent (OAS Resolutions n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014). The autonomy of these institutions is indeed important, since they defend the interests of vulnerable citizens against the arbitrariness of the state. However, high degrees of autonomy can be problematic for the effectiveness of the services provided by those organizations since the lack of accountability mechanisms can lead to suboptimal performance. A practical implication is that autonomy should be delegated to PDOs with caution; the focus should be on aspects related to its operation and the functional action of public defenders, not in the hierarchical disconnection of the PDO from a higher authority.

The discussion on the relationship between autonomy and performance of PDOs is also brought up in Chapter 5, “When Autonomy is Necessary for Performance: a study on the Brazilian Public Defenders’ Offices”. However, it uses a different institutional context (subnational PDOs in Brazil) and methodological approach, once it observes public defenders’ perception. Results confirm that such organizations should operate at certain levels of autonomy, but caution should be taken when granting autonomy to PDOs, since accountability has stronger influence on performance than autonomy. It was also observed that bureaucrats’ skills positively influence performance, but the availability of resources does not present a statistically significant relationship with performance.

That chapter provides relevant theoretical contributions and implications for practice. First, it indicates that public agencies with a mission related to promoting access to justice and controlling public policies aimed at the vulnerable population need greater autonomy to perform better. Moreover, the study proposes explanations about the mechanisms by which autonomy is able to influence performance, thus indicating that higher levels of autonomy are not related to higher levels of availability of

resources. Interaction between autonomy and skills of these bureaucrats was observed, indicating that higher levels of autonomy might benefit PDOs composed of more skilled bureaucracies.

Regarding the practical contributions, Chapter 5 also indicates that accountability has stronger influence on performance than autonomy. This suggests that, more important than autonomy, are the accountability mechanisms of the public agency in relation to its performance. Furthermore, the study in Chapter 5 suggests three ways to expand PDOs performance: increasing bureaucrats' skills; guaranteeing autonomy in the exercise of their functions; and establishing effective accountability mechanisms.

Finally, Chapter 6 concludes with the discussion of the results, contributions for practice and theory, and proposals for research agenda.



## **Chapter 2**

### **PERSPECTIVES ON THE AUTONOMY OF PUBLIC ORGANIZATIONS: A STATE OF THE FIELD AND A RESEARCH AGENDA<sup>1</sup>**

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<sup>1</sup>A previous version of this Chapter was presented at the 4th International Conference on Public Policy, Montreal, 2019.

## **Abstract**

In order to identify the dimensions that explain the autonomy of public organizations, and provide a research agenda on this topic, this article dissects the nomenclatures and meanings about autonomous agencies and provides a framework for the analysis of the autonomy capable of encompassing different public organizations with the common feature of autonomy vis-à-vis elected authorities. The proposed framework comprises four dimensions of analysis: delegation, hierarchy, discretion, and appointment. It also provides a selective overview on the functional reasons for creating autonomous agencies, as well as their implications, highlighting open questions and indicating paths for future research.

**Keywords:** Autonomy; Independence Public Sector Organizations; Accountability; Performance

## **Introduction**

Authority delegation to public organizations has been addressed by the Public Administration literature for a long time. In the 1980s, seminal articles were published on the bureaucratic discretion of autonomous agencies and their control by the Legislature from the perspective of principal-agent relationship (Weingast & Moran, 1983; Moe, 1984; Weingast, 1984). But, even before that, in the nineteenth century, there was already a debate about delegation of authority in the public sector. According to Wilson, the discovery of the best principle of the distribution of authority is of fundamental importance in a democratic system, with vigilance and responsibility being ways to dispel the problems generated by the distrust of the delegation (Wilson, 1941).

However, there is still no consensus in the literature on the definition for what we call in this article autonomous agency. Not even the nomenclature for this type of public organization is consensual. At least 26 ways can be identified within the Public Administration literature to classify this type of organization. Some examples are non-majoritarian institutions (Stone Sweet & Thatcher, 2002), independent regulatory agencies (Gilardi, 2002), quasi-governmental organizations (Wettenhal, 2003), unelected bodies (Vibert, 2007), semi-autonomous agencies (Verhoest, Van Thiel, Bouckaert, & Laegreid, 2012). The lack of consensus on the very definition of this organizational type, as well as on its creation, operationalization, consequences and the challenges involved in delegating authority to them indicate that the production of knowledge in this area is still fuzzy.

The aim of this essay is to identify the dimensions that explain the autonomy of public organizations, as well as provide a research agenda on this topic. To do so, this essay dissects the nomenclatures and definitions of autonomous agencies, and proposes a framework for the analysis of the autonomy of public agencies capable of encompassing different public organizations with the common feature of autonomy vis-à-vis elected authorities. The present study identifies the main elements to explain the autonomy of public agencies despite the cross-country variations of the levels of autonomy that they are granted. Even if these organizations operate in different sectors, authority is delegated to them for common reasons, and the consequences of these delegations are also similar. This study is not intended to be a systematic review, but rather a theoretical essay, the scope of which is naturally limited. Therefore, it provides a selective overview on the functional aspects involved in the studies on autonomy of public agencies, highlighting open questions and ways to advance knowledge on the topic.

Public sector organizations can be divided into departments or ministries, autonomous agencies, and local authorities (Wettenhal, 2003). Their levels of autonomy can be categorized through a scale from 0 to 5, where 0 means entirely governmental organizations and 5 means the greatest autonomy from the government (van Thiel, 2012). The focus of this article is on organizations levels 1 and 2. Level 1 comprises public organizations with some managerial autonomy but no formal independence, and level 2 consists of legally independent organizations (van Thiel, 2012).

This article is organized as follows. The next section presents a discussion about the nomenclature and the meanings adopted in the Public Administration literature for autonomous agencies. From this discussion, dimensions that make up the concept are identified. Then, the following section presents an overview on the functional reasons for creating autonomous agencies and their implications, indicating questions that remain open. Finally, this article concludes presenting propositions that serve as guidelines for our future research agenda.

### **Meanings and a framework for public agencies' autonomy**

The study on autonomous agencies is widespread in Western Europe and the United States (Overman, 2016) and there is also growing research on this topic in developing countries (Badran, 2012; Ozel, 2012; González & Verhoest, 2016; Zahra &

Jadoon, 2016; Bersch, Praça, & Taylor, 2017; Pavón Mediano, 2018; Peci & Pulgar, 2018; Tomic, 2018). These agencies can exercise diverse functions and take various structural forms (Stone Sweet & Thatcher, 2002). However, most of the studies refer to regulatory agencies in several sectors of the economy (Pollitt, Bathgate, Caulfield, Smullen, & Talbot, 2001; Gilardi, 2002; Thatcher, 2002; Verhoest, Peters, Bouckaert, & Verschuere, 2004; van Thiel, 2004; Elgie, 2006; Yamamoto, 2006; Maggetti, 2007; Eckert, 2010; Biela & Papadopoulos, 2014; Eckert, 2017). There are also studies on other types of organizations, but they are less common than those on regulatory agencies. These organizations include central banks (McNamara, 2002), anti-corruption agencies (Di Mascio, Maggetti, & Natalini, 2018), appointment committees (Flinders, 2009), forest management agencies (Birner & Wittmer, 2006), climate policy agencies (Meckling & Nahm, 2018), audit institutions (Peci & Pulgar, 2018), ethics commissions (Rauh, 2016), water supply utilities (Braadbaart et al., 2007), and hospital service authorities (Caulfield & Liu, 2006; Anand, Exworthy, Frosini, & Jones, 2012).

There is a wide variety of nomenclatures and meanings to define such organizations. In this study, we identified 26. It is, thus, perceived that there is no consensus on how to name this type of public organizations. In addition, distinct nomenclatures were found in a single article. This leads to fundamental problems in the operationalization of this concept as a study variable, as well as in the comparison of research results that deal with aspects related to this type of organization. As seen in Table 1, many studies adopt the term "agency"; others use "bodies"; "organizations"; "institutions"; "entities" and "authorities". The articles also qualify these organizations as "independent" and "autonomous".

Table 1. Nomenclatures adopted for the qualification of autonomous agencies.

<b>Nomenclature</b>	<b>Research</b>
Agencies	Taratoot and Nixon (2011); Bach (2014); Bjørnholt and Salomonsen (2014); Vining et al. (2015); Rauh (2016); Bersch, et al. (2017); Meckling and Nahm (2018); Mascio et al. (2018)
Independent Agencies / Independent Regulatory Agencies	Gilardi (2002); Thatcher (2002); Birner and Wittmer (2006); Maggetti (2007); Flinders (2009); Eckert (2010); Roederer-Rynning and Daugbjerg (2010); Badran (2012); Ozel (2012); Biela and Papadopoulos (2014); Font (2015); Pavón Mediano (2018)
Autonomous / Semi-autonomous Agencies / Autonomous Regulatory Agencies	Birner and Wittmer (2006); Levi-Faur and Jordana (2006); Schillemans (2010); Verhoest et al. (2012); Verhoest and Wynen (2016); Overman (2017); Tomic (2018); Schillemans et al. (2020)
Non-majoritarian Institutions	Stone Sweet and Thatcher (2002); Flinders (2009); Eckert (2010); van Thiel and Yesilkagit (2011); Bertelli (2016)
Administrative / Executive / Government/ Public Agencies	van Thiel and Yesilkagit (2011); Kim and Cho (2014); Bertelli (2016); Zahra and Jadoon (2016)

Semi-Autonomous Public Sector Organizations	Yesilkagit and Thiel (2008)
Autonomous Bodies / Autonomous Public Statutory Bodies / Autonomous Administrative Bodies / Semi-autonomous Public Bodies	Birner and Wittmer (2006); Caulfield and Liu (2006); Yamamoto (2006); van Thiel and Yesilkagit (2011); Peci and Pulgar (2018);
Independent Bodies	Peci and Pulgar (2018)
Quasi-Autonomous Arm's Length Bodies	Flinders (2009)
Quangos	Wettenhal (2003); van Thiel (2004); Bertelli (2006); Flinders (2009)
Non-majoritarian Quasi-Autonomous Authorities	Font (2015)
Quasi-Governmental Entities / Organizations	Wettenhal (2003) ; Bertelli (2006)
Extra-governmental Organizations	Flinders (2009)
Independent Administrative Authorities / Independent Regulatory Authorities	Elgie (2006); Eckert (2017)
Unelected bodies	Vibert (2007)

Source: based on the nomenclature identified in a series of articles that were not systematically selected. These articles, however, specifically address this topic and are mostly published in journals with the greatest impact in the Public Administration field.

It is important to acknowledge that different terms may have been used wittingly to identify different organizations in essence and purpose. The nomenclatures used, in most cases, refer to entities of different kinds, regardless of their institutional arrangement or sector in which they operate. However, there is no pattern for the use of most of the terms. Non-majoritarian institutions, quangos, agencies (whether independent, semi-autonomous, autonomous, executive), autonomous bodies, etc., can refer to diverse kinds of public entities that operate in the most varied sectors. The term Quasi-Non-Governmental Organizations “Quango” is an example of indiscriminate use. These are entities that perform functions of public character and with state funding (e.g., Wettenhal, 2003; van Thiel, 2004; Bertelli, 2006; and Flinders, 2009). They are distinct from the Quasi-Governmental organizations “Quagos,” defined as statutory authorities that have a degree of autonomy in relation to the political core. Despite this difference, the terms Quango and Quago have been used interchangeably in the literature (Wettenhal, 2003; Bertelli, 2006; Flinders, 2009).

The most studied type of autonomous organizations, regulatory agencies, is expressed by specific terms: independent regulatory agencies, independent regulatory authorities, or autonomous regulatory agencies. This does not mean that regulatory agencies are not being referred to by the generic terms highlighted above.

The term body brings the notion that there is no distinction between the legal personalities of the body and the parent ministry. In fact, the first definitions of body in the Cambridge Dictionary refer to a whole structure, or the main part of a person or a group. Body, therefore, could be either a department within a ministry, or an organization with some degree of autonomy, but without legal independence. Conversely, the term "entity" gives the idea of complete separation between the organization to which it refers and the government. That is, entity is an organization that exists separately from another. In turn, "authority" may refer both to the character of legality involved in attributing competence to a public organization for a given task, and to the fact that this organization has specialized knowledge in a certain area.

Agency is the most used, and the most appropriate term to define organizations that are not part of a ministry. In other words, agencies are organizations that operate remotely from the government to conduct public activities. Their structures are disaggregated from the parent ministry, which allows them greater managerial and operational freedom compared to the departments of that ministry, but they are usually not completely independent (Verhoest, Van Thiel, Bouckaert, & Laegreid, 2012).

The adjectives autonomous and independent may seem synonymous but have different connotations in organizational studies. The term "independence" assumes that there is no dependency relationship between the organization and the government. On the subject, it is worth remembering that relations between organizations commonly entail bonds of mutual dependence (Emerson, 1962). Organizations depend on external stakeholders, who have resources of their interest (Pfeffer & Salancik, 2003), which allows these stakeholders to influence strategic decision-making (Frooman, 1999). This should be no different for public organizations, since even entities with great autonomy will always depend on public resources, besides having the government as a stakeholder of paramount importance. Thus, the term "autonomous" seems more appropriate to define types 1 and 2 organizations, since it does not assume complete independence.

The expression "non-majority institution" indicates that the decisions of these organizations potentially frustrate public opinion or the legislative majority. However, it should be highlighted that public agencies are not immune to factors related to reputation. Public managers have, either by necessity or training, a deep knowledge of the audience who monitors them. They would observe and measure expectations in

relation to the external demands. Therefore, their image before these audiences tends to be considered in the decision-making process, thus shaping bureaucratic autonomy as well as administrative choice (Carpenter & Krause, 2012). Consequently, the claim that autonomous agencies are non-majority institutions can refer to the power of these organizations to make decisions contrary to public opinion, which will not necessarily be exercised frequently.

Therefore, we opt to use the nomenclature "autonomous agencies" to encompass governmental institutions whose structures are separate from the core of government and that are not directly administered by elected politicians for whom specialized public authority has been granted. The variation in nomenclatures already indicates some characteristics of these organizations. Regarding the content of the definitions adopted in the literature, four main dimensions can be set to form a theoretical framework to analyze the autonomy of public agencies: delegation, hierarchy, discretion, and appointment. Each of these dimensions represents a perspective through which autonomy can be observed. The following subsections offer a selective overview on each of these dimensions.

### *Delegation*

Autonomous agencies perform public tasks on behalf of the state (Elgie, 2006; Zahra & Jadoon, 2016; Overman, 2017), exercise a concession of specialized public authority (Maggetti, 2007), and/or operate under contractual conditions (Overman, 2017). Thus, it is noteworthy that autonomous agencies are commonly governed by Public Law, that is, they obey a set of rules that govern Public Administration. This concept excludes organizations that perform public activities, but operate under Private Law, such as civil society organizations, public or mixed-capital companies. Furthermore, these organizations exercise specialized authority under the conditions defined in a statute, whether this statute is a law, a decree, or any other applicable rule, through which authority is delegated. That is, there can be multiple legislative sources on the basis of which authority is delegated.

The delegation perspective deals with the mechanisms underlying the delegation of public authority by governments to agencies, as well as their implications. Understanding the reason for choosing to delegate public policies to autonomous agencies is important to explain the functioning of the state apparatus in comparative

perspective, and also why certain public policies would be implemented by distinct types of organizations in different countries.

### ***Hierarchy***

Some definitions emphasize that the autonomous agencies are not subordinated to the government, but have distinct structures from the ministries (Thatcher, 2002; Wettenhal, 2003; Bertelli, 2006; Elgie, 2006; Maggetti, 2007; Badran, 2012; Overman, 2017). It means that autonomous agencies are organizations that work at arm's length from the central government, with its own leadership, staff, institutional design, and cultural aspects. Other definitions relativize this distinction, pointing out that the entities are partially separated from the central government departments (Schillemans, 2010), or that are part of the ministerial hierarchy, but have their own administration (Bjørnholt & Salomonsen, 2014). It is important to consider that the degree of separation from the central government should depend on broader institutional contexts (e.g., common law versus civil law systems). The partial separation in one context might be representative in terms of actual autonomy of an agency if a full separation is not legally possible. Therefore, these differences in definitions of hierarchy might ultimately reflect the limits of autonomy authorized by law.

This perspective raises relevant questions about the relationships between autonomy and organizational control. Understanding institutional accountability mechanisms for autonomous agencies, as well as institutional variations between agencies in countries or sectors with different cultural and sociological aspects, is important to assess how institutional frameworks can induce greater quality in policies conducted by autonomous agencies. Hierarchical control plays an important practical and normative role in aligning the behavior of the heads of autonomous agencies, even in contexts of fragmented governance (Schillemans, 2010).

### ***Discretion***

In relation to discretion, two main categories stand out: administrative and political. Political autonomy is related to the entities' discretion about the policy formulation and implementation (Verhoest, et al., 2012; Zahra & Jadoon, 2016). Autonomous agencies have their own competences and responsibilities (Thatcher, 2002), and their actions should not be influenced or sanctioned, except by the courts



(Elgie, 2006). Administrative autonomy refers to the discretion of entities in the management of personnel and budgetary resources (Verhoest et al., 2012; Bach, 2014; Zahra & Jadoon, 2016). The separation of the budget of autonomous agencies from that of ministries is also an indicator of administrative autonomy (Bjørnholt & Salomonsen, 2014; Overman, 2017). Sometimes they have their own means for generating resources, for example through the application of fees. From this perspective, it is important to understand the implications of granting greater discretion to agencies. The focus is on understanding how autonomy influences capacities and performance of public agencies.

### ***Appointment***

Concerning appointment, the definitions emphasize that autonomous agencies are managed by agents who were not elected (Thatcher, 2002; Maggetti, 2007; Pavón Mediano, 2020). These agencies are not directly elected by the people, nor are they managed by elected politicians, but appointed by an elected official, or by different representatives, e.g. forms of appointment that involve the nomination by one state branch (the Executive for example) and referral by another (the Legislature). From this perspective, the establishment of autonomous agencies with unelected leaders may lead to questions about the legitimacy of these institutions and the reduction of the scope of the political debate. The role of traditional democratic institutions is also debatable, since the elected representatives appear to exercise less control over the formulation and implementation of public policies, which depends fundamentally on the opinion of specialists with a more technical rather than political rationality (Vibert, 2007). In this sense, some authors call autonomous agencies non-majoritarian institutions (e.g., Stone Sweet and Thatcher, 2002; Flinders, 2009; Eckert, 2010; van Thiel and Yesilkagit, 2011; Bertelli, 2016), referring to the fact that the decisions of autonomous agencies are eminently technical, which could contradict the popular or representative majority.

### **Autonomy as (in)dependent variable and ways forward**

One of the main issues that occupy the Public Administration literature about bureaucratic autonomy include the reasons for creating autonomous agencies, as well as their implications. The causes and consequences for delegating authority to autonomous agencies can be based on different perspectives, since this topic has been studied by several fields of knowledge. In this article, we chose to focus on functional perspectives, i.e., linked to the capacities, performance and accountability of autonomous agencies.

Despite this, we recognize that the phenomenon can be exploited through institutional theories to assess the spread of such organizations (Pollitt, et al., 2001; van Thiel, 2004; Levi-Faur & Jordana, 2006; Roederer-Rynning & Daugbjerg, 2010; Badran, 2012) or by approaches related to public choice, as those dealing with blame shifting (Fiorina, 1982; Weaver, 1986; Overman, 2017).

### ***Independent variable***

From a functional point of view, elected politicians may have expectations when creating autonomous agencies. These expectations may cover the supposed increase in institutional capacity and/or performance, and the increase of the State credibility in the commitment to certain public policies.

First, there are cases in which legislators delegate authority to autonomous agencies due to expectations of better performance or efficiency in the implementation of public policies. It is possible to state that there would be an economy in transaction costs by appointing an agent with the expertise and resources needed to implement certain policy goals (Eckert, 2017). A reduction in decision-making costs can be expected, since policies would tend to be executed more efficiently by expert agents (van Thiel & Yesilkagit, 2011).

Second, there is an expectation that the delegation would increase credibility in the commitment to certain public policies (Majone, 2001; Bach, 2014). There would be an intention to separate the State policies from the government policies (Wettenhal, 2003). The creation of autonomous agencies would thus be linked to the need to distance State policies from party affairs. The credibility would be due to the fact that the entities enjoy autonomy vis-à-vis elected politicians (Thatcher, 2002), which would allow the safeguarding of political stability, difficult to achieve in volatile political arenas (Eckert, 2017). Furthermore, autonomous agencies would have superior ability to handle complex and highly technical functions (Badran, 2012).

However, this has not been always confirmed in the literature. A study of the reforms of Italian governments, for example, indicates that governments that suffer from stronger credibility problems are not the ones that delegate the most. On the contrary, governments that do not anticipate any threat from regulators tend to give them more authority (Mascio et al., 2018).

Third, political competition among various interest groups may undermine the credibility of certain policies. Hereupon, the creation of autonomous agencies can be made from a need to reduce the level of conflict (Bertelli, 2016). In cases where a sector is regulated by different authorities that have varying degrees of autonomy, there is an institutionalized conflict. This conflict can be avoided by establishing an integrative model, in which only one entity should be responsible for a particular policy (Eckert, 2017).

The number of veto players in certain political systems is a relevant variable in this context. Veto players can be defined as individual or collective actors whose agreement is necessary for a change in the status quo (Tsebelis, 2002). The effect of this variable, however, is not yet clear. There are studies that find a negative relationship between the number veto players in a given political system and the delegation of authority to autonomous agencies. That is, more veto players would lead to less delegation (Gilardi, 2002; Taratoot & Nixon, 2011). However, Maggetti (2007) comes to a different conclusion; the presence of multiple veto players would tend to increase the autonomy of the agencies, since the division between politicians would make it more difficult to influence the decisions of the regulatory agencies.

Therefore, it is possible to analyze autonomy as an independent variable from the perspectives of delegation and appointment. From the point of view of appointment, the expectation that the separation between government policies and party affairs will make public policies more credible shows the disbelief in representative democracy. Ultimately, one can perceive the feeling that political influence is undesirable in the implementation of public policies that lack the credibility of the State's commitment. It is worth mentioning that bureaucracies are also not immune to the pressures imposed by interest groups, and can also be captured by these interests (Thatcher, 2002). In this sense, open questions are: to what extent can the establishment of mechanisms of democratic control over autonomous agencies influence or compromise the credibility and legitimacy of public policies? What types of democratic control mechanisms are most effective for the credibility and legitimacy of public policies implemented by autonomous agencies?

From the perspective of the delegation dimension, it is worth mentioning that the expectations of politicians when delegating authority to autonomous agencies are not

always met after the delegation, which raises the doubt about their strength as a factor capable of predicting the decision to delegate authority to autonomous agencies. In this sense, there is still no clear evidence that politicians do in fact delegate authority to autonomous agencies hoping that such agencies will have greater capacity to perform better. As these alleged causes are related to the perception of politicians, the best way to address them would be through psychometric methods. In addition, if the hypothesis of politicians' expectations is true, social factors should act as important predictors of the creation of autonomous agencies that deal with salient social policies.

### *Dependent variable*

The main effects of authority delegation to autonomous agencies can be related to the organizational performance and capacity of the autonomous agencies, and the accountability risks. With regard to performance, there is still no systematic evidence of a direct relationship between performance and autonomy (Maggetti & Verhoest, 2014). Some studies suggest such relationship (e.g., Anand et al., 2012; Vininget al., 2015). However, there are studies that suggest otherwise, that is, an inverse relationship between autonomy and performance (Kim & Cho, 2014; Overman & van Thiel, 2016). Considering the possibility of both being right, it is likely that the relationship between autonomy and performance is curvilinear (Rainey & Steinbauer, 1999), in the form of a parabola with a downward facing concavity (Fukuyama, 2013), indicating that there is an optimal situation in the average. The existence of intervening factors in this relationship should be considered, such as the level of qualification of the bureaucracy (Fukuyama, 2013), or certain accountability mechanisms (Han & Hong, 2019), or even the nature of the agency's task (van Thiel & Yesilkagit, 2014). It would be important to understand which accountability mechanisms would have the greatest influence on the relationship between autonomy and performance. It must also be considered that autonomy is a multidimensional construct, so that each of its dimensions could have a distinct influence on performance.

Autonomous agencies would play an important role in the resilience of sectors of the economy, protecting them from crises (Ozel, 2012). In addition, less involvement of autonomous agencies in the formulation and implementation of public policies would be related to the greater policy inefficiency. For example, on an individual level, it has already been observed that agents with little political and managerial autonomy tend to

perform poorly (Zahra & Jadoon, 2016). At the institutional level, there is a relation between autonomy and capacity, and that these two variables, along with party dominance, have significant effects on levels of corruption. That is, low levels of capacity and autonomy and high partisan dominance would be associated with higher levels of corruption (Bersch et al., 2017).

However, there are studies indicating that autonomy alone is insufficient to understand the levels of state capacity or that their consequences are not always positive. Meckling and Nahm (2018), in studying climate policy entities in the United States and Germany, conclude that the focus on bureaucratic autonomy is insufficient to understand levels of state capacity. Delegating policymaking to bureaucracies may be a critical source of state capacity, but such delegation requires political capital (Meckling & Nahm, 2018). In addition, there is an intrinsic relationship between the concepts of autonomy and control. If the statute of delegation minimizes the principal's sanctioning power, agents tend not to worry about the breach of the principal's interests. Bureaucrats may prefer to serve private interests, thus opting for sub-optimal policy outcomes (Tomic, 2018).

Governments need to show commitment to certain policies. The delegation of authority to autonomous agencies would be a means to increase the credibility of such policies (Gilardi, 2002), and, therefore, the government's capacity to implement such policies. This would tend to occur due to less possibilities of political interference and risks of partiality or partisanship (van Thiel & Yesilkagit, 2011), as well as due to a process of decision-making with greater technical base (Meckling & Nahm, 2018). Credibility is based on the responsible exercise of the independent judgment of the autonomous agencies' specialists in the performance of their functions (Bertelli, 2006). In cases where there is high party dominance in the nomination, it is possible to think of incentives for patronage. In this sense, higher levels of partisan dominance can lead to higher levels of corruption (Bersch et al., 2017), since, in patronage regimes, greater loyalty is expected rather than independent judgment (Bertelli, 2006).

Regarding accountability risks, looser control over bureaucracy in autonomous agencies opens opportunity for corruption (Bertelli, 2006). Indeed, if we consider that agents tend to be self-interested and seek to maximize their utility, a consequence of delegation would be a greater difficulty in accountability. Accountability weaknesses

can bring corporatist benefits to bureaucrats. Authority delegation to autonomous agencies may contain incentives for greater benefits to the civil servants, since agents may occasionally behave differently from the interests of principals. The greater the discretion of the autonomous agency, the greater the risk of bureaucratic drift (van Thiel & Yesilkagit, 2011). Bureaucrats tend to show stronger bonds of loyalty with their own institution, valuing their autonomy. In organizations with a high degree of autonomy, bureaucracies tend to deny ties of loyalty to political appointees, parties or any external stakeholders (Peci & Pulgar, 2018).

In order to compensate for delegated autonomy and to adjust the interests of principal and agent, the Legislature may try to politicize nominations for autonomous agencies (Tomic, 2018). However, delegation can be a protection against rent seeking (Birner & Wittmer, 2006). This rationale tends to disregard the need for legitimacy of autonomous agencies and accountability to democratically elected representatives. One way out of this trap would be to counteract wage demands and the selection of a more professional and representative bureaucracy to mitigate the corporate incentives contained in the delegation process (Bertelli, 2006).

When the delegation occurs in an environment conducive to dialog between the autonomous agency and the parent ministry, there may be higher levels of transparency (Bjørnholt & Salomonsen, 2014). Redundant mechanisms of accountability, that is, mechanisms that consider both instruments of vertical accountability (towards society or elected representatives), and horizontal (towards other public entities), tend to have positive effects. Redundancy increases the reliability of supervision, so that the possibilities of discovering and correcting unwanted behaviors are increased, as well as helping to mitigate information asymmetry, breaking the monopoly of autonomous agency over information (Schillemans, 2010).

Finally, it is possible to analyze autonomy as an independent variable from the perspectives of discretion and hierarchy. The mechanisms by which autonomy can influence the capacities and performance of public agencies are still unclear. From the hierarchy point of view, it is known that the level of proximity between the agency and the parent ministry, with a stronger perception of accountability, is linked to trust relationships between principal and agent (van Thiel & Yesilkagit, 2011; Schillemans, et al., 2020), which may allow greater capacities and resources for the autonomous

agency. However, the autonomy of public organizations in relation to the hierarchical bound with the central government is an important institutional aspect that characterizes autonomous agencies (Gilardi, 2002; Thatcher, 2002; Hanretty & Koop, 2012; Mascio, Maggetti, & Natalini, 2018). Therefore, a question that remains open and should be addressed in future studies is: how do accountability mechanisms influence autonomous agencies' behaviors?

On the discretion perspective, it is possible that the multiple aspects of autonomy have different impacts on the performance of autonomous agencies. High levels of political autonomy can lead to a distance between the agency and the central government, in an effect similar to that pointed out for the hierarchical attachment. However, it can ensure that the autonomous agency is able to make decisions based on technical rationality, not necessarily in line with public opinion or the occasional legislative majority. In turn, administrative autonomy, related to discretion in the management of personnel and financial resources, can ensure that the autonomous agency has the necessary resources for its activities. However, extreme levels of administrative autonomy, without the corresponding accountability mechanisms, can lead to the use of resources in the interests of bureaucracy. Thus, questions that remain open and should be addressed in future studies are: which aspects of autonomy are most relevant to performance? How can the different aspects of autonomy influence the performance of public organizations? How do such aspects impact the functioning of these organizations?

### **Conclusion**

This study provides a selective overview of the literature on public agencies autonomy. This topic can be approached under different theoretical lenses. However, the approach we choose favors the field of Public Administration, especially the theoretical approach arising from the firm's theory, which deals with the relationship between principal and agent. In any case, it is worth mentioning that we tangentially adopt theoretical approaches from Political Science and Organizational Theories to support the argumentation.

In this study, we have proposed a theoretical framework to analyze the autonomy of public agencies, setting four dimensions: delegation, hierarchy, discretion, and appointment. Each of these dimensions represents a perspective through which

autonomy can be observed. Furthermore, open questions on the topic of bureaucratic autonomy were identified. In conclusion, we present three propositions that express the current state of our knowledge and serve as guidelines for our future research agenda, and some useful guidelines for advancing research on this topic. These propositions are particularly linked to the relationship between autonomy and performance of public organizations, seeking to bring greater clarity to a relationship that is still very fuzzy in the literature on autonomous agencies.

Regarding the mechanisms of democratic control and their influence on the credibility and legitimacy of the policies implemented by the autonomous agencies, there is still no clear evidence that the control of these agencies carried out directly by the legislature is effective. As discussed above, autonomous agency decisions are potentially non-majoritarian, and may frustrate public opinion or an occasionally majority political understanding. Considering that public managers are aware of the public that monitors them, those who have a closer connection to the principal will know their interests better. Therefore, considering that the performance must be accessed based on the expectations of the principals, agencies that have greater contact with the elected representatives and greater knowledge about the public that monitors them will tend to present better performance. Thus, the first proposition is:

***Proposition 1*** - *Agencies that have some type of hierarchical link to a parent ministry, with an obligation of accountability, present greater performance than those agencies that are not linked to the ministry and that report directly to the legislature.*

About the expectations of elected politicians to be a factor capable of predicting the decision to delegate authority to autonomous agencies; it is worth mentioning that this is an important study topic, which must take into account psychological aspects. However, more relevant than that, is to understand the factors that make elected politicians develop such expectations. In this sense, we believe it is important to identify whether politicians are in fact aware of the effects of potential delegations. It is also worth highlighting the need to evaluate agencies whose mission is to provide social services palpable to the population, shifting the focus from agencies aimed at regulating markets and controlling public administration.

Concerning accountability mechanisms and their influence on the behavior of agencies, it is worth mentioning that high levels of autonomy is likely to create incentives for greater benefits to the civil servants, since agents may occasionally



behave differently from the interests of principals. However, as previously discussed, redundant accountability mechanisms increase the possibilities of discovering and correcting deviant behaviors, and mitigating information asymmetry. It can be expected that autonomous agencies established with instruments of control that allow to reaffirm the power of elected representatives will tend to realize their capacities in a way compatible with those expected by these representatives. The existence of effective accountability mechanisms is likely to shape the behavior of public managers, even in situations of high levels of autonomy. Thus, the second proposition follows:

***Proposition 2*** - *The level of accountability moderates the relationship between autonomy and the performance of bureaucracy.*

Regarding the relationship between the dimensions of autonomy and their influence on performance, it is possible that the various aspects of autonomy have different impacts on the performance of autonomous agencies. High levels of political autonomy can lead to a distance between the agency and the parent ministry, but it can also ensure that the agency will not have its decisions overturned by a higher authority. In turn, high levels of administrative autonomy can ensure that the agency has the necessary resources for its operations, but it can also allow bureaucrats to use these resources to serve their own interests. Therefore, it is expected that the institutional arrangement of each autonomous agency can lead to different performance results. Thus, the third proposition is as follows:

***Proposition 3*** - *Different dimensions of autonomy have different impacts on the performance of public agencies.*

With regard to the operationalization of these propositions, we believe that observing institutional and legal aspects is the best way to compare institutional contexts or organizations operating in the same sectors. The use of surveys is a relevant way to compare organizations in similar institutional contexts, and to operationalize political autonomy. As autonomy is an abstract construct, its operationalization must take place through its observable aspects. Thus, forms of operationalization that use similar aspects of autonomy produce comparable results.

Finally, since most comparative studies focus on Western Europe and the United States, it is important to state that studies that characterize the phenomenon of delegation with broader geographic scope are needed. The literature suggests that the

behavior of autonomous agencies may vary in different regions of the world. Therefore, it remains to be understood whether this occurs systematically, and why it occurs.

## Chapter 3

### **THE AUTONOMY OF PUBLIC DEFENDER'S OFFICES: A SYSTEMATIC COMPARISON BETWEEN LATIN AMERICAN COUNTRIES<sup>2</sup>**

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<sup>2</sup> This Chapter has been submitted to a peer-reviewed journal. Previous versions of this Chapter were presented at the 3rd Administration of Justice Meeting EnAJUS, Curitiba, 2020, and at the IRSPM expert meeting - Design-led Approaches to Renewing Public Management and Governance, Rotterdam, 2019.

## **Abstract**

In most Latin American countries, the provision of legal assistance to the vulnerable population is carried out by public defender's offices (PDOs), agencies composed of state-paid career lawyers. The aim of this paper is to explain the cross-country variation regarding the autonomy levels of Latin American PDOs. A scale to measure autonomy was built allowing access to the autonomy of sixteen different PDOs. Data were gathered through content analysis of the statutes that organize the PDOs and analyzed through qualitative comparative analysis (QCA). The results demonstrate different levels of autonomy among Latin American PDOs. The level of autonomy varies according to factors related to institutional and social contexts. There are signs that the levels of income, human development, democracy, and the complexity of the political systems are related to the PDOs' autonomy.

**Keywords:** Governance; Autonomy; Public Defender's Offices; Latin America

## **Introduction**

Many different studies have tried to explain the autonomy of public organizations in several sectors. These studies, however, focus on the western world, specifically Europe and the United States (Overman, 2016). Justice be done, there are important studies on autonomy in other regions of the world, as Latin America (Levi-Faur & Jordana, 2006; González & Verhoest, 2016; Mediano, 2018; Peci & Pulgar, 2018), but these are not as frequent.

There are still several questions to be answered on this topic, especially regarding the factors that influence autonomy. It is worth highlighting the need to define the structural and organizational factors, and how do these factors interact to determine the level of autonomy (Maggetti & Verhoest, 2014). There is also a gap in the Public Administration literature regarding organizations sector. The studies deal mostly with independent regulatory authorities, and it is difficult to observe studies that address organizations of the justice system (Buta & Teixeira, 2019). It is noteworthy that PDOs are interesting to be studied from the perspective of autonomy, since they are public organizations which often directly litigate against the state. Thus, the autonomy of these organizations should enhance their capacity to uphold social welfare and protect human rights (Madeira, 2014).

PDOs are agencies designed to provide legal aid for vulnerable citizens. Their mission is to defend human rights, reduce social inequalities and strive for the rule of law (Madeira, 2014). The policy design for promoting access to justice through a state bureaucracy is endemic in Latin America and adopted in most Latin American countries (Smulovitz, *Public Defense and Access to Justice in a Federal Context: Who Gets What, and How, in the Argentinean Provinces*, 2019), with few exceptions. This system reflects the willingness of the state to take responsibility for defending vulnerable citizens.

The Organization of American States, through Resolutions issued by its General Assembly (AG/RES n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014), encourages member states to adopt the model of providing free legal assistance through autonomous PDOs. It is a model in which there is a delegation of authority to a public organization for the provision of a specialized public service.

The balance between autonomy and accountability is necessary. It should be highlighted that excessive levels of autonomy tend to make organizations unaccountable. An appropriate degree of bureaucratic autonomy should not imply that bureaucrats isolate themselves from society, or make decisions that deviate from citizens' interests (Fukuyama, 2013). High levels of political autonomy, for example, can make it more difficult for agencies to interact with the political representatives who control public resources (Schillemans, et al., 2020).

There are variations between the institutional structures of the Latin-American PDOs. For example, the Brazilian PDOs are autonomous agencies unrelated to any of the state's branches (Buta, Guimaraes, & Akutsu, 2020). In Argentina, PDOs can be linked to the Judiciary; it can also be subordinated to the head of the Public Prosecution Service; or even form a two-headed institution together with the Public Prosecution Service (Smulovitz, 2019). Thus, it is possible to infer that there are different institutional arrangements and accountability mechanisms for the Latin American PDOs, and consequently different levels of autonomy. Therefore, why do organizations that have the same mission present different levels of autonomy?

The aim of this paper is to explain the cross-country variation in the autonomy levels of Latin American PDOs. To do so, first, it is necessary to measure the levels of autonomy of these agencies. For this purpose, cross-national analysis of sixteen

nationwide Latin American PDOs was made. Consideration was given to the normative instruments governing the operation of these agencies. After observing the variation in the autonomy levels, fuzzy set qualitative comparative analysis was carried out to explore the conditions capable of explaining such variations among countries.

This article lays the foundations for the study of PDOs autonomy. This inductive and exploratory research argues that factors related to the institutional and social contexts play an important role in defining the levels of autonomy of PDOs. The article brings four main contributions. First, an instrument for measuring the autonomy of PDOs was built, generating a unique comparative data set. Second, it presents a characterization of the institutional arrangement of PDOs of various Latin American countries, allowing the comparison between them. Third, it explores the conditions capable of offering a plausible explanation for the differences between the levels of PDOs autonomy in different countries, with special attention to macro factors related to social context. Finally, this article illuminates a kind of organization neglected by the Public Administration literature, namely justice organizations. This is especially relevant for the delegation literature as it deals with the conflict involved in the delegation of authority to organizations that restrain government action.

### **Autonomy of Public Agencies**

The autonomy of public agencies has been studied both across sectors and across countries, with particular attention to regulatory agencies in Europe and the United States (Maggetti & Verhoest, 2014; Overman, 2016). Cross-sectoral studies mainly cover regulatory agencies in the areas of food safety, telecommunications, electricity, postal services, pharmaceuticals, financial markets, and general competition (Gilardi, 2002; Thatcher, 2002; Levi-Faur & Jordana, 2006; Maggetti, 2007; Mediano, 2018). There are also studies that use large databases to compare various agencies from numerous sectors, without clear distinction of agency type or activity (Taratoot & Nixon, 2011; van Thiel & Yesilkagit, 2011; Bach, 2014; ; Bertelli, 2016; Overman & van Thiel, 2016; Bersch, Praça, & Taylor, 2017). In turn, cross-national studies mainly cover Western Europe (Gilardi, 2002; Thatcher, 2002; Maggetti, 2007; Eckert, 2010; Bach, 2014; Font, 2015; Overman & van Thiel, 2016; Eckert, 2017).

Although there is consolidated literature on the topic, questions remain to be answered about the sets of factors that determine the level of autonomy of those

agencies, as well as the cross-country variation in the autonomy levels of organizations that perform similar tasks (Maggetti & Verhoest, 2014). Public Administration literature points to different factors capable of explaining the levels of autonomy in public organizations. In this article, we address factors related to the institutional context, and also explore factors related to the social context that are not usually addressed in the literature, but can influence the level of autonomy due to the mission of this type of organization.

Comparative studies indicate that institutional context induces the level of autonomy. The characteristics of political and administrative systems, such as state structure, decision-making patterns, administrative traditions and the level of democratization have been linked to the level of autonomy of public organizations (Maggetti, 2007; Eckert, 2010; Bach, 2014; Bersch, Praça, & Taylor, 2017; Mediano, 2018).

The complexity of the political system is a particularly relevant factor (Font, 2015). Political conflict plays an important role in perceiving the bureaucracy's discretion (Bertelli, 2016). Consensual political systems, in which there is heterogeneity of interest groups, tend to operate with uncertainty about the groups that will hold power in the future. With a great diversity of groups capable of influencing decision-making, it is possible that there will be no hegemonic groups for long periods of time. This condition of uncertainty leads political actors to design counter-majoritarian institutions, such as autonomous agencies, to assure possible ways to assert their interests (Knight, 2001; Buta, 2020).

The number of veto players could influence both the creation of autonomous agencies and their level of autonomy. However, the way these players influence autonomy is not yet clear. On the one hand, there are results showing that more veto players would lead to fewer autonomous agencies (Gilardi, 2002), and that agencies created under divided governments tend to be more limited by statutory controls and, therefore, less autonomous (Taratoot & Nixon, 2011). On the other hand, there are studies that indicate that the presence of many veto players would lead to greater *de facto* autonomy in public organizations (Maggetti, 2007; Mediano, 2018). These results, even if apparently conflicting, indicate that the complexity of the political system can

influence the autonomy of public agencies, but this autonomy would also depend on other factors.

Considering the nature of the services provided by the PDO, government effectiveness can also be a factor capable of determining autonomy. It should be noted that the PDO often litigates against the government in cases where public policies are not being well implemented. In this case, countries where governments are more effective, having greater capacity to provide public policies for the population, would not demand as much capacity for the PDOs.

Furthermore, PDOs actions might target their political principals. Thus, ineffective governments have incentives not to strengthen the PDO, since these agency's initiatives can jeopardize them. This has been observed in the literature on anti-corruption agencies, which notice a contradictory tension between signaling to external actors a commitment to fight corruption, and at the same time making sure that the agency will not turn against the very government that created it (Batory, 2012). The level of autonomy and the breadth of delegated powers should depend on the government's perception of what to expect from the autonomous agency (Mascio, Maggetti, & Natalini, 2018).

It is also pointed out in literature that politicians would envision that more autonomy would induce better performance in the implementation of public policies. It is expected that granting autonomy to agents with the necessary capacities for the implementation of certain public policies would be a source of innovation, efficiency gains, and increased performance (Overman, 2016). It would reduce the transaction costs involved in the decision-making process, because public policies would be better implemented by experts (van Thiel & Yesilkagit, *Good Neighbours or Distant Friends?*, 2011; Eckert, 2017).

Therefore, taking the mission of the PDOs into account, variables related to the social context could be seen as inducing the level of autonomy of these agencies. It is feasible to think that elected politicians would grant greater autonomy to the PDOs in order to make policies aimed at the most vulnerable population more effective. In fact, ideology helps to explain the behavior of politicians. Political actors with a programmatic orientation are likely to be responsive to the needs of the vulnerable population (Ingram, 2012). Thus, regions with higher levels of poverty and inequality



would need PDOs with greater autonomy and organizational capacity to fulfill their mission. It is also noteworthy that PDOs provide services with high political salience in places where the population has low levels of income, which could also influence the levels of autonomy (Bach, 2014).

### *Measuring Autonomy*

The autonomy of public organizations can be operationalized in several ways. There are studies that use surveys to ascertain managers' perception of autonomy (van Thiel & Yesilkagit, Good Neighbours or Distant Friends?, 2011; Bach, 2014; Bertelli, 2016; Zahra & Jadoon, 2016), and there are studies that measure autonomy through institutional aspects related to the statutes of the organizations analyzed (Gilardi, 2002; Thatcher, 2002; Maggetti, 2007; Taratoot & Nixon, 2011; Hanretty & Koop, 2012; Mediano, 2018).

In the present study, PDOs' autonomy was operationalized through the aspects observed in these organizations' statutes. The index was built based on Gilardi (2002), Thatcher (2002), and Mascio et al. (2018). Nevertheless, it needed to be modified because those indexes were built to measure autonomy of regulatory agencies. So, the autonomy was operationalized through four dimensions: hierarchical link to the central government; characteristics of the position held by agents; administrative autonomy and political autonomy.

First, the link between the PDO and the parent ministry refers to the hierarchical control of a government body member over the PDO. In this case, we sought the formal definition of the PDO independence, its accountability obligations to the government, and the entity responsible for the appointment and dismissal of the heads of the PDO. The appointment of the defender general is a political choice, but the greater the politicization, the lesser autonomy from elected politicians (Thatcher, 2002). The nomination process may be entrusted to the government, parliament, or both, when the government designates members and parliament deliberates and ratifies that decision. The existence of a board of directors is also an important mechanism of control over the agent, as this mechanism potentially integrates the interests of the principal, guiding management decisions (Lashgari, 2004; Williamson, 1996). However, the presence of boards of directors in public agencies distances the organization from the central government, allowing greater autonomy in decision-making, once the board can balance

the interests of the minister with other interests, as clients and experts (Maggetti & Verhoest, 2014; Zahra & Jadoon, 2016). The autonomy can be higher especially if those boards are captured by agents, where case ownership and management are confused, as it allows bureaucracy to isolate itself from democratic controls. Boards with a mixed composition of representatives from the executive, legislative and judicial branches tend to expand accountability while protecting institutional autonomy (Ingram, 2012).

Second, the characteristics of the position held by the agent are also important in defining the degree of autonomy. This involves aspects related to the status of the head of the agency and the members of the board, such as the term length, the way of appointment and the decision-making process (Gilardi, 2002). The most relevant aspects in this case involve the existence and duration of the mandate, the possibility of reappointment, the structures of the office and the possibilities of dismissal (Gilardi, 2002; Thatcher, 2002; Hanretty & Koop, 2012; Mascio, Maggetti, & Natalini, 2018).

Third, administrative autonomy refers to the discretion of making decisions about management issues, as staff and finance management (Verhoest et al., 2012). Guarantees for administrative autonomy are in the budgeting process, possibilities for obtaining resources by its own means, and in personnel policies. In this sense, the budget may come from its own resources or be determined by the government and/or parliament, the workforce may be fixed by law or decided by the organization on its own, and personnel policies may be autonomously defined by the organization or imposed by the hierarchically superior body (Gilardi, 2002; Thatcher, 2002; Mascio et al., 2018). Administrative autonomy is fundamental for exercising political autonomy, since the organization depends on stability and availability of resources to program its activities and sustain its mission (Mascio et al., 2018).

Political autonomy refers to the discretionary decision-making on policy implementation without the need for ministerial oversight (Verhoest et al., 2012). It covers the daily actions of the organization and the self-determination of its preferences (Maggetti, 2007). Aspects related to political autonomy involve the range of PDOs' competencies, as well as the ability to provoke the legislative process on its own initiative.

Considering that this study observes normative statutes, what is measured is mostly formal autonomy. There are studies that claim that formal autonomy is not a

determining factor to explain the variations in *de facto* autonomy of public organizations, other institutional factors would have a more decisive impact (Maggetti, 2007; Eckert, 2010). However, we understand that legal provisions cannot be overlooked by public organizations. In fact, there are indications that the formal structure of one organization influences its *de facto* autonomy. Agencies that do not enjoy formal autonomy would have a level of autonomy lower than organizations created by a statute (Bach, 2014). Moreover, bureaucrats from agencies with higher levels of formal autonomy would tend to show a strong bond of loyalty to their own organization, reaffirming itself as an independent state bureaucracy (Peci & Pulgar, 2018).

## **Methods**

The cases selected for this study cover the nationwide PDOs of Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Venezuela. These are sixteen out of the twenty Latin American countries.

The researchers were unable to obtain data for the Haiti PDO. Regarding Uruguay, the country does not have a nationwide PDO, but local PDOs, linked to the Departments of the country. It was decided not to consider such PDOs to avoid the use of non-comparable data. Cuba and Colombia do not adopt the system of providing legal assistance through PDOs, but through a social interest organization of law firms, in the case of Cuba (Fleitas & Alves, 2016), and through contracting out private lawyers, students and graduates of law schools, in the case of Colombia.

Data of the sixteen selected PDOs were gathered between June and October 2019 through content analysis of their constituent documents, covering constitutional texts, laws, internal rules, and statutes found on the websites of these agencies on the Internet. In some cases, information was requested through transparency channels made available by PDOs.

## ***Dependent Variable***

The operationalization of autonomy was based on the dimensions presented above: hierarchical link to the central government; characteristics of the position held by agents; administrative autonomy; and political autonomy. Within each of the 4

dimensions of concept, we identified attributes related to that dimension and coded each attribute as present or absent on a dichotomous scale (0, 1). If there was an intermediate coding possible, we used 0.5. See appendix for details.

Each factor was assigned a score, in order to rank the PDO according to their degree of autonomy. The final value was defined by the ratio between the score achieved by a PDO and the total possible score. Thus, the range of autonomy has values ranging from zero to one. The closer to one, the greater the autonomy; and the closer to zero, the lower the autonomy.

### *Independent Variables*

The independent variables are related to institutional and social context. With regard to institutional context, variables linked to the level of democratization, veto players, the form of State organization, and government effectiveness were observed. The Liberal Democracy Index – LDI – (V-Dem Institute, 2020) was used as a proxy for democratization level. The effective number of political parties (Laakso & Taagepera, 1979) was used to access veto players. The calculation was made based on the current number of seats per party in the lower house. Data for Brazil, Chile, Costa Rica, and Mexico were obtained from the database Election Resources on the Internet. Data for the other countries were obtained from the online portals of the respective parliaments. The form of organization of the State was indicated by a dummy variable, whether the state is federative or not. And government effectiveness was measured by the namesake indicator of the Worldwide Governance Indicators (Kaufmann, Kraay, & Mastruzzi, 2010). Variables related to the social context were also observed, such as GDP per capita and HDI (ECLAC, 2018). Data for independent variables were gathered between March and June 2020.

### *Analysis*

This study was developed in two stages. The first stage aimed to characterize the autonomy of the nationwide Latin American PDOs. It involved the operationalization of the PDOs autonomy, carried out through content analysis of the normative instruments that organize the PDOs.

After observing the wide variation in the autonomy levels of PDOs, we sought to explore the factors capable of explaining why public agencies that perform the same

function have varying levels of autonomy. Thus, the second stage of this research covered the relationship between the levels of autonomy and the independent variables presented above. To this end, a qualitative comparative analysis was carried out through the software fsQCA. This method has gained relevance in the field of Applied Social Sciences, including comparative politics and public administration, especially with a focus on systematic comparative studies (Roig-Tierno, Gonzalez-Cruz, & Llopis-Martinez, 2017).

This method allows analyzing social reality in which the data consists of set membership scores. Causal relations are modeled in terms of subset or superset relations, in order to access the necessary and sufficient conditions for a given outcome (Schneider & Wagemann, 2012). This method is suitable for small samples, which may be problematic if analyzed using correlation or regression analysis.

Before performing the fsQCA, it is important to calibrate the data. That is, to establish the extent to which a case belongs to a certain set of cases. For that end, we used the direct calibration method, in which the raw data are adjusted among three qualitative anchors: 1 (full membership), 0.5 (point of indifference) and 0 (full non-membership) (Schneider & Wagemann, 2012). Table 2 summarizes the variables and shows the set calibration criteria.

Table 2. Descriptive statistics and membership criteria

	Raw Data		Calibration Criteria		
	n = 16 Mean	SD	Full member	Cross- over	Non member
<b>Outcome</b>					
Overall Autonomy (OVA)	0.383	0.186	1	0.5	0
<b>Conditions</b>					
GDP per capita (GDP)	6940.01	4032.51	15000	7000	1900
Human Development Index (HDI)	0.738	0.065	0.8	0.7	0.6
Effective Number of Parties (ENP)	4.894	3.649	8	4	1
Liberal Democracy Index (LDI)	0.450	0.221	0.8	0.5	0.3
Government Effectiveness (GEF)	-0.313	0.567	1	0	-1
Federative (FED)	0.250	0.447	1	-	0

## Results and Discussions

There are four dimensions of autonomy observed in the present study: hierarchical attachment to central government; characteristics of the position held by agents; administrative autonomy; and political autonomy. The following subsections describe PDOs as a function of these dimensions.

### ***Hierarchical Attachment to Central Government***

The PDO is usually linked to one of the state branches. In Chile, Peru and Bolivia, the PDO is linked to the executive branch, through the Ministry of Justice. In Paraguay, Ecuador, Costa Rica, Honduras, Mexico, Panama, and Nicaragua, the PDO is linked to the Judiciary.

Six PDOs are independent of any state branches. These are the PDOs of Argentina, Brazil, Guatemala, Venezuela, Dominican Republic, and El Salvador. In the cases of Argentina, Brazil, El Salvador and Guatemala, the PDOs are directly accountable to the Legislature. In Venezuela, the PDO is accountable to the Supreme Court of Justice and communal councils. In the case of Dominican Republic, the PDO is accountable only to the Supreme Court of Justice.

The Argentine case deserves attention, as the PDO and the Public Prosecution Service form a two-headed agency led by the heads of these two bodies. This may cause greater difficulties for the PDO in formulating their own policies, as Smulovitz (2014) points out, but does not necessarily mean subordination of the PDO to the Public Prosecution Service.

With regard to the appointment of the head of the PDO, the cases that indicates greater autonomy involves a compound appointment act, carried out by two entities. In Argentina and Brazil, the head of the Executive branch appoints and the Legislature ratifies the appointment. In Chile, the appointment is also made by the chief of the Executive branch, but after the designation of a list by the Board of Public High Direction. In Guatemala, the PDO itself presents a threefold list for the legislature to elect a chief. In other countries, the appointment may be made by the head of the Judiciary, in cases where the PDO is part of this branch; by the Legislature, in El Salvador and Venezuela; or by the Minister of Justice in Peru and Bolivia. It is noteworthy that, in Brazil, the appointment of the head of the PDO is restricted to a threefold list drawn up by the defenders themselves. In addition, Brazil and Panama are

the only countries of the sample in which the head of PDO must necessarily be a member of its bureaucracy, which confers greater autonomy to those agencies.

The existence of a board of directors is also an indicator of autonomy, since central government control is farther in the presence of a board of directors, allowing agencies to perform tasks and make decisions autonomously (Zahra & Jadoon, 2016). These boards tend to function as accountability mechanisms that also protect the autonomy of these agencies (Ingram, 2012). It is an effort to find a balance between autonomy and accountability. This structure is absent in most cases. The PDOs of Mexico, Guatemala and the Dominican Republic, in turn, have boards composed by representatives of various institutions, which allows the autonomy of these PDOs, but maintains a form of control by actors representing various social sectors.

On the other hand, the Brazilian PDO has a board composed only of public defenders elected by their peers, which represents an appropriation of the board of directors by the agents themselves. This isolates the PDO from democratic controls, causing an effect contrary to the expectations (Buta, Guimaraes, & Akutsu, 2020). That is, the Brazilian PDO's board of directors does not function as an instrument of control of the principal over the agent, but as an instrument that allows the PDO to isolate itself from society, making democratic control over its bureaucracy unfeasible.

### ***Characteristics of the Position Held by Agents***

With the exception of Honduras, Peru, and Costa Rica, the head of the PDO has a term of office, which ranges between two and seven years. The longer the term of office, the greater the autonomy of the PDO (Gilardi, 2002; Thatcher, 2002; Hanretty & Koop, 2012; Mascio et al., 2018), because there will be less interference from external stakeholders on the agency. The mandate may be renewed in some cases. In this regard, the cases of Argentina, Paraguay and Nicaragua deserve to be highlighted, where the mandates are longer than five years, and the head of the PDO is allowed to be reappointed more than once.

With regard to the possibility of removal from office, only Brazil, Costa Rica and Mexico do not make express predictions in the analyzed rules of the possibility of dismissal of the head of the PDO before the end of his or her term. This does not

necessarily mean that such possibility does not exist, but it certainly makes harder to break the mandate.

### *Administrative Autonomy*

Most PDOs have their own means of obtaining financial resources, which increases their autonomy. Possibilities for obtaining funds through appropriation of international fees, donations or cooperation, management of their own assets and financial operations are frequent.

The Brazilian PDO is the only one with the power to forward its budget proposal directly to the Legislature. In all other cases, the PDO budget must be jointly sent with either the budget of the Executive or the Judiciary branches. In the case of Argentina, there is an express instruction that the budget should be sent to the Executive branch, which may make observations to the project, but not modify its content.

With regard to personnel resources, only the Ecuadorian and the Panamanian PDOs have autonomy to define the workforce. In other cases, it is required an authorization from the Legislature and/or higher hierarchical instances. In terms of personnel policies, Costa Rica, Guatemala, Honduras, Mexico and Nicaragua do not have the autonomy to define these policies, which include, but are not limited to, issuing rules for the provision of services, defining the location of defenders, the possibility of removal of defenders, designing and implementing training programs.

### *Political Autonomy*

Two indicators were observed regarding political autonomy: ability to refer bills directly to the Legislature, and PDO's scope of operation. Only the Brazilian and Ecuadorian PDOs have the power to refer bills directly to the Legislature. That is, such bodies are capable of initiating the legislative process on matters related to their structure, which indicates a large degree of autonomy.

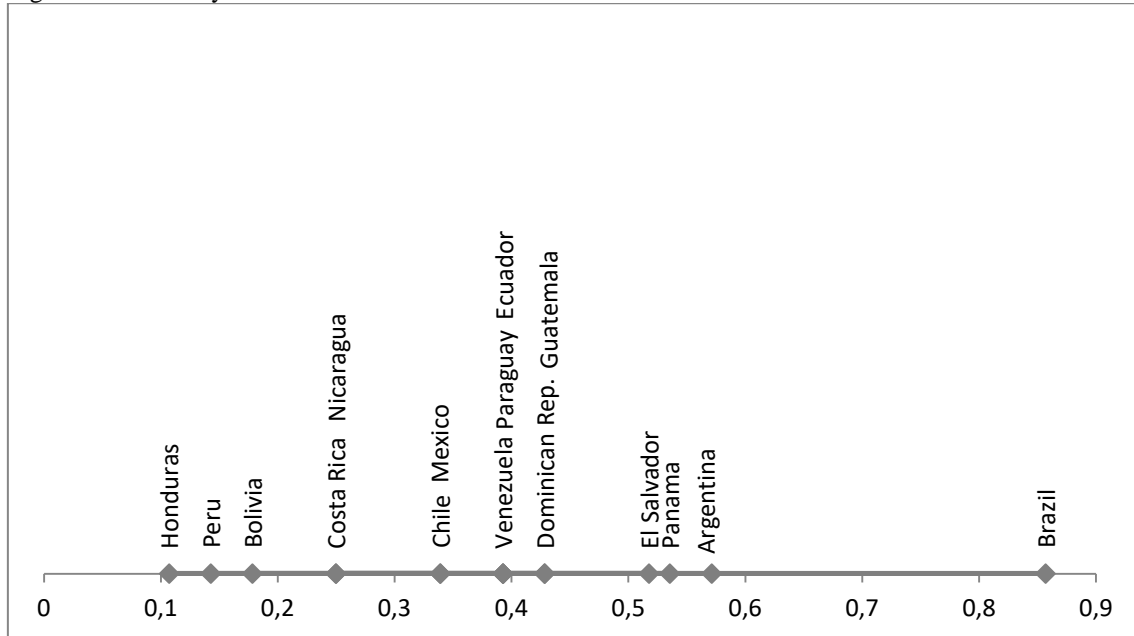
Regarding the scope of the PDOs' competences, most of them can act in several areas of law. This represents a wide range of legal competences, which expands the power of the PDOs. Only the PDOs of Chile, Bolivia, Guatemala, and Dominican Republic are constrained to the area of Criminal Law.

### *Autonomy Scores*



The Brazilian PDO is the one with the highest degree of autonomy, followed by the Argentine and the Panamanian. At the other extreme there are the PDOs of Honduras, Peru, and Bolivia with a low degree of autonomy. In short, the autonomy of Latin American PDOs is quite varied, as can be seen in Figure 2.

Figure 2. Autonomy scores of nationwide PDOs.



Source: prepared by the author.

It can be noted that PDOs linked to the Judiciary have varying degrees of autonomy. In turn, PDOs with lower levels of autonomy tend to be linked to the Executive branch of their countries and subordinate to the Ministry of Justice. PDOs that are not linked to a branch of the state tend to present the higher levels of autonomy. This pattern may be related to a conflict of interest intrinsic to the PDO's mission. These entities tend to litigate against the Government in cases where public policies aimed at the most vulnerable citizens are not well provided. Thus, it is possible that, when linked to the Executive Branch, these agencies also have low levels of political and administrative autonomy to carry out their mission.

### ***Explanatory model for the level of autonomy***

Table 3 shows the results of fsQCA. Solutions were observed for the presence of the outcome “overall autonomy”. The analytical process of logical minimization, in which data is compared to a truth table containing possible logical configurations of conditions for the desired result, can generate three standard solutions, a complex one, a

parsimonious one, and an intermediate one (Schneider & Wagemann, 2012). We chose to present and focus the discussion on the intermediate and parsimonious solutions, due to easier interpretation.

Table 3. Combinations for Overall Autonomy

Condition	Parsimonious	Parsimonious	Intermediate	Intermediate	Intermediate
	Solution – path 1	Solution – path 2	Solution – path 1	Solution – path 2	Solution - path 3
GDP	●	●	●	●	●
HDI			●	●	●
ENP	○		○		○
LDI		●		●	●
GEF		○	○	○	
FED				●	●
Consistency	0.783375	0.851003	0.846821	0.882759	0.898876
Unique Coverage	0.147163	0.12234	0.384752	0.0921986	0.0265957
Solution Coverage	<i>0.673759</i>			<i>0.632979</i>	
Solution Consistency	<i>0.791667</i>			<i>0.847981</i>	

Note: Solutions are plotted with solid black circles (●) indicating the presence of a condition to the outcome, white circles (○) indicating the absence a condition, and blank cells indicating that the condition is irrelevant in that particular configuration. Solution values represent overall consistency/coverage of all solutions within the effective samples.

As there are few sufficient configurations, it is possible to assume that there are some ways that lead Latin American countries to establish PDOs with higher levels of autonomy. It is important to state that each path meets the requirements for consistency and unique coverage, as well as the solutions as a whole. Consistency refers to the degree to which empirical information deviates from a perfect subset relationship. It is recommended that the consistency value for sufficient conditions should be greater than 0.75. The unique coverage indicates how much of the outcome is covered only by a specific path, and the solution coverage indicates how much of the outcome is covered by the entire solution term. A unique coverage higher than zero indicates that there is no logical redundant path included in the solution. There is no lower limit indicated for coverage, since low coverage paths may still be of theoretical importance (Schneider & Wagemann, 2012).

The intermediate solution 1 indicates that the group of countries with higher levels of GDP per capita and HDI, as well as that do not have a high number of political parties and do not present high levels of government effectiveness tend to have more autonomous PDOs (in Boolean notation:  $GDP * HDI * \sim ENP * \sim GEF \rightarrow OVA$ ). Intermediate solutions 2 and 3 point out that the group of countries with higher levels of GDP per capita and HDI, in addition to being federative and with higher levels of liberal democracy, and that do not have high levels of government effectiveness, or a large effective number of political parties, tend to institute more autonomous PDOs (in Boolean notation:  $GDP * HDI * LDI * FED * [\sim ENP + \sim GEF] \rightarrow OVA$ ).

GDP per capita might be considered a necessary condition to the outcome, since it happens whenever the outcome is present (Schneider & Wagemann, 2012). The same can be said for HDI. In fact, these two conditions occur concurrently, therefore the parsimonious solution presents only one of these conditions. The GDP per capita and HDI variables indeed have a strong correlation, of 0.9 for this data set. This result indicates that PDOs in countries with higher levels of income tend to have greater autonomy. It is worth remembering that the mission of the PDOs is directly related to poverty, as the PDOs are responsible for providing legal assistance to economically needy populations. Thus, PDOs tend to be more politically salient in low-income countries, so that the government might want to keep them close.

Another important condition for the outcome is the level of democratization, observed through the Liberal Democracy Index. It is worth noting that the process of expanding access to justice in Latin America accompanies the consolidation of democracy in the region (Madeira, 2014; King, 2017). Thus, the PDOs are instruments of the democratic state for the promotion of human rights and defense of the needy in face of possible deviations of governments in the application of the law.

The results also indicate that the state's form of organization might be an important condition to the level of autonomy. The set of federal countries tends to institute more autonomous PDOs. When returning to the data set, it is noticed that federative countries tend to institute PDOs with lower levels of hierarchical link with the State's branches.

With regard to the number of veto players, measured by the effective number of political parties, the results indicate that the absence of this condition is related to the

outcome. In other words, the number of veto players would be negatively related to the PDO's autonomy. This result is in line with the part of the literature that indicates that more veto players would lead to less autonomous agencies (Gilardi, 2002; Taratoot & Nixon, 2011), and contrary to the of the literature that advocates that the number of veto players could positively influence autonomy (Maggetti, 2007; Mediano, 2018; Buta, 2020). This issue deserves more attention in future studies.

Finally, the absence of government effectiveness is related to high levels of PDO's overall autonomy. It indicates that governments with greater political capital, more effectiveness and with greater quality in the provision of public services would have their PDOs closer to them. This result can be perceived by observing the PDO's mission. PDOs often litigate against the government to ensure the citizens' rights when public policies are not working effectively. In this sense, PDOs would have a greater need for autonomy in countries where the government is less effective. It seems that PDOs are a palliative instrument for the ineffectiveness of the welfare state.

### **Conclusion**

In order to characterize the autonomy of sixteen nationwide Latin American PDOs, an autonomy measurement scale was built and applied to these agencies, producing an original dataset. The scale allows the evaluation of four dimensions of autonomy: hierarchical attachment to central government; characteristics of the position held by agents; administrative autonomy; and political autonomy.

The results allow concluding that the autonomy of the Latin American PDOs is quite varied. There are two PDOs with clear hierarchical subordination to the Ministry of Justice of their countries, as well as largely autonomous PDOs, with no connection to any of the state branches.

After observing the variation in the levels of autonomy, it remained to explore the factors that possibly explain why public organizations that have the same mission present different levels of autonomy. The results showed that factors related to institutional and social contexts can help understand the levels of PDOs' autonomy.

The level of income and human development proved to be necessary conditions to the establishment of more autonomous PDOs. It is important to confer this result with the mission of PDOs, that is, to provide legal assistance to economically vulnerable

populations. This result can be related to the level of political salience of that specific service in view of the populations' needs. The negative relationship between the government's effectiveness and the level of autonomy of PDOs can also be linked to the mission of these agencies. PDOs often litigate against the government to guarantee citizens' rights when public policies are not well-implemented. Therefore, PDOs would have a greater need for autonomy in countries where the government is less effective. It is also noteworthy that the level of democratization is an important condition for the autonomy of PDOs. This factor is related to the process of expanding access to justice in Latin America, which occurred after the fall of authoritarian regimes at the end of the last century.

This study presents relevant contributions to literature on delegation and to the practice of administration of PDOs. Firstly, the creation of a scale to measure the autonomy of public agencies stands out as an original comparative data set of PDOs covering a large amount of Latin American countries. Future studies may use this instrument in order to expand the data set, and/or connect the data set to various topics. Secondly, this study has a comprehensive scope. It was able to characterize the institutional arrangements of sixteen national PDOs, allowing broad comparison between legal aid agencies for the vulnerable population in a region of the world that still suffers from high levels of poverty. Finally, it presents possible explanations on the variations of PDOs' level of autonomy, showing PDOs' idiosyncrasies, whose autonomy is influenced also by social context variables, in view of the nature of their mission. It should be noted that factors related to the social context are not widely considered by the literature on autonomy of public agencies.

This research has limitations, which do not invalidate the results. It was not possible to interview representatives of the PDOs analyzed. This could help the interpretation of the legislation applied to PDOs, as well as the observation of regulations that may not have come to the knowledge of researchers. Thus, analyses were made according to what was observed in the legislation of each country. It is also noteworthy that this research covered only nationwide PDOs, not involving subnational PDOs. In addition, the data have only internal validity, and cannot be extrapolated to the population.

This article sets the basis for the study on PDOs autonomy. It will be useful for future studies seeking enlightenment about the phenomenon of delegation and agencification. In this sense, data related to the autonomy of Latin American PDOs could be used as dependent variables, seeking to understand the consequences of the autonomy of those agencies.

Regardless of the PDOs' level of autonomy, literature highlights in unison the difficulty of these agencies in providing legal aid services. Lacks of organizational capacity have been noted in Argentina (Smulovitz, 2019), Brazil (Bersch et al., 2017), Chile (King, 2017), and Mexico (Fondevilla & Reyes, 2016; Ávila & Fix-Fierro, 2018). Future studies should look at whether the level of autonomy is capable of influencing their capacities and performance.

## **Chapter 4**

### **AUTONOMY AND PERFORMANCE OF LATIN AMERICAN PUBLIC ORGANIZATIONS<sup>3</sup>**

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<sup>3</sup> This Chapter has been submitted to a peer-reviewed journal. A previous version of this Chapter was presented at the IRSPM expert meeting - Design-led Approaches to Renewing Public Management and Governance, Rotterdam, 2019.

## **Abstract**

Although autonomous agencies have proliferated based on the belief that delegating authority would improve performance, literature still lacks evidence on this relationship. This study aims to explore the relationship between autonomy and performance of Public Defender's Offices (PDOs), public organizations established mainly in Latin America to provide legal assistance to vulnerable citizens. We analyzed secondary data related to 19 PDOs in 16 Latin American countries. Results indicate that none of the dimensions of autonomy significantly influences the proportion of citizens served by the PDOs; administrative autonomy positively influences PDOs' efficiency and hierarchy attachment to superior authorities negatively influences efficiency.

**Keywords:** Autonomy; Performance; Public Organizations; Public Defender's Offices; Latin America.

## **Introduction**

The proliferation of autonomous agencies has been a trend based on the belief that the delegation of authority to public entities would improve their performance and therefore the quality of public policies (Pollit, Bathgate, Caulfield, Smullen, & Talbot, 2001; Overman, 2016). However, evidence about the superior performance of autonomous agencies is still lacking (Maggetti & Verhoest, 2014).

On the one hand, autonomous agencies would be expected to be more efficient in responding to specific problems (Stone Sweet & Thatcher, 2002), considering a reduction in decision-making costs and increased expert-driven policy efficiency (van Thiel & Yesilkagit, 2011). The discretion entailed in the delegation of authority to autonomous agencies allows greater interaction with citizens, as well as more possibilities to provide services tailored to specific audiences. Accordingly, the autonomy of these organizations would lead to greater state responsiveness to specific problems, which in turn would conduce to a more positive assessment of public services (Overman, 2017).

On the other hand, high levels of autonomy may also contribute to sub-optimal policy results. In cases of high autonomy in which the sanctioning power of the principal over the agent is minimized, there is a tendency for bureaucrats to cater to private interests over the interests of the principal. This allows agents to opt for suboptimal policy choices (Tomic, 2018). Moreover, the autonomy of public organizations does not necessarily lead to the use of performance management tools,



and consequently to performance itself. Rather, the use of external mechanisms for controlling results by the parent ministry would induce performance (Verhoest & Wynen, 2016).

In short, knowledge about the relationship between performance and autonomy is fuzzy. This indicates that questions remain to be answered about this relationship. This knowledge has been built mostly on public organizations in developed countries, particularly regulatory agencies in Western Europe and the United States (Buta & Teixeira, 2019). There is a scarcity of work on public organizations that provide social services in developing countries. Thus, studies that explore the relationships between autonomy and performance of public agencies in developing countries may deviate from those applied in developed countries (e.g., González & Verhoest, 2016; Mediano, 2018; Tomic, 2018).

To understand the relationship between autonomy and performance, the present study investigates Public Defender's Offices (PDOs). These are public legal aid organizations maintained by the State to provide legal assistance to socially and economically vulnerable people. This type of public organization is the form used in most of Latin America to carry out a policy of promoting access to justice. These organizations often operate at arm's length from the central government, and its lack of performance and organizational capacity has been noticed in several countries, such as Argentina (Smulovitz, 2019), Brazil (Bersch, Praça, & Taylor, 2017; Buta, Gomes, & Lima, 2020), Chile (King, 2017), United States (Farole & Langton, 2010) and Mexico (Fondevilla & Reyes, 2016; Ávila & Fix-Fierro, 2018). It is noteworthy that PDOs are recommended to be autonomous, once they often litigate against the State. The OAS General Assembly Resolution 2821/2014, for example, recommended the autonomy and the strengthening of the Official Public Defender's Offices as a guarantee of access to justice. Therefore, it is necessary to understand how autonomy is related to performance.

The aim of this work is to explore the relationship between autonomy and performance in 19 PDOs of 16 Latin American countries. The empirical model was based on Overman and van Thiel (2016), in view of the small number of observations. It took place via a cross-country comparison based on secondary data about the PDOs of

the investigated countries in order to establish a general framework for the examined relationship.

### **Autonomy and Public Organizations' Performance**

Many studies relate bureaucratic autonomy to the performance of public organizations. However, the relationships between autonomy and performance observed in these studies vary widely, which indicates that there is still no systematic evidence about the direction of the relationship between autonomy and performance. There are studies which results indicate that autonomy directly influences performance (Silver, 1993; Braadbaart, Van Eybergen, & Hoffer, 2007; Anand, Exworthy, Frosini, & Jones, 2012; Vining, Laurin, & Weimer, 2015). Others point to an inverse relationship, that is, higher levels of autonomy would induce lower levels of performance (Kim & Cho, 2014; Overman & van Thiel, 2016; Voorn, Borst, & Blom, 2020). Moreover, there are studies that suggest a curvilinear relationship (Rainey & Steinbauer, 1999; Fukuyama, 2013). That is, balanced levels of autonomy may positively influence performance, but the excess or lack of autonomy would lead to lower levels of performance. There are even studies that do not find a significant relationship between autonomy and performance (Yamamoto, 2006; Guidi, 2015), or indicate that autonomy is not such a relevant factor in defining the performance levels of public entities (Verhoest & Wynen, 2016; Han & Hong, 2019).

Autonomy has been operationalized in three main ways: through the perception of managers (e.g., Verhoest, Peters, Bouckaert, & Verschuere, 2004; Yamamoto, 2006; Braadbaart, Van Eybergen, & Hoffer, 2007; Anand, Exworthy, Frosini, & Jones, 2012; Zahra & Jadoon, 2016; Han & Hong, 2019); through the observation of legal and institutional characteristics (e.g., Silver, 1993; van Thiel, 2004; Kim & Cho, 2014; Vining, Laurin, & Weimer, 2015; Verhoest & Wynen, 2016; Overman & van Thiel, 2016); and through proxies (e.g., Taratoot & Nixon, 2011; Bersch, Praça, & Taylor, 2017). Even if the form of operationalization is similar, the dimensions observed may not be. For example, when observing the perception of managers, surveys or interviews can focus on the autonomy of human resources management (Han & Hong, 2019), or they may involve a holistic view covering aspects of a managerial, political, structural, financial and interventional nature (Verhoest, Peters, Bouckaert, & Verschuere, 2004; Yamamoto, 2006; Braadbaart, Van Eybergen, & Hoffer, 2007; van Thiel & Yesilkagit,

2014; Zahra & Jadoon, 2016). The same occurs in research that operationalizes autonomy through legal and institutional characteristics. That is, there are studies encompassing the different dimensions of autonomy (Verhoest & Wynen, 2016), and others in which autonomy is operationalized through only one of its dimensions, such as access to resources (Silver, 1993), human resources management (Kim & Cho, 2014), or by the legal condition of the entity (van Thiel, 2004; Vining, Laurin, & Weimer, 2015; Overman & van Thiel, 2016).

Performance measures vary according to the activities developed by the organizations, so that they also present a great variation. However, to measure performance, some studies use capacities indicators such as ability to collect fees and earn revenue (Braadbaart, Van Eybergen, & Hoffer, 2007), or employee identification with the organization (Silver, 1993), or even use efficiency-related indicators, such as average cost (Vining, Laurin, & Weimer, 2015). This confusion may undermine the conclusions. It is worth noting that, in a broad sense, organizational capacities are related to the inputs of management systems, and performance to outputs (Christensen & Gazley, 2008). Capacity refers to a set of skills and resources necessary to perform the functions of the organization (Wu, Ramesh, & Howlet, 2015), and to preserve performance gains (Isaza, Herrera Kit, Herrera, Mendez, & Balanzo, 2015).

Therefore, it is possible that the findings about the relationship between autonomy and performance are motivated by the variability in the measurement of these two constructs. Thus, differences in this relationship can be expected if performance is observed through outputs or if performance is observed through efficiency indicators. It also makes sense to picture that the various dimensions of autonomy can influence performance in different ways or intensities. Autonomy is an abstract construct, which can be expressed through four dimensions: a) hierarchy, related to the hierarchical linkage of the organization to the core government; b) office characteristics, related to the characteristics of the position held by the leader of the autonomous public entity; c) administrative autonomy, related to the discretion in the management of budget personnel resources; and d) political autonomy, related to the discretion of the public entity in the formulation and implementation of its policies (as stated in Chapter 3). In short, each of these dimensions can influence the performance of public organizations in different ways. In fact, the different dimensions of autonomy are felt differently by the heads of autonomous agencies (Schillemans, et al., 2020).

Autonomy is not a sufficient condition for performance (Anand, Exworthy, Frosini, & Jones, 2012). There would be other intervening factors, such as organizational capacity. A positive correlation between autonomy and capacities has been observed in the literature, although there are still inaccuracies (Maggetti & Verhoest, 2014). For example, when estimating the effects of capacity and bureaucratic autonomy on child mortality and tuberculosis prevalence, it was observed that greater bureaucratic autonomy is strongly related to reductions in child mortality and tuberculosis prevalence levels, but the effect of state capacity did not prove accurate (Cingolani, Thomsson, & Denis, 2015). Another example is a study that compares the structure of climate policy bodies in California and Germany and the State's ability to implement such policies, which concludes that delegating authority to bureaucracies can be a critical source of capacity, but bureaucratic autonomy is insufficient to understand levels of capacity. Other factors should come into the equation, such as political capital, democratic legitimacy, and democratic accountability (Meckling & Nahm, 2018).

In order to understand the relationship between autonomy and performance, it is important to take into account the interests of the agents. If the delegation's statute minimizes the principal's sanctioning power over agents, they would tend to be unconcerned with violating the principal's interests. In other words, agents may choose to serve private interests, opting for sub-optimal performance in the implementation of public policies (Tomic, 2018). This issue can be tackled through redundant accountability mechanisms, involving vertical accountability, in which public entities report to the parent ministry; and horizontal accountability, in which the entity must report to non-hierarchical principals, such as customers, partners, controllers, etc. (Schillemans, 2010). It is therefore important to understand whether there are accountability mechanisms in the institutional framework of the PDOs capable of mediating the relationship between autonomy and performance.

### ***Public Defender's Offices***

Like other public organizations, PDOs can be integrated with the core government or structurally disaggregated from the government. In Latin America, the policy of legal assistance to vulnerable citizens is carried out mainly by public organizations of types 0, 1 and 2 (according to the archetype of van Thiel, 2012). That

is, PDOs make up the core of the government, which may be departments within a Ministry (type 0), or state agencies with lesser (type 1) or greater autonomy (type 2).

There is an idea that justice-related organizations should be independent to maintain social welfare, the stability of democratic regimes and the protection of human rights against arbitrary government and discriminatory law enforcement practices (Madeira, 2014). However, excessive autonomy may allow the bureaucracy to behave in a self-interested manner. Delegation statutes that minimize the sanctioning power of the principal may allow the bureaucracy not to worry about choices that violate the principal's interests, thus opting for suboptimal political choices (Tomic, 2018). In this sense, the mere creation of autonomous judicial organizations does not guarantee their proper functioning in practice. Such organizations can vary significantly in terms of their institutional integrity and their effectiveness in promoting the rule of law. The establishment of autonomous judicial entities is only one factor in the development of legitimate and effective judicial governance mechanisms (Beers, 2012).

With regard to PDOs, it is necessary to highlight that these organizations litigate directly against the government, seeking to protect citizens from the failures of the State in enforcing the law. Therefore, the Organization of American States recommends that member states should maintain autonomous PDOs to provide free legal assistance for its citizens (OAS Resolutions n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014). Nevertheless, the literature has reported irregular levels of capacity and performance in Latin American PDOs. In Chile, for example, the transition from an inquisitorial to adversarial justice system, in which the Public Defender's Office was created, has shown good results in terms of efficiency and transparency. However, the PDO still suffers from passivity and ineffectiveness, which has corroborated the growth of incarceration in that country (King, 2017).

In Mexico, the perception of the legal aid services by arrested defendants indicates that these defendants are more satisfied when assisted by private lawyers than by public defenders. However, defendants assisted by public defenders would receive more lenient sentences, which indicate a better performance of these defenders in relation to private lawyers. (Fondevilla & Reyes, 2016). Mexican public defenders have a high level of training. Nevertheless, not all public defenders are hired by public tender, many are recruited out of simple recommendation or out of friendship and

kinship with the recruiter for positions of trust, that is, they are not part of the permanent staff of the PDO (Ávila & Fix-Fierro, 2018).

The Argentine case is interesting, as each province organizes its own PDO. In most provinces, the PDO faces difficulties in formulating its own policies. Many PDOs are linked to the Public Prosecutor's Office, which depreciates the role of public defenders, who lack their own institutional leadership. In addition, the supply of public defenders is mainly determined by administrative or bureaucratic considerations, not by the needs of service users (Smulovitz, *Public Defense and Access to Justice in a Federal Context: Who Gets What, and How, in the Argentinean Provinces*, 2014).

Brazil is considered a discrepant case regarding PDO's autonomy. It has much more autonomy than any similar organization in Latin America (Buta, 2019). The Brazilian Federal PDO is an agency with a high degree of autonomy, yet a low level of capacity (Bersch, Praça, & Taylor, 2017). Indeed, the granting of greater autonomy to this agency accompanied the fall in its performance levels (Buta, Gomes, & Lima, 2020). This may have been due to a lack of control mechanisms over this agency. In fact, senior managers of the Brazilian PDO hardly notice external or internal control mechanisms (Buta, Guimaraes, & Akutsu, 2020).

In short, there is a general impression in literature that PDOs have difficulties in fulfilling their mission. These organizations present low levels of capacity, and performance. In addition, the level of autonomy varies among countries, according to their level of income, the complexity of the political system, and government effectiveness (as stated in Chapter 3). Therefore, what is the relationship between autonomy and performance for PDOs in Latin America?

## **Methods**

The PDOs analyzed were the entities with national coverage in the following countries: Bolivia, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru and Venezuela. In addition, we also observed PDOs from the Brazilian states of Amazonas and Rio Grande do Sul, from the Mexican states of Michoacán, Sonora and San Luis Potosí, and from the Argentine province of Rio Negro (these states and provinces were chosen due to the

availability of data). National PDOs from Argentina, Brazil and Mexico were not considered, as those countries have PDOs at the State level.

We sought to include all Latin American countries in the analysis. However, this objective was hampered by two main reasons: the lack of reliable data in some countries, and the fact that some countries adopt very different models of legal assistance. Cuba and Colombia, for example, do not adopt the same system of legal assistance as other Latin American countries. In Cuba, the public policy of legal assistance occurs through a social interest organization of law firms (Fleitas & Alves, 2016). In Colombia, legal assistance to vulnerable citizens occurs through contracting-out private lawyers, students and law graduates. With regard to the Haiti and Uruguay PDOs, we were unable to obtain data.

In Argentina, Brazil and Mexico, there is a federal PDO, with national jurisdiction, and subnational PDOs, with jurisdictions restricted to the states, or provinces, in which they operate. In these cases, the national PDO has a narrower scope of action, dealing only with federal matters. The rest of the Law matters, which are more common and consequently have a greater volume of lawsuits, are absorbed by state PDOs. That is, state PDOs have a broader scope of action and greater demand. Non-federative countries (and Venezuela) have only one PDO with jurisdiction throughout their territory. In this sense, we understand that the state PDOs of Brazil, Argentina and Mexico can be compared to the national PDOs of unitary countries.

It is also noteworthy that the form of performance measurement adopted in this work uses the percentage of the population assisted by the PDO. Thus, if the national PDOs of Argentina, Brazil and Mexico were to compose the sample, its performance would be underestimated, since it would come from a broader population. In addition, these PDOs have relatively fewer public defenders than subnational PDOs, as they only act on federal matters. Unfortunately, it was not possible to obtain data for all subnational PDOs in those countries. As previously highlighted, there is great difficulty in collecting data for all variables analyzed in this study. Thus, the sample has six subnational PDOs. A dummy variable was created as a control variable to observe any interference from this condition for comparing subnational and national PDOs.

Data for the observation of autonomy were obtained through the PDOs autonomy scale developed by Buta (2019). In that context, overall autonomy was operationalized through weighted average of four dimensions:

- a) Hierarchy – combines factors related to the hierarchical linkage of the Public Defender's Office in the framework of the State, such as: link to State branch, accountability to hierarchically superior bodies, appointment of the defender general, and existence of a board of directors;
- b) Office characteristics – covers factors related to the characteristics of the position held by the defender general, such as the term of office, the possibility of renewing the mandate, and the possibility of removal from office;
- c) Administrative autonomy – covers aspects related to discretion in the management of budgetary and personnel resources, such as the existence of ways of obtaining resources through their own means, the possibility of submitting the budget proposal directly to the legislature, the possibility for the PDO to independently establish its personnel policies and its workforce;
- d) Political autonomy – combines aspects related to the ability to refer bills directly to the Legislature and the PDO's scope of operation (if only in criminal matters or in various matters of Law).

The data for the operationalization of these dimensions were obtained through content analysis of the documents that establish and organize the observed PDOs, covering constitutional provisions, organic laws, internal rules and statutes found on the websites of those organizations. A score was established for each of the factors. The final value was defined by the proportion between the values reached by each PDO in each of the dimensions and the total possible value. Thus, the closer to one, the greater the autonomy, and the closer to zero, the lesser the autonomy.

Organization performance was operationalized by two variables:

- a) Assisted Citizens: the ratio between the number of citizens assisted by the PDO and the population of the country or state. This variable is related to the activity of any PDO, and has a significant weight on the PDOs performance (Buta, Gomes, & Lima, 2020);



b) Efficiency: corresponds to one minus the ratio between the percentage of the budget allocated to the PDO and the percentage of the population served by that PDO. In other words, efficiency was measured by a relationship between cost and output.

Variables related to the capacities of the PDOs were used as control variables and operationalized through budgetary and personal resources, as follows:

a) Budgetary resources: percentage of the total budget allocated to the PDO, i.e. ratio between the PDO budget of a given country, or state, and the total government budget of that country, or state, multiplied by one hundred;

b) Personnel resources: ratio between the number of defenders per one hundred thousand inhabitants.

Data were collected through the management reports found on the websites of these organizations on the Internet. The data collected refer to the year 2019 and were gathered between April and September 2020. Data on the PDO's budget, number of defenders, and number of assisted citizens were obtained through the PDO's website or through requests for access to information. Data on the country, or state, budget were obtained from the Legislatures' websites and budget laws and considered the authorized values for the year 2019. Data on population were obtained from the Latin American and Caribbean State Yearbook 2019, prepared by United Nations Economic Commission for Latin America and the Caribbean. Data on the population of the Brazilian states analyzed were obtained from the Brazilian Institute of Geography and Statistics. The data related to the Mexican states were obtained from the Mexican National Institute of Statistics and Geography. And the data related to the population of the Argentine state was obtained from the National Institute of Statistics and Censuses of that country. Up-to-date data were not found for the DPOs in Bolivia, Venezuela and Rio Negro, for these cases, we used data from 2018.

The effects of autonomy and control variables on PDOs performance are tested in repeated OLS multiple linear regression analysis, using the statistical software RStudio. Four regression models were created, two for each dependent variable, one of which includes all independent variables and the other developed by comparing the AIC values (stepwise). Although the number of observations can be considered low (N = 19 PDOs), this should not be a problem, since there are indications in literature that four

cases per dimension should avoid overfitting (Cook & Hawkins, 1990). Multicollinearity of the variables, as well as normality and heteroscedasticity of the residues were also observed. In this sense, the variable Overall Autonomy was removed from the regression models, thus avoiding multicollinearity. Models 1 and 2 did not present normally distributed residues. Logarithmic transformations in the variables, however, did not substantially alter the results of the regression analyses. Therefore, we chose to keep the original variables for better interpretation. It is also worth mentioning that this is an exploratory study, which does not claim to be conclusive about the relationship of autonomy and performance of PDOs.

### **Results and Discussion**

Table 4 summarizes the variables presenting descriptive statistics and correlation matrix. The correlation analysis was performed by Pearson's method to observe the strength and meaning of the relationships between variables. R Studio statistical software was used to run the analyses. The correlation analysis shows evidence that autonomy and its dimensions are positively related to assisted citizens. The dimensions of autonomy, except for office characteristics, presented significant correlations to assisted citizens. With regard to efficiency, only the administrative autonomy dimension showed a significant correlation, indicating that the higher the PDO's level of autonomy in relation to administrative management, the higher the efficiency of that organization.

When observing the relationship between assisted citizens and organizational capacities, it is clear that the number of defenders per 100,000 inhabitants has a moderate positive correlation with the percentage of the budget allocated to the PDO and the percentage of the population assisted by the PDO. This suggests that PDOs with higher budget resources also have more defenders, and PDOs with relatively more public defenders serve more people. Therefore, a positive relationship between the organizational capacity, here represented by budget and personnel resources, and the citizens assisted by the PDO is inferred. However, there is no significant relationship between these variables and efficiency. That is, the efficiency levels are not related to the availability of resources for the PDOs.

Table 4. Descriptive statistics and correlation.

Variables	Min	Max	Range	Mean	SD	a	b	c	d	e	f	g	h	i	j
Assisted Citizens (a)	0.00	0.14	0.14	0.03	0.03	1.00									
Efficiency. (b)	0.03	0.61	0.58	0.17	0.16	0.30	1.00								
Overall Autonomy (c)	0.11	0.84	0.73	0.37	0.21	0.61**	0.19	1.00							
Hierarchy (d)	0.00	0.88	0.88	0.34	0.30	0.47**	-0.14	0.83***	1.00						
Office Characteristics. (e)	0.00	0.81	0.81	0.34	0.27	0.30	0.23	0.81***	0.57*	1.00					
Administrative Autonomy (f)	0.00	0.75	0.75	0.38	0.24	0.64**	0.41*	0.82***	0.58**	0.51**	1.00				
Political Autonomy (g)	0.00	1.00	1.00	0.47	0.31	0.49**	0.15	0.45*	0.14	0.22	0.33	1.00			
Personnel Resources(h)	0.59	15.51	14.93	4.64	3.35	0.36	0.10	-0.03	-0.13	-0.29	0.27	0.16	1.00		
Budget Resources (i)	0.00	0.01	0.01	0.32	0.00	0.76***	0.01	0.53	0.46**	0.15	0.64**	0.39*	0.68**	1.00	
Subnational (j)	0.00	1.00	1.00	0.32	0.48	0.46**	0.04	0.24	0.24	-0.06	0.22	0.43*	0.16	0.54*	1.00

Source: prepared by the author; N=19; \*\*\*p < 0.001. \*\*p < 0.05. \*p < 0.10.

Table 5 presents an overview of the regression analyses. The complete models (1 and 3) did not show significant relationships between the variables. Model 2 indicates that budget resources were the only variable capable of influencing the proportion of citizens assisted by the PDOs. When taken together, none of the autonomy dimensions is capable of influencing output performance. In turn, Model 4 indicates that the dimensions ‘Hierarchy’ and ‘Administrative Autonomy’ influence efficiency, but in opposite directions. Higher levels of autonomy in relation to hierarchical linkage lead to lower levels of efficiency, but higher levels of administrative autonomy lead to higher levels of efficiency. The variables personnel resources and subnational did not present statistical significance in the models, indicating that the relative number of public defenders and the fact that the PDO is national or subnational do not influence any of the performance dimensions.

Table 5. Explaining PDOs’ performance.

Independent variables	Dependent variables			
	Assisted Citizens		Efficiency	
	Model 1 (complete)	Model 2 (stepwise)	Model 3 (complete)	Model 4 (stepwise)
Hierarchy	0.003439		-0.003439	-0.29366**
Office Characteristics	0.002535		0.002535	
Administrative Autonomy	0.02896	0.039231	0.02896	0.63652**
Political Autonomy	0.01956		0.01956	
Personnel Resources	-0.001984		-0.001984	
Budget Resources	0.07809	0.065181**	0.07809	-0.18126
Subnational	0.00006068		0.00006068	
Intercept	0.00721	-0.007479	-0.007201	0.73979***
N (observations)	19	19	19	19
R <sup>2</sup>	0.6648	0.615	0.6648	0.4596
Adjusted R <sup>2</sup>	0.4515	0.5669	0.4515	0.3515
F	3117**	12.78***	3117**	4252**

Source: prepared by the author; \*\*\*p < 0.001. \*\*p < 0.05. \*p < 0.10.

These results suggest that the great variation in the results of studies on the relationship between autonomy and performance may be related to measurement variability of these two constructs. In other words, different dimensions of autonomy can influence different dimensions of performance in different, and even opposite,

ways. If we are dealing with output, measured in this work by the proportion of citizens assisted by the PDO, the dimensions of autonomy may present a positive correlation, but this does not mean a causal relationship. In this sense, it is important to consider the deficiencies of the PDOs in Latin America which involve scarcity of resources and lacks of organizational capacities (Smulovitz, *Public Defense and Access to Justice in a Federal Context: Who Gets What, and How, in the Argentinean Provinces*, 2014; Fondevilla & Reyes, 2016; King, 2017; Ávila & Fix-Fierro, 2018). Therefore, granting more budgetary resources to these agencies can be a factor more relevant for better output performance than granting autonomy, which weakens the OAS recommendation that the PDOs should be independent.

The most notable result is the opposite influence that hierarchy and administrative autonomy have on efficiency. This result has a practical implication, greater discretion for the PDO in managing its resources is more important for efficiency than the hierarchical disconnection of the PDO from a higher authority.

Note that the hierarchy dimension showed a positive correlation with the proportion of assisted citizens, and also presented a negative influence on efficiency. In other words, higher levels of autonomy in relation to the hierarchical bond with higher authority are correlated to higher levels of assisted citizens, but lead to lower levels of efficiency. Thus, it can be suggested that this may be desirable on the one hand but can allow bureaucracy to establish greater benefits for itself on the other.

The hierarchy dimension encompasses aspects related to forms of accountability over the organization's leaders. That is: hierarchical link to a higher authority, accountability obligation to that authority, form of appointment of the head of the PDO, existence and composition of the board of directors. In sum, these aspects are related to mechanisms that allow elected representatives to control the head of the PDO, asserting their interests. Thus, the negative relationship between formal autonomy and efficiency may indicate a loss of agency, i.e. a difference between what the elected representatives want and the results presented by the bureaucracy (Stone Sweet & Thatcher, 2002). In such cases of greater hierarchical autonomy, the sanctioning power of the principal over the agent is minimized, allowing the bureaucracy to choose to serve private interests over the interests of the principal (Tomic, 2018). In fact, heads of autonomous agencies

who have more contact with hierarchically superior authority perceive higher levels of accountability (Schillemans, et al., 2020).

Proximity to the principal tends to be more important for a given agency than autonomy. Agents who have a greater degree of proximity to the principal, with a greater number of contacts and more frequent performance reports, are also those with the strongest trust relationship with the principal (van Thiel & Yesilkagit, 2011). Higher levels of trust can also mean greater availability of resources for the agency, greater political will to approve projects that are important to the agency's operation and, consequently, better performance. In line with the findings of Schillemans et al. (2020), the role of hierarchical control, not only in practice, but also in normative terms, is relevant even today, when fragmented governance mechanisms prevail.

### **Conclusion**

In order to explore the relationship between autonomy and performance of PDOs, this study analyzed aspects related to the autonomy, capacities, efficiency and performance of PDOs in 16 Latin American countries. The relationships were explored through correlation and multiple regression analysis.

Positive associations between autonomy and performance were identified. However, when taken together, the autonomy dimensions do not significantly influence the proportion of citizens assisted by the PDOs. In addition, dimensions of autonomy influence efficiency in different ways. That is, greater administrative autonomy induces greater efficiency, but loose hierarchical link to a higher authority leads to lower levels of efficiency. In short, the relationship between autonomy and performance depends on which dimensions of these two constructs are being measured. In this case, accountability mechanisms are important to keep PDOs in line with democratically represented interests.

It is important to highlight that this is an exploratory study that brings an important contribution to the Public Administration literature, since it highlights a type of entity little studied in this field of knowledge, the Public Defender's Office. In addition, it indicates that the dimensions of autonomy can be associated with performance in different ways and intensities. This study also has raised important questions about the nature of the consequences of granting high levels of autonomy to

public entities, in general, and to PDOs in a specific way. Taken together, the results suggest that the expectation in part of the literature that higher levels of autonomy lead to higher levels of performance and efficiency does not always tend to be confirmed.

These results weaken the claim that PDOs must be independent (OAS Resolutions n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014). The autonomy of these institutions is indeed important, since they defend the interests of vulnerable citizens against the arbitrariness of the State, but this autonomy should not be misunderstood as independence. High degrees of autonomy can be problematic for the effectiveness of the services provided by these organizations, since the absence of accountability mechanisms can lead to suboptimal performance. It is important to maintain accountability mechanisms that allow the monitoring and control of aspects related to the performance of these organizations, as well as to bring these entities closer to government decision-making bodies responsible for determining the allocation of public resources. Furthermore, we recommend that autonomy should be delegated to PDOs with caution; the focus should be on aspects related to its operation and the functional action of public defenders.

Finally, this study has limitations, which are linked to the challenges of developing cross-national comparative research. First, the number of observations is small, which did not allow for more robust statistical analysis. It is also noteworthy that the research covered only documentary data, not including interviews with stakeholders, which could enrich the explanatory power of the article. These limitations can be overcome in future studies, which can observe the relationship between autonomy and performance through other analytical perspectives, such as the perception of public defenders. Future studies could also assess factors related to accountability and how they influence the performance of PDOs.

## **Chapter 5**

### **WHEN AUTONOMY IS NECESSARY FOR PERFORMANCE: A STUDY ON BRAZILIAN PUBLIC DEFENDERS' OFFICES**



## **Abstract**

Autonomy is an important factor in explaining the performance of Public Defenders' Offices (PDOs), organizations responsible for providing access to justice for vulnerable citizens. This is due to the fact that these organizations often directly litigate against the State in defense of quality public services for social vulnerable groups. The present study aims to test the impact of perceived autonomy on the perceived performance of Brazilian PDOs. To this end, we applied a questionnaire to bureaucrats from 27 Brazilian PDOs and analyzed the data using structural equation modeling. The variables observed include performance and autonomy, whose relationship is the focus of this work, in addition to the availability of resources, skills and accountability. The results indicate that these organizations should operate autonomously, away from political influences, so that they could perform their mission in the best way. The skills of bureaucrats are also a relevant factor for the performance of these organizations, as well as accountability. There was no significant relationship between the availability of resources and the perceived performance. The contributions of this study include obtaining evidence of empirical validity for measuring the constructs autonomy, availability of resources, skills and accountability, and their impact on PDOs' performance.

**Keywords:** Autonomy; Performance; Public Defender's Offices; Survey; Structural Equation Modeling

## **Introduction**

Performance and autonomy are important topics in the study of Justice Administration, a research field with high practical and political salience but still neglected by the broader field of Public Administration (Guimaraes, Gomes, & Guarido Filho, 2018). Understanding these concepts and how they possibly relate is fundamental to solving a paradoxical problem in the Judiciary of many countries, such as expanding access to justice and, at the same time, meeting the demand for better and faster justice services (Guimaraes, Gomes, & Guarido Filho, 2018).

However, we have not been successful in finding studies that empirically associate these dimensions in Justice organizations. There are studies in the public administration literature that examine such relationship, but these studies are not univocal. In fact, there is still no compelling evidence that indicate greater performance of autonomous agencies (Maggetti & Verhoest, 2014).

Autonomy may be relevant to explain the performance of Public Defender's Offices (PDOs), an organization of the Justice System responsible for providing legal

assistance to socially and economically vulnerable citizens. To carry out its mission, this type of organization must directly litigate against the State in order to ensure the provision of public services and to prevent abuse or deviation by the government in applying the law. Therefore, elected politicians could intentionally stifle PDOs, depriving them of the resources and means necessary for their performance.

Therefore, we can ask: does greater perception of autonomy by PDOs' bureaucrats leads to higher levels of perceived performance? Having this question as a guide, this study aims to test the impact of perceived autonomy on the perceived performance of Brazilian PDOs. Other factors capable of influencing performance are also observed, such as the availability of resources, the skills and characteristics of bureaucrats. This research was operationalized through the application of a survey to observe the perception of the Brazilian PDOs' bureaucrats. The analyses were performed using structural equation modeling. The results demonstrate that autonomy, skills of bureaucrats, and accountability directly influence performance. However, there is no significant relationship between resources and performance.

### **Theoretical Framework**

The relationship between the autonomy of public organizations and their performance has been studied in public administration, especially with regulatory agencies as research locus. However, there is still no consensus on the direction and mechanisms involved in this relationship. Some results indicate that autonomy and performance are directly related (Silver, 1993; Bertelli, 2006; Braadbaart, Van Eybergen, & Hoffer, 2007; Anand, Exworthy, Frosini, & Jones, 2012; Vining, Laurin, & Weimer, 2015). Other studies point to an inverse relationship, that is, higher levels of autonomy would be related to lower levels of performance (Kim & Cho, 2014; Overman & van Thiel, 2016). There are also articles that bring a curvilinear relationship (Rainey & Steinbauer, 1999; Fukuyama, 2013). In this case, balanced levels of autonomy may positively influence performance, but the excess or lack of autonomy would contribute to lower levels of performance. There are even studies that indicate that autonomy is not such a relevant factor in defining the performance levels of public organizations (Verhoest & Wynen, 2016; Han & Hong, 2019), or even do not find a significant relationship between autonomy and performance (Yamamoto, 2006).

Performance is a multidimensional and multilevel construct, which has been observed in the most diverse public organizations under varied aspects. With regard to Justice Organizations, performance has been linked to: speed of judicial proceedings (e.g., Abramo, 2010), workload and output (e.g., Beenstock & Haitovsky, 2004; Jonski & Mankowski, 2014), efficiency (e.g., Yeung, 2020), access to justice (e.g., Cunha, Oliveira, & Glezer, 2014; Oliveira & Cunha, 2016), quality, and effectiveness (Gomes & Guimarães, 2013). In the present study, performance is observed through the perception of bureaucrats about the results and policies produced by the PDO.

In general, studies on judicial performance consider judges as a fundamental element. The variables most commonly used to explain performance mainly cover the availability of resources, including personnel (such as the number of judges and assistants) (Beenstock & Haitovsky, 2004; Gomes, Guimaraes, & Akutsu, 2016; Gomes & Freitas, 2017; Gomes, Buta, & Nunes, 2019), financial and technological resources (Gomes, Alves, & Silva, 2018). But other variables are also pointed out, such as the characteristics of the judges (Abramo, 2010); the workload (Beenstock & Haitovsky, 2004; Jonski & Mankowski, 2014; Grajzl & Silwal, 2020); the complexity of procedures; political disputes; level of poverty (Beer, 2006); the normative framework; the institutional designs; and the characteristics of the users (Gomes & Guimarães, 2013).

Governance is also a multidimensional construct, of which autonomy (often referred to as independence) is a fundamental dimension. This dimension can be expressed, for example, through the dependence of Justice Organizations on State resources; the ability of law enforcement officials to act in accordance with laws and the constitution; possible interference by members of other powers in judicial decisions; interests and pressures of third parties (Akutsu & Guimarães, 2015).

In the specific case of PDOs, there is speculation that greater autonomy may be related to lower levels of performance. This comes from an observation that the performance levels of the Brazilian federal PDO reduced after that agency constitutionally acquired the condition of political and administrative autonomy (Buta, Gomes, & Lima, 2020). However, this has not yet been empirically tested. In a broader context, Vining et al. (2015), when studying the long-term impact of autonomy on the performance of Canadian public agencies, conclude that, soon after assuming greater

conditions of autonomy, the observed agencies experienced long-term productivity gains, and these gains reached a level limit after a period of time (Vining, Laurin, & Weimer, 2015). Still, it should be noted that the performance measures used in that study are financial, not directly related to the results that the agencies deliver to society. Consequently, the authors are not evaluating the capacity of those agencies in delivering good services to its users, but efficiency, that is, the measure is more related to costs and access to resources than to performance itself.

Considering these conclusions, some hypotheses can be formulated, in order to highlight the main constructs and respective theoretical relationships arising from the theoretical-empirical references discussed. Testing these hypotheses allows adding empirical evidence to the relationship between the autonomy and performance constructs, as well as bringing empirical evidence to resolve controversies in the collected studies.

The performance of public organizations depends on several factors, such as supportive behavior by external stakeholders, as politicians for example; agency autonomy with regard to the implementation of its mission; and certain leadership behaviors (Rainey & Steinbauer, 1999). In the case of PDOs, it is worth remembering that they litigate directly against the state, for example, in cases where public policies are not being satisfactorily delivered to the vulnerable population. Furthermore, these agencies are also sometimes anathema, when they are seen as defenders of criminals. Thus, elected politicians may have vested interests in stifling a legal aid service that is causing them some sort of embarrassment. Consequently, PDOs with higher levels of political and administrative autonomy would tend to perform better. Therefore, here is the following hypothesis:

*H1: Higher levels of autonomy perceived by PDO bureaucrats lead to higher levels of performance.*

Autonomy, however, should not be the only factor capable of explaining the performance of PDOs. The availability of resources and the capabilities of bureaucrats must also be considered. The availability of resources is a factor that has been studied as an explanatory variable for judicial performance, but the way in which this variable influences performance is still controversial.

For example, there are indications that the importance of personnel resources for performance of Justice Organizations is relative. The surplus of personnel may cause a reduction in the level of performance, taken as productivity (Beenstock & Haitovsky, 2004; Gomes & Guimarães, 2013; Gomes & Freitas, 2017; Gomes, Buta, & Nunes, 2019). Investment in technology, however, has been positively related to increased productivity in courts. Nevertheless, it should not be assumed that performance will increase whenever technological resources expand. The productive capacity has limitations, as it depends on the capacities of judges and their assistants (Gomes, Alves, & Silva, 2018).

In fact, there must be a limit between the ratio of resources to performance, especially when looking at issues of efficiency (cost/benefit) and average productivity of employees. However, in absolute terms, the expansion of available resources (inputs) must lead to an increase in the outputs (Overman & van Thiel, 2016). It is worth thinking that an increase in the number of public defenders, for example, will generate an increase in the number of citizens assisted by the PDO, even if this means that each of the public defenders will start to show less productivity. Therefore, we expect to find a positive relationship between resources availability and performance:

*H2: Higher availability of resources leads to higher performance.*

Since the autonomy of public agencies also covers issues related to obtaining resources by their own means (Gilardi, 2002), which, in the specific case of PDOs, may involve attorney's fees, for example, it is possible that, in a condition of greater autonomy, public agencies will have access to a greater amount of resources, and, therefore, there would have greater performance. Therefore:

*H3: The relationship between autonomy and performance is mediated by the availability of resources.*

This relationship might be tricky if the autonomy represents a greater distance from the politicians responsible for the distribution of public resources. In other words, autonomy can lead to distance from the principal and, consequently, lower levels of resources (van Thiel & Yesilkagit, 2011).

The bureaucracy skills are also a factor that explains their performance. Indeed, capacities and performance are intrinsically related concepts, which, in a broad sense,

describe the inputs and outputs of management systems (Christensen & Gazley, 2008), and the analytical, managerial, and political skills are important dimensions of the concept of capacity (Wu, Ramesh, & Howlett, 2015; Howlett & Ramesh, 2016).

What organizations can actually do and the likelihood of success in what they do depends critically on the skills they have to diagnose problems and develop appropriate strategies to address those problems. Successful organizations must be composed of a body of bureaucrats with the ability to acquire and use knowledge, as well as the ability to access and apply scientific and technical knowledge, in addition to mastering analytical techniques (Howlett & Ramesh, 2016). Therefore, here is the following hypothesis:

*H4: Skill levels are positively related to performance.*

In the specific case of Justice organizations, the observation of autonomous judicial councils in Eastern European countries has shown that the mere granting of autonomy, without assuring that social interests are served, does not guarantee the proper functioning of these organizations in practice (Beers, 2012). The potential for implementing quality public policies can certainly come from a professional and insulated bureaucracy (Cingolani, Thomsson, & Denis, 2015).

However, a situation of greater autonomy can influence performance to a greater or lesser extent depending on the capabilities of the bureaucracy. Thus, on the one hand, the impact on performance tends to be negative if an organization has a high degree of autonomy, but is full of professionals without technical competence, or is formed by politicians appointed by vested interests. On the other hand, an organization with the same high levels of autonomy, but with a qualified professional bureaucracy, with the necessary skills and knowledge, would tend to have a positive impact on performance (Fukuyama, 2013). In this sense, the relationship between autonomy and performance would be moderated by the skills of the bureaucracy:

*H5: The skills of PDOs bureaucrats moderate the relationship between autonomy and performance.*

Last, but not least, institutional arrangements in which agents have high levels of discretion tend to cause a loss of agency, that is, the results generated by agents tend to be different from those preferred by the principals. In such cases, the powers delegated

to the agents are vast, but the control instruments that the principals have to restrict or reverse the results of unwanted policies are scarce (Stone Sweet & Thatcher, 2002). In such cases, the leaders of the autonomous agency tend not to worry about whether their decisions violate the interests of the principals, thus leading to sub-optimal political choices (Tomic, 2018).

In this sense, maintaining mechanisms capable of keeping agents accountable for their actions would tend to guarantee the performance of autonomous organizations. In fact, multiple accountability channels decrease the chances of failure, correcting unwanted behavior (Schillemans, 2010). Thus, it is expected that higher levels of accountability are related to higher levels of performance, leading to the following hypothesis:

*H6: Higher levels of accountability lead to higher levels of performance.*

Furthermore, the accountability mechanisms influence the behavior of bureaucrats. The closeness between the parent ministry and the agency, with greater trust relationship between principal and agent, brings a stronger perception of accountability (Schillemans, et al., 2020) which might influence the agency's performance. It is worth remembering that the absence of accountability mechanisms can lead to sub-optimal performance (Tomic, 2018). Thus, it can be expected that the level of accountability moderates the relationship between autonomy and performance, as stated in the following hypothesis:

*H7: The level of accountability moderates the relationship between autonomy and performance.*

## **Methods**

A survey was carried out to capture the perception of bureaucrats from Brazilian PDOs about aspects related to the autonomy, skills, resources, accountability and performance of these agencies. It is assumed that bureaucrats have relevant considerations based on their experience, so that their perception is important to indicate the functioning of the PDOs.

Data collection took place via a survey applied to bureaucrats of PDOs throughout the country. The survey was applied via internet to PDOs' bureaucrats all

over Brazil in September and October 2019, using the Google Forms tool. The link to the questionnaire and an explanatory text inviting the bureaucrats to be part of the survey were shared in internal communication channels of PDOs and professional associations of public defenders.

The research universe is composed of PDOs' bureaucrats. This includes the 28 PDOs, one in each Brazilian federative unit plus the Federal Public Defender's Office. The IV Diagnosis of the Public Defenders' Offices in Brazil points to a population of 6,062 public defenders in 2015, counting all PDOs. Data for the population of other types of public servants, such as managers and advisors, is not known.

The research sample was not obtained randomly, since the form of application depended on the institutional support of PDOs and professional associations of defenders. Data were collected from 27 PDOs, the PDO of the State of Pernambuco was the only one from that we could not obtain responses. After processing the data, in which responses from interns and outsourced employees were excluded, as well as a response recorded in duplicate, 325 response records remained, which is sufficient for the analysis, for which samples greater than 300 are reliable (Tabachnick & Fidell, 2013).

The questionnaire, that seeks to measure comparatively state capacities, was based on a scale developed by the Center on Democracy, Development and the Rule of Law, from Stanford University, in partnership with the Brazilian Institute for Applied Economic Research (Pereira, et al., 2019). Recent studies show evidences of validity of this questionnaire (Gomide, Machado, & Albuquerque, 2019; Cavalcante & Pereira, 2019; Cavalcante & Lotta, 2019).

As the survey was designed for public organizations linked to national governments, some changes in the items were necessary to adapt it to the context of subnational PDOs. Before applying the survey, a pilot was carried out with a group of representatives of the target audience in order to validate the items semantically. Semantic validation aims to verify that the items are understandable to the target population (Pasquali, 2010). This step was carried out by administering the questionnaire to eight members of the Federal PDO, the PDO of the Federal District and the PDO of the State of Ceará, selected by convenience. After each answer, the doubts raised about the survey were noted, and the response time was estimated. The



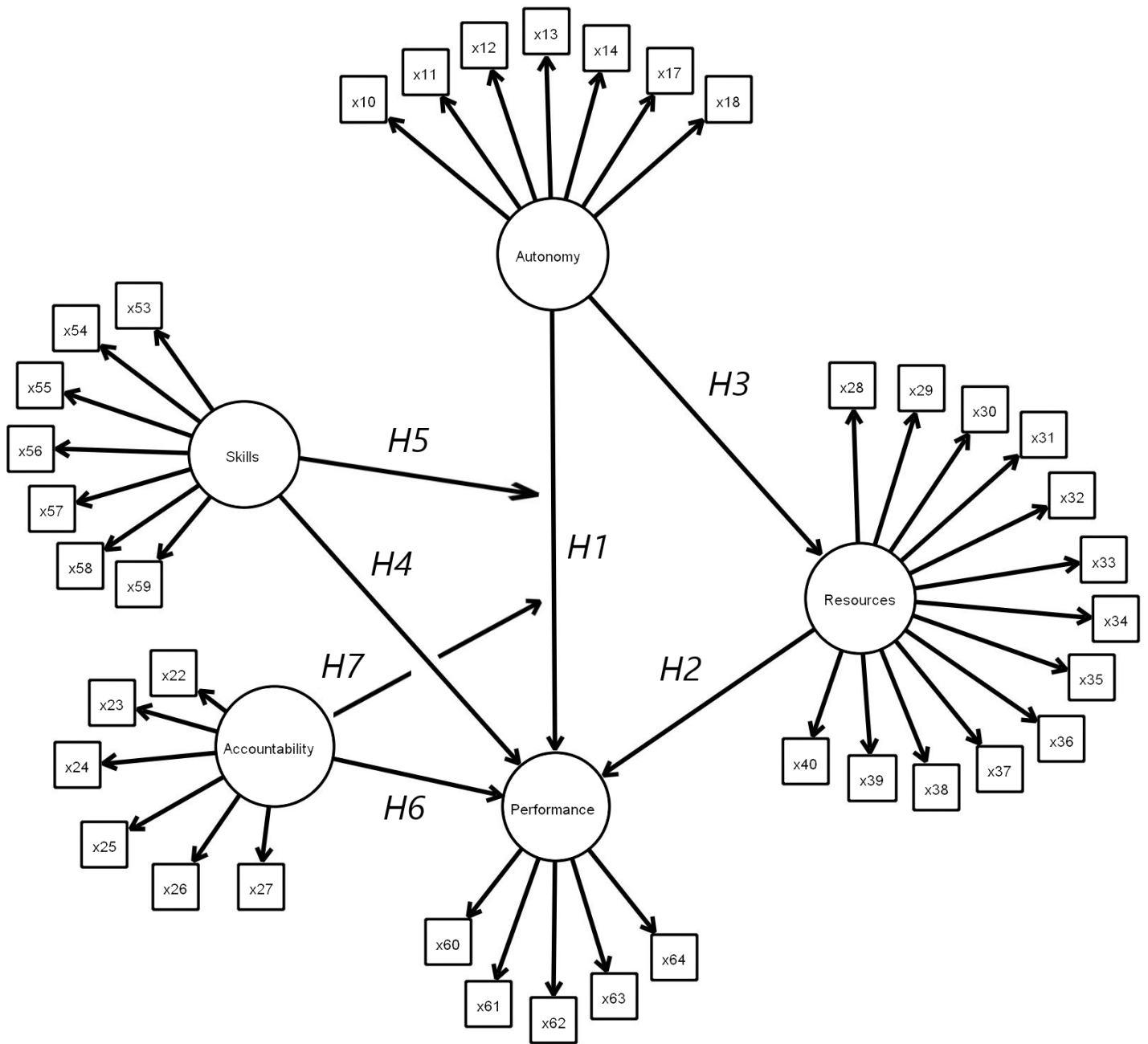
application of the pilot allowed the identification of items with confusing wording, to which explanatory texts were added in order to solve any doubts.

The adapted questionnaire consists of ten sections and 72 items. The initial section includes a presentation of the questionnaire, with information about the target audience, the average response time, the commitment to confidentiality and the contact details of the research author. Next, there is a section with items on the sample's socio-demographic profile. The following sections cover aspects related autonomy, performance, and capacities of PDOs.

For the present study, 41 items were used, as the scope of this article covers only the following dimensions: performance (dependent variable), and autonomy, accountability, skills and resources (independent variables). The responses to the items were organized on a Likert-type scale, with five points of agreement.

Data analysis was performed using structural equation modeling and confirmatory factor analysis. We used RStudio and Onyx (both free software) to measure and build analysis models. Such methodology allows estimating relationships between latent and observed variables (Bollen, 1989). In this sense, we sought to measure the latent variables, performance, autonomy, skills, resources, and accountability through the observed variables represented by the attributes contained in each of the items in the questionnaire. Then, the relationships between each of the latent variables were measured. The following diagram (Figure 3) shows the theoretical model and the research hypotheses.

Figure 3. Path diagram representing the relations of the hypothetical model.



Source: prepared by the author.

Seven models were created for the analyses, one for each hypothesis. For the elaboration of the models 5 and 7, it was necessary to create an interaction variable. This variable was created by the multiplication between one of the indicators linked to the factor Skills (x53) and Autonomy (x10), as well as Accountability (x22) and Autonomy (x10). It is noteworthy that the multiplication of just one indicator of each factor is considered sufficient for the creation of the multiplicative term, and prevents measurement error. The result of this multiplication was centralized in order to avoid

multicollinearity of the new variable with the variables that formed it (Cortina, Chen, & Dunlap, 2001).

## Results and Discussion

The socio-demographic profile of the sample has the following characteristics. There is a prevalence of public defenders, which correspond to 73% of the sample; the other 27% of the answers are from management employees and advisers. The average age of respondents is 38 years, ranging from 25 to 66 years old. The average working time in public administration is 11 years. The male gender is predominant, representing 55% of the sample, compared to 45% of female respondents. Most respondents, 53% have specialization as the highest level of education, 27% of respondents have a *lato sensu* graduate degree, 18% have a master's degree, 1% has a doctorate degree, and 1% has only high school level. Finally, 97% of respondents are not affiliated to a political party.

Initially, the adequacy of the sample for statistical analysis was verified. The sample size is satisfactory, as stated earlier. The Kaiser-Meyer-Olkin test, capable of measuring the sample's adequacy for the analyses, indicates an adequacy value of 0.89, which is acceptable. Bartlett's test was significant, indicating significant relationships between variables. It is concluded, therefore, that the data is adequate for the analyses.

All the relationships between the latent variables and their observable aspects, that is, the questionnaire items, are significant for all models analyzed. Table 6 contains the items corresponding to the factors, as well as the factor loads. Factor loads were obtained through confirmatory factor analysis for the construction of this table.

Table 6. Factors, items, and factor loads.

Factor	Introduction and possible answers	Item	Factor Load	Mode	Median
Autonomy	Rate your level of agreement with the following items 1 Strongly agree 2 Agree 3 Neither agree nor disagree 4 Disagree 5 Strongly disagree 999 I don't know / I don't want to answer	10 - In my current position, I am encouraged to bring new and better ways of working.	1.000	3	3
		11 - I am able to make my own decisions when carrying out my work.	0.814	1	2
		12 - The approval of a project depends on my technical considerations.	0.763	3	3

	<p>1 Very satisfied 2 Satisfied 3 Neither satisfied nor dissatisfied 4 Dissatisfied 5 Very dissatisfied 999 I don't know / I don't want to answer</p> <p>1 Always 2 Often 3 Sometimes 4 Rarely 5 Never 999 I don't know / I don't want to answer</p> <p>Rate your level of agreement with the following items:</p> <p>1 Strongly agree 2 Agree 3 Neither agree nor disagree 4 Disagree 5 Strongly disagree 999 I don't know / I don't want to answer</p>	<p>13 - How satisfied are you with your involvement in the decisions that affect your work?</p> <p>14 - How often do formal rules and regulations prevent you from doing your job?</p> <p>17 - Members or employees of the Public Defender's Office are politically neutral in the performance of their duties.</p> <p>18 - Members or employees of the Public Defender's Office must strictly obey their superiors.</p>	<p>1.041</p> <p>-0.364</p> <p>0.273</p> <p>0.210</p>	<p>3</p> <p>4</p> <p>3</p> <p>3</p>	<p>3</p> <p>4</p> <p>3</p> <p>3</p>
Accountability	<p>Rate your degree of agreement with the following items:</p> <p>1 Strongly agree 2 Agree 3 Neither agree nor disagree 4 Disagree 5 Strongly disagree 999 I don't know / I don't want to answer</p>	22 - The organizational culture of the Public Defender's Office in which I work hinders corrupt practices.	1.000	2	2
		23 - Civil society organizations are able to participate in the decision-making process of the Public Defender's Office policies in which I work.	0.804	3	3
		24 - The Public Defender's Office in which I work is charged in relation to obtaining results.	0.833	2	2
		25 - The performance of the Public Defender's Office in which I work is well evaluated by society.	0.864	2	2
		26 - The management of the competence policies of the Public Defender's Office where I work has instruments for coordination between different levels of government.	0.899	3	3
		27 - The society respects unelected government officials.	0.463	2	2
		28 - Human Resources	1.000	1	2
Resources	<p>Are the following items obstacles to the good performance of the Public Defender's Office</p>	29 - Budget	0.322	1	1

	in which you work? 1 Strongly agree 2 Agree 3 Neither agree nor disagree 4 Disagree 5 Strongly disagree 999 I don't know / I don't want to answer	30 - Technological resources 31 - Stability of the management board 32 - Planning, monitoring and evaluation processes 33 - Legislation 34 - Relationship instruments with the Judiciary and the Prosecutor's Office 35 - Coordination instruments with the Legislative Branch 36 - Inter-federative coordination with states and municipalities 37 - Audits and control processes 38 - Instruments for social participation 39 - Access to key decision-makers 40 - Political-party interference	1.248 1.153 1.854 1.286 1.495 1.326 1.529 1.709 1.753 1.416 0.414	1 3 3 3 3 3 3 3 3 3 5	2 3 3 3 3 3 3 3 3 3 3
Skills	Do the members and staff of the Public Defender's Office where you work have the skills described below? Rate your degree of agreement with the following items: 1 Strongly agree 2 Agree 3 Neither agree nor disagree 4 Disagree 5 Strongly disagree 999 I don't know / I don't want to answer	53 - Knowledge of public policy for the sector of activity 54 - Research skills 55 - Skills for analyzing public policies 56 - Leadership 57 - Conflict management skills 58 - Skills in building interpersonal relationships 59 - Communication skills	1.000 1.154 1.084 1.188 1.259 1.176 1.212	3 3 3 3 3 3 3	3 3 3 3 3 3 3
Performance	1 Much more effective 2 More effective 3 Equal 4 Less effective 5 Much less effective 999 I don't know / I don't want to answer 1 Strongly agree 2 Agree 3 Neither agree nor disagree 4 Disagree 5 Strongly disagree 999 I don't know / I don't want to answer	60 - Compared to the results of the last five years, the current results of the Public Defender's Office in which you work are: 61 - The policies produced by the Public Defender's Office to which I belong have achieved the expected results. 62 - The available resources were sufficient to fulfill the functions of the Public Defender's	1.000 1.106 0.512	2 3 5	2 3 4

Office to which I belong.			
63 - The skills required of members of the Public Defender's Office to which I belong were adequate to achieve their objectives.	1.105	3	3
64 - The Public Defender's Office in which I work is creative and innovative.	1.180	3	3

Source: prepared by the author.

The hypothetical models presented good fit indexes. The global adjustment indexes indicate that the models are representative. It can be seen through the comparative fit index (CFI) and the Tucker–Lewis index (TLI). The closer to one, the better adjusted the model is (Meade, Johnson, & Braddy, 2008). The root mean square error of approximation (RMSEA) and the standardized root mean square residual (SRMR) deal with errors or residuals of the model. The lower the RMSEA and the SRMR, the better the model fit (Meade, Johnson, & Braddy, 2008). Therefore, they also indicate that the models have good fit. The relationships between the latent variables and the fit indexes of each model can be seen in Table 7.

Table 7. Relationships between latent variables and perceived performance

Latent Variables	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
Autonomy~Performance	0.563***	0.553***	0.556***	0.370***	0.275***	0.316***	0.292***
Resources~Performance		-0.103	-0.053				
Autonomy~Resources			-0.113**				
Skills~Performance				0.469***	0.364***		
Skills*Autonomy~Performance					0.030***		
Accountability~Performance						0.588***	0.553***
Accountability*Autonomy~Performance							0.009
Model Fit Measures	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>	<i>Model 4</i>	<i>Model 5</i>	<i>Model 6</i>	<i>Model 7</i>
CFI	0.958	0.862	0.866	0.915	0.690	0.842	0.557
TLI	0.948	0.849	0.852	0.903	0.650	0.818	0.495
RMSEA	0.050	0.058*	0.057*	0.069***	0.144***	0.077***	0.149***
SRMR	0.049	0.077	0.067	0.128	0.192	0.129	0.180

Significance: \*\*\* 0.001, \*\*0.01, \*0.1

Autonomy and performance are positively related in all models. This result corroborates H1, which states that higher levels of autonomy perceived by PDO

bureaucrats are related to higher levels of performance. It is in line with part of the Public Administration literature that indicates that autonomy positively influences the performance of public organizations (e.g., Silver, 1993; Bertelli, 2006; Braadbaart, Van Eybergen, & Hoffer, 2007; Anand, Exworthy, Frosini, & Jones, 2012; Vining, Laurin, & Weimer, 2015).

Model 2 shows no significant relationship between resource availability and performance, which undermines H2. It is noteworthy that the majority of respondents strongly agree that human resources, budget and technological resources, as they are currently available, are obstacles to the PDO's performance. In addition, most respondents strongly disagree with the statement that the resources available are sufficient for the PDO to fulfill its mission. Nevertheless, most respondents realize that the results of the PDO in which they work have improved over time. This result, however, must be viewed with caution, as it could represent a general perception of bureaucrats that there is a lack of resources in the PDOs.

Nevertheless, it is worth mentioning the indications in the literature that put in doubts the importance of increasing the amount of resources for the performance of Justice Organizations. There are studies that indicate that the increase in personnel resources, for example, may even cause a reduction in the level of performance (Beenstock & Haitovsky, 2004; Gomes & Guimarães, 2013; Gomes & Freitas, 2017; Gomes, Buta, & Nunes, 2019).

In turn, Model 3 indicates that the effect of autonomy on performance is direct, and not mediated by the availability of resources. It leads us to reject H3, which states that the relationship between autonomy and performance is mediated by the availability of resources. In fact, the relationship between autonomy and resources is negatively related. In other words, there is evidence that greater autonomy leads to less availability of resources, and not the other way around. This result goes against what was found by Buta (2019), when studying Latin American PDOs. It is worth mentioning, however, that autonomy in that study is taken in a broad way, that is, the institutional arrangement of the organization as a whole was observed. In the present study, autonomy is more related to the individual perception of bureaucrats. It is also noteworthy that Brazilian PDOs have much higher levels of autonomy than PDOs in other Latin American countries (Buta, 2019).

A possible explanation for this result is that the condition of greater autonomy leads to a great distance between the bureaucracy of PDOs and the elected politicians, who are responsible for the distribution of public resources. In this way, these politicians would tend to rely less on this bureaucracy and, hence, reduce the amount of resources allocated to it (van Thiel & Yesilkagit, 2011). Therefore, PDOs operate in a complicated context, in which they must have reasonable levels of autonomy to be able to exercise their mission in the best way, but this ends up alienating them from elected politicians. Accordingly, the autonomy of these agencies should represent the guarantee that they would have the amount of resources necessary for their proper functioning.

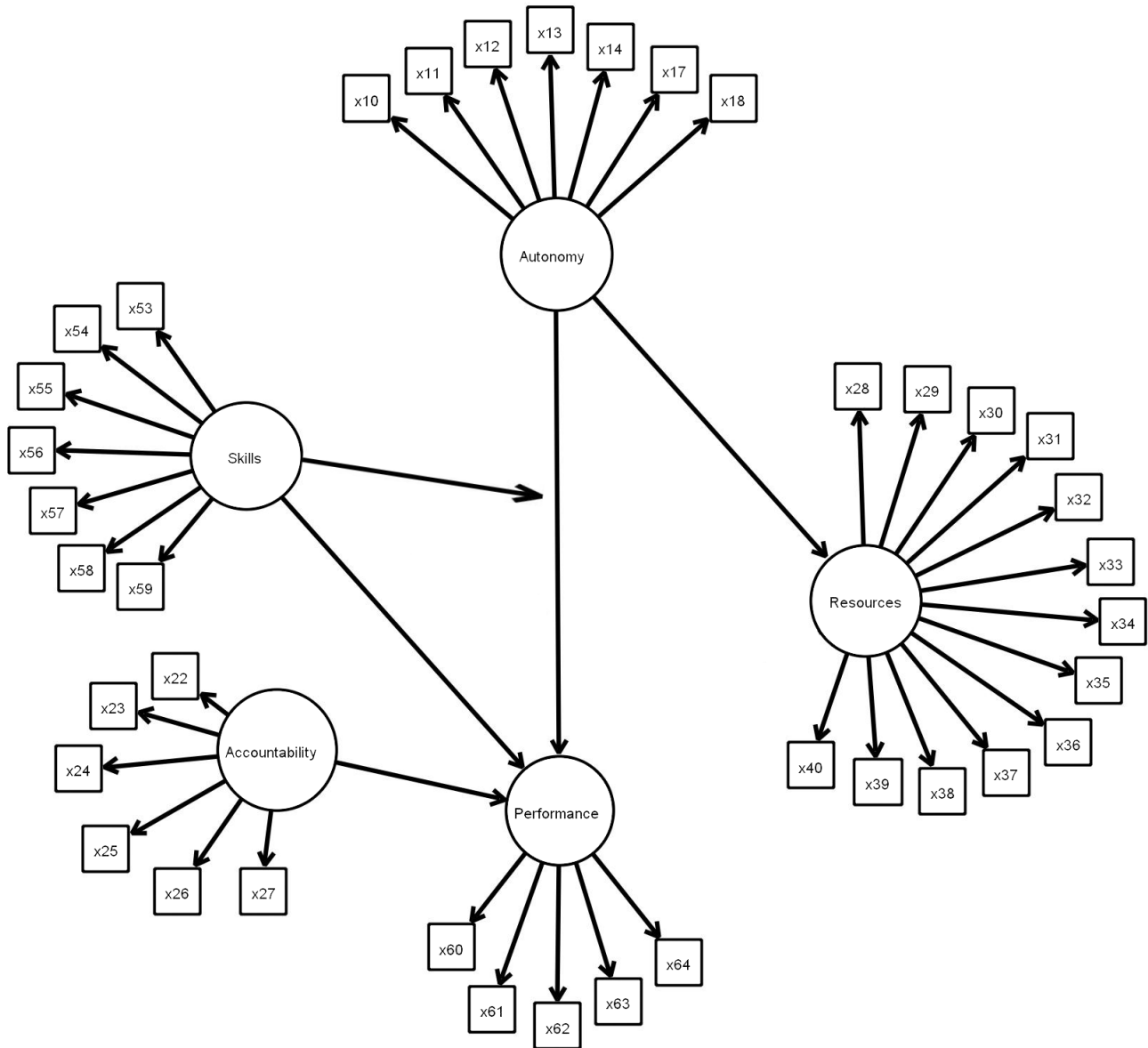
The results concerning Model 4 indicate that skills also positively and significantly influence performance. This corroborates H4, which states that skill levels are positively related to performance. This result was expected, since it is well known that organizations that have a body of more qualified bureaucrats, endowed with skills that allow them to acquire and apply knowledge will definitely perform better (Howlett & Ramesh, 2016). These findings are similar to those found by Cavalcante and Pereira (2019), even using different databases and methods.

Model 5 indicates that skills also moderate the relationship between autonomy and performance, corroborating H5. The greater or lesser degree of skills influences the relationship between autonomy and performance. This finding is in agreement with the theorized by Fukuyama (2013). That is, if the PDO is endowed with skilled bureaucrats, granting greater levels of autonomy to this agency will tend to improve the level of performance.

Finally, accountability is another important performance-inducing variable. Model 6 indicates that accountability positively and significantly influences performance, which corroborates H6. In the presence of this variable, the relationship between autonomy and performance is weaker than in the other models. Although both variables are important predictors of performance, the test performed on Model 7 did not indicate that the interaction between autonomy and accountability influences performance, suggesting H7 rejection. In other words, autonomy and accountability are both necessary factors for the performance of PDOs, but they operate through different means. The following figure summarizes the hypotheses results.



Figure 4. Summary of the results.



## Conclusion

In order to test the impact of perceived autonomy on the perceived performance, this study took place through the application of a survey to bureaucrats from Brazilian PDOs. The results indicated that autonomy is positively related to performance. PDOs are organizations that often litigate directly against the State to ensure the provision of quality public services to the most vulnerable population and to avoid discriminatory application of the law by Governments. Therefore, these results indicate that such organizations should operate at certain levels of autonomy.

It was also observed that bureaucrats' skills influence performance, and moderate the relationship between autonomy and performance. It is also noteworthy that

the availability of resources did not present a statistically significant relationship with performance. This result deserves to be better evaluated in future studies, as it may come from a general perception of bureaucrats that there is a lack of resources in the PDOs. In addition, the resources availability was negatively related to autonomy. In other words, greater autonomy is related to less resources availability. This may be connected to the distance between the PDOs and the politicians responsible for the distribution of public resources.

It should also be noted that accountability has stronger influence on performance than autonomy. This indicates that caution should be exercised when granting autonomy to PDOs. High levels of autonomy, without mechanisms that allow PDOs to be held accountable for poor performance, will tend to lead to behaviors in which the agent satisfies his own interests, to the detriment of the PDO's mission.

This article presents important theoretical contributions. First, this research shows a positive relationship between the autonomy and performance, thus, adding to a group of studies that verify the positive relationship between autonomy and performance. This is evidence that public agencies with a mission related to promoting access to justice and controlling public policies aimed at the vulnerable population need greater autonomy to perform better. It is also important to highlight the novelty of this type of approach for PDOs. Moreover, the study proposes explanations about the mechanisms by which autonomy is able to influence performance, thus indicating that there is an interaction between autonomy and skills of these bureaucrats. In addition, higher levels of autonomy are not related to higher levels of availability of resources. There are also practical contributions, which can be applied in the management of PDOs, and by extension, to other organizations of the Justice System. The increase in the skills of bureaucrats, as well as the guarantee of autonomy in the exercise of their functions, and establish accountability mechanisms may be relevant ways to the expansion of their performance.

This study has limitations, among which it is worth mentioning that the data analysis was carried out in an aggregate manner, which can hide the regional differences between the PDOs. Data collection was not done at random, so that the PDOs and professional associations of public defenders who supported the research by disseminating the survey in their internal communication channels have greater

representation in the data. Thus, the data have only internal validity, and cannot be extrapolated to the population. Finally, the data are subjective, as they refer to the perception of bureaucrats on the analyzed constructs. Therefore, the results must be analyzed with caution. However, none of these limitations nullify the scientific validity of this research. Contrariwise, the acknowledgment of these limitations emphasizes the need for complementary approaches to the phenomenon.

Future studies may bring complementary approaches that help to better understand the relationship between autonomy and performance, especially from Justice Organizations, which naturally need greater autonomy in their operations. Furthermore, a more detailed analysis is needed specifically on the relationship between availability of resources and their possible interactions with autonomy and performance.

## **Chapter 6**

### **CONCLUDING REMARKS**

## **Summary of the findings**

The PDOs' mission is to promote access to justice for the most vulnerable population through the provision of legal assistance. This bureaucratic design of the provision of legal assistance occurs in most Latin American countries. PDOs are supported by the state and often litigate against the government itself in cases of deviations in public policies aimed at socially and economically vulnerable citizens. Thus, the autonomy of these agencies is important to maintain social well-being and to protect needy citizens against discriminatory practices in the application of the law (Madeira, 2014).

In fact, the Organization of the American States (OAS) recommends that the PDOs should enjoy functional, financial, budgetary and technical autonomy (OAS Resolutions n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014). Although such recommendations have been pursued, the literature have reported irregular levels of PDOs' capacity and performance (e.g., Smulovitz, 2014; Fondevilla & Reyes, 2016; Bersch, Praça, & Taylor, 2017; King, 2017; Ávila & Fix-Fierro, 2018). In fact, the example of the Brazilian Federal PDO presented in Chapter 1 shows that greater autonomy may not always lead to greater performance.

Thus, the following problem was pursued in this dissertation: how does the relationship between autonomy and performance take place in PDOs? The objective carried out throughout the dissertation was to explore and test aspects of the relationship between autonomy and performance of PDOs.

In the study presented in Chapter 2, we proposed a theoretical framework to analyze the autonomy of public agencies, setting four dimensions: delegation, hierarchy, discretion, and democracy. This framework underlies the building of the autonomy scale for PDOs, reported in Chapter 3. Furthermore, open questions on the topic of bureaucratic autonomy were identified, having three propositions served as guidelines for this research were also presented in Chapter 2. These propositions are particularly linked to the relationship between autonomy and performance of public organizations, and were pursued throughout the research.

The first proposition relies on the mechanisms of democratic control and their influence on the autonomous agencies' performance. It stated that "Agencies that have

some type of hierarchical link to a parent ministry, with an obligation of accountability, present greater performance than those agencies that are not linked to the ministry and that report directly to the legislature”. The second proposition is related to the accountability mechanisms and their influence on the behavior of agencies, and stated that: “The level of accountability moderates the relationship between autonomy and the performance of bureaucracy”. Finally, the third proposition shed light on the relationship between the dimensions of autonomy and its influence on performance, raising the question of whether the various aspects of autonomy may have different impacts on the performance of autonomous agencies, as follows: “Different dimensions of autonomy have different impacts on the performance of public agencies”.

Chapter 3 covered the elaboration of a scale for measuring the autonomy of PDOs based on the framework presented in Chapter 2. This scale allowed characterizing the autonomy of PDOs in sixteen Latin American countries, producing a unique dataset. The results showed that the autonomy of the Latin American PDOs is quite varied; there are PDOs with clear hierarchical subordination to the Ministry of Justice of their countries, as well as largely autonomous PDOs, with no ties to any of the state branches. The results of that chapter also showed that factors related to institutional and social contexts can help to understand the levels of PDOs’ autonomy. There was evidence that the government's effectiveness, per capita GDP and the number of political parties are related to the autonomy of the PDOs.

Subsequently, Chapter 4 explored aspects related to autonomy, capacities, efficiency and performance of Latin American PDOs. It was possible to identify positive associations between autonomy and performance. However, such associations are not so straightforward. That is, each of the dimensions of autonomy influences the dimensions of performance differently, indicating that the third proposition launched in Chapter 2 may be valid. The administrative autonomy dimension was positively related to efficiency, but the hierarchy dimension presented itself negatively related to efficiency, a dimension of performance. That is, greater administrative autonomy induces greater efficiency, but loose hierarchical link to higher authority leads to lower levels of efficiency. This result is an indication of the validity of the first proposition launched in Chapter 2. In short, the relationship between autonomy and performance depends on which dimensions of these two constructs are being measured.

Finally, Chapter 5 tested the impact of autonomy on the performance of Brazilian subnational PDOs. In that case, autonomy, performance, accountability, as well as skills and resources were measured through the perception of bureaucrats of those agencies. The results indicated that autonomy, accountability and skills are positively related to performance. Although accountability has not been found to moderate the relationship between autonomy and performance (contrary to the second proposition launched in Chapter 2), the results indicated that accountability is a factor that influences performance with greater intensity. In short, accountability, autonomy and skills are all necessary for the performance of the PDOs, but they operate by different means.

### **Limitations**

The limitations of this study should be acknowledged. They are related to the challenges of making cross-country comparisons, as well as measuring abstract constructs. However, none of these limitations invalidate this research. Instead, the acknowledgment of these limitations emphasizes the need for complementary approaches to the phenomenon.

First, the theoretical essay presented in Chapter 2 was not based on a systematic literature review. Even though it is grounded on a broad set of articles published in journals with the greatest impact in the Public Administration field, it provides a selective overview of the literature on public agencies autonomy.

It also stands out that representatives of the PDOs analyzed in Chapters 3 and 4 were not interviewed. This could support the interpretation of the legislation applied to each of the PDOs, as well as detect any regulations that might not have come to the knowledge of the researcher. Thus, analyses were made according to what was observed in the legislation of each country. Still with regard to Chapters 3 and 4, the number of observations for regression analysis can be considered small, although the most relevant model for the analysis has shown good adjustment rates.

Regarding Chapter 5, it should be mentioned that the data analysis was carried out in an aggregate manner, which can hide the regional differences between the PDOs. Furthermore, data gathering was not random, so there is a higher proportion of responses from the PDOs and professional associations that supported the data

collection for this research. It is also worth mentioning that the data refer to the perception of bureaucrats, and are therefore subjective.

### **Theoretical contributions**

This dissertation established the basis for the study of autonomy in PDOs. This type of organization is practically neglected by the Public Administration field. Therefore, some theoretical contributions of this dissertation deserve to be highlighted. First, the present work offers a theoretical model for the analysis of the autonomy of public agencies, according to which there are four dimensions to be considered: delegation, hierarchy, discretion, and democracy.

This dissertation also presents possible explanations of why organizations with the same mission have such different levels of autonomy. It shows that the idiosyncrasies of PDOs are important to understand variations in the level of autonomy, which is influenced not only by institutional factors, but also by factors related to the social context. Thus, there are indications that the autonomy of PDOs is related to government's effectiveness, GDP per capita and the number of political parties.

The present work also indicates that the dimensions of autonomy can be associated with performance in different ways and intensities. The expectation in part of the literature that higher levels of autonomy lead to higher levels of performance does not always tend to be confirmed. Special attention must be paid to the hierarchical attachment to central government and to administrative autonomy. These dimensions showed different relations with the level of performance, measured by efficiency. That is, greater administrative autonomy is related to greater efficiency, but loose hierarchical link to a higher authority leads to lower levels of efficiency. In short, the relationship between autonomy and performance depends on which dimensions of these two constructs are being measured.

Finally, this research shows that some aspects of autonomy are necessary for the performance of this type of public organization. Moreover, the study proposes explanations about the mechanisms by which autonomy influences performance, thus indicating that higher levels of autonomy are not related to higher levels of resources availability. Nor is there any interaction between autonomy and skills of these bureaucrats, but these two variables influence performance to similar proportions. In



addition, accountability is more important to performance than autonomy, suggesting that autonomy and accountability are both necessary factors for the performance of PDOs, but they operate through different means.

### **Methodological contributions**

There are also some important methodological contributions. First, the creation of a scale to measure the autonomy of public agencies stands out as an original comparative dataset from PDOs, covering a large number of Latin American countries. Future studies can use this instrument to expand the dataset and/or connect it to various topics. This can also be considered a theoretical contribution.

Second, it is noteworthy that the studies that relate autonomy and performance of public organizations use different methods, approaches, and dimensions of autonomy so they reach to different conclusions. Thus, the framework developed in this work can contribute to the consolidation of the necessary structure to study the autonomy of public organizations.

### **Implications for practice**

The results of this dissertation can also serve to inspire aspects in practice. It is worth mentioning that this work characterized the institutional arrangements of national and subnational PDOs from 16 countries, allowing broad comparison between legal aid agencies for the vulnerable population in a region of the world that still suffers from high levels of poverty.

It is also noteworthy that the results weaken the claim that PDOs must be independent (OAS Resolutions n° 2656/2011, n° 2714/2012, n° 2801/2013, and n° 2821/2014). The autonomy of these institutions is indeed important, since they defend the interests of vulnerable citizens against the arbitrariness of the state, but this autonomy should not be misunderstood as independence. Autonomy should be delegated to PDOs with caution; the focus should be on aspects related to its operation and the functional action of public defenders.

Autonomy should not be understood as a panacea. Other factors are also important for the performance of PDOs. It is important to consider the need for effective accountability mechanisms for such organizations to align with social interests.

Furthermore, increasing the skills of bureaucrats may be a relevant way to expand their performance.

### **Research agenda**

Now that it is known that the different dimensions of autonomy have a different influence on the performance dimensions, this should be tested in other types of agencies, which operate in different sectors. Future studies could deepen the measurement instruments of each dimension of autonomy, thus allowing to understand what the arrangement for the PDOs, or other agencies, is that allows the best performance.

In addition, relationship between resource availability and performance needs a closer look. The findings in chapters 4 and 5 seem contradictory at first. In Chapter 4, the results indicate a positive relationship between the organizational capacity, represented by budget and personnel resources, and the citizens assisted by the PDO, one of the performance dimensions. However, no significant relationship was observed between these variables and efficiency, another dimension of performance. That is, the efficiency levels were not related to the availability of resources for the PDOs. In turn, Chapter 5 showed no significant relationship between resource availability and performance. In fact, there are indications in the literature that put in doubts the importance of increasing the amount of resources for the performance of Justice Organizations (Beenstock & Haitovsky, 2004; Gomes & Guimarães, 2013; Gomes & Freitas, 2017; Gomes, Buta, & Nunes, 2019).

Future studies could assess whether this inconsistency is characteristic of organizations in the justice system. They can also assess whether there are other factors influencing the relationship between the availability of resources and the performance of PDOs, such as the existence and effectiveness of accountability mechanisms, for example.

It is also worth noting that some questions raised in Chapter 2 remain open. Therefore, future studies are important to uncover the best mechanisms of democratic control over autonomous agencies, allowing to assess their influence on the credibility and legitimacy of public policies carried out by autonomous agencies.

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## APPENDIX I

Table 8. Legislation

Country/State	Legislation
	Constitution of the Argentine Nation
Argentina	Law 24.946, Organic Law of the Public Prosecution Service Law 27149, Organic Law of the Public Ministry of Defense of the Nation
Bolivia	Law 463, Law of the Plurinational Public Defender Service Law 1178, Personnel Administration and Control Act
Brazil	Constitution of the Federative Republic of Brazil Complementary Law 80/1994
Chile	Law 19.718 / 2001, which creates the Public Criminal Defense Law 19.882 / 2003, which regulates the personnel policy
Costa Rica	Law 7333, Organic Law of the Judicial Power
Dominican Republic	Constitution of the Dominican Republic Law 277-04 that establish the National Public Defender Service
Ecuador	Constitution of the Republic of Ecuador Organic Code of Judicial Function, Official Registration Supplement 544/2009
El Salvador	Constitution of the Republic of El Salvador (1983) Decree no. 775 - Organic Law of the Attorney General of the Republic
Guatemala	Congress Decree 129-97 - Criminal Defense Public Service Act Agreement no. 04-02 - Supreme Court of Justice - Internal Regulations of the Supreme Court of Justice
Honduras	Agreement no. 05-94 - Supreme Court of Justice - Regulation of the Program for Public Defender Agreement no. 07-2014 - Council for Judiciary and Judicial Career - Public Defender Regulations
Mexico	Federal Law of Public Defender Nicaraguan Political Constitution
Nicaragua	Law No. 260, Organic Law of the Judicial Power Public Defender's Organization and Functions Manual
Panama	Law 53-15, Regulates the judicial career
Paraguay	Constitution of the Republic of Paraguay Law No. 4423/2011 Organic Law of the Ministry of Public

	Defender
	Resolution DG 215/2018, which deals with the organization chart and organization of the Ministry of Public Defender
	Law 879/1981, Law of Organization of the Judicial Power
	Law 29360/2009, Public Defender Service Act
Peru	Supreme Decree 13/2009 - Jus, which regulates Law 29.360 / 2009
	Constitution of the Bolivarian Republic of Venezuela
Venezuela	Organic Law of Public Defender
	Partial Reform Law of the Organic Law of Public Defender
	Constitution of the Federative Republic of Brazil
Amazonas – Br	Federal Complementary Law 80/1994
	State Complementary Law 1/1990
	Constitution of the Federative Republic of Brazil
	Federal Complementary Law 80/1994
Rio Grande do Sul – Br	State Complementary Law 9230/1991
	State Complementary Law 11795/2002
	State Ordinary Law 13.224/2009
Michoacán de Ocampo– Mx	State Decree 155/2013
	State Decree 767/2014
San Luis Potosí – Mx	Regulation of the Law of The Public Defender's Office of the State of San Luis Potosí
	Political Constitution of the Free and Sovereign State of Sonora
Sonora – Mx	State Decree 99/2012
	State Decree 26/2019
Neuquén – Ar	Constitution of the Province of Neuquén
	Provincial Law 2892/2013
Rio Negro – Ar	Constitution of the Province of Rio Negro
	Provincial Law 4199/2010

Source: prepared by the author.

## APPENDIX II

Table 9. National PDOs' scores.

Items	Answers	Score	Argentina	Brazil	Chile	Paraguay	Peru	Bolivia	Ecuador	Venezuela	Costa Rica	Mexico	Guatemala	Nicaragua	Dominican Republic	Panama	El Salvador	Honduras
<i>Hierarchy</i>																		
Link to State Branch	Yes No	0 1	1	1	0	0	0	0	0	1	0	0	1	0	1	0	1	0
Accountability to hierarchically superior bodies	Yes No	0 1	1	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0
Appointment of defender general involves:	More than one branch (e.g., The head of the Executive Branch appoints and the Legislature endorses) Only the Chief of One of the Branches	1 0.5	1	1	1	0.5	0	0	0.5	0.5	0.5	0.5	1	0.5	1	0.5	0.5	0.5

	A representative from another hierarchical level (e.g., minister or secretary)	0																
Board of directors	There is no Board of Directors	0																0
	There is a board of directors whose members are not public defenders	0.5	0	1	0	0	0	0	0	0	0	0.5	0.5	0	0.5	1	0	
	There is a board of directors formed only by public defenders	1																
<i>Office Characteristics</i>																		
Term of office for the head of the public Defender's office	Over 5 years	1																
	2 to 5 years	0.75																
	Up to 2 years	0.5	1	0.5	0.75	1	0	1	1	1	0	0.75	1	1	1	1	0.75	0
	There is no mandate	0																

Renewal to the post of Chief of the Public Defender's Office	More than once	1																	
	One time	0.5	1	0.5	1	1	0	0.5	0	0	0	1	0.5	1	0.5	1	1	1	0
	There is no renewal	0																	
Can non-defenders occupy the position of head of the PDO?	Yes	0																	
	No	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Is there any express provision for the possibility of removal from office?	Yes	0																	
	No	1	0	1	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0
<i>Administrative Autonomy</i>																			
Does the public Defender's office have ways of obtaining resources by its own means?	Yes	1																	
	No	0	1	1	1	1	0	0	0	1	1	0	1	0	1	0	1	0	0
Is the budget proposal submitted directly to the legislature?	Yes	1																	
	No	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Can the amount of personnel be decided by the public Defender's office autonomously?	Yes	1																
	No	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0
Are personnel policies defined by the public Defender's office autonomously?	Yes	1																
	No	0	1	1	1	1	1	1	1	1	0	0	0	0	1	1	1	0
<i>Political Autonomy</i>																		
Can the PDO refer bills directly to parliament?	Yes	1	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0
	No	0																
What is the scope of the PDO's operation?	Criminal only	0																
	Other areas of law	1	1	1	0	1	1	0	1	1	1	1	0	1	0	1	1	1
Outcome	Absolute values	14	8	12	4,75	5,5	2	2,5	5,5	5,5	3,5	4,75	6	3,5	6	7,5	7,25	1,5
	Relative Values	100	57%	86%	34%	39%	14%	18%	39%	39%	25%	34%	43%	25%	43%	54%	52%	11%

Source: prepared by the author.



Table 10. Subnational PDOs' scores.

Items	Answers	Score	Amazonas - Br	Rio Grande do Sul – Br	Michoacán – Mx	San Luis Potosí – Mx	Sonora – Mx	Rio Negro – Ar	Neuquén - Mx
<i>Hierarchy</i>									
Link to State Branch	Yes	0	1	1	0	0	0	0	0
	No	1							
Accountability to hierarchically superior bodies	Yes	0	1	1	0	0	0	0	1
	No	1							
Appointment of defender general involves:	More than one branch (e.g., The head of the Executive Branch appoints and the Legislature endorses)	1	0,5	0,5	0,5	0,5	0,5	0,5	1
	Only the Chief of One of the Branches	0,5							
	A representative from another hierarchical level (e.g., minister or secretary)	0							
Board of directors	There is no Board of Directors	0	1	1	0,5	0	0	1	1
	There is a board of directors whose members are not public defenders	0,5							
	There is a board of directors formed only by public defenders	1							
<i>Office Characteristics</i>									

Term of office for the head of the public Defender's office	Over 5 years	1	0,75	0,75	0	0	0	0	1
	2 to 5 years	0.75							
	Up to 2 years	0.5							
	There is no mandate	0							
Renewal to the post of Chief of the Public Defender's Office	More than once	1	0,5	0,5	0	0	0	0	1
	One time	0.5							
	There is no renewal	0							
Can non-defenders occupy the position of head of the PDO?	Yes	0	1	1	0	0	0	0	0
	No	1							
Is there any express provision for the possibility of removal from office?	Yes	0	1	1	0	1	0	0	0
	No	1							
<i>Administrative Autonomy</i>									
Does the public Defender's office have ways of obtaining resources by its own means?	Yes	1	1	1	1	0	0	1	1
	No	0							
Is the budget proposal submitted directly to the legislature?	Yes	1	1	1	0	0	0	0	0
	No	0							
Can the amount of personnel be decided by the public Defender's office autonomously?	Yes	1	0	0	0	0	0	1	1
	No	0							
Are personnel policies defined by the public Defender's office autonomously?	Yes	1	1	1	0	1	0	1	1
	No	0							
<i>Political Autonomy</i>									
Can the PDO refer bills directly to parliament?	Yes	1	1	1	0	0	0	0	1
	No	0							

What is the scope of the PDO's operation?	Criminal only	0							
	Other areas of law	1	1	1	1	1	1	1	1
Outcome	Absolute values	14	11,75	11,75	3	3,5	1,5	5,5	10
	Relative Values	100	84%	84%	21%	25%	11%	39%	71%

Source: prepared by the author.