

## CHARACTERIZING THE AUTONOMY OF NATIONWIDE PUBLIC DEFENDER'S OFFICES: A SYSTEMATIC COMPARISON BETWEEN 15 LATIN AMERICAN COUNTRIES

Governance and Legitimacy in Justice Systems

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### ABSTRACT

In most Latin American countries, the provision of legal assistance to the economically and socially vulnerable population is carried out by public Defender's offices (PDOs), entities composed of state-paid career lawyers. These entities have different institutional design and various levels of autonomy. Studies on autonomy have focused mainly on regulatory agencies in developed western countries. In this way, a study on Latin American PDOs brings a great contribution to the literature on delegation of authority to autonomous entities. The aim of this paper is twofold: characterize the autonomy of the nationwide Latin American PDOs, and explain the cross countries variations in the autonomy levels. Therefore, a scale to measure autonomy was built allowing access to the autonomy of 15 different PDOs. Data were gathered through content analysis of the statutes that organize the PDOs. The results demonstrate different levels of autonomy among Latin American PDOs. There are indications of a positive relationship between de facto and formal autonomy. The level of autonomy varies according to factors related to institutional and social contexts, and reputational mechanisms. The level of poverty and income is especially relevant, in view of the institutional mission of PDOs and the social inequality historically observed in the region. The data set generated by this study is unique and covers a large amount of Latin American Countries. It could be used in futures studies to evaluate the consequences of the agencification of the policies related to access to justice in Latin America.

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

### Introduction

Many different studies have tried to explain the autonomy of public entities 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 the 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 the sector of the organizations. 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 Public Defender's Offices (PDOs) are interesting to be studied from the perspective of autonomy, since they are state-owned organizations, which often

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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, also known as Legal Aid Organizations, 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 PDOs is adopted in most Latin American countries (Smulovitz, 2014). This system reflects the willingness of the state to take responsibility for defending vulnerable citizens. However it faces challenges associated with citizens' lack of confidence in public defenders and insufficient resources (Schulhofer & Friedman, 2010; Farole & Langton, 2010; Fondevilla & Reyes, 2016).

There are variations between the institutional structures of the Latin-American PDOs. For example, the Brazilian PDOs are autonomous entities 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, 2014). 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.

The aim of this paper is twofold: characterize the autonomy of the nationwide Latin American PDOs, and explain the cross countries variations in the autonomy levels of entities that have the same mission. For this purpose, we made an analysis of similarity and disparity points between 15 nationwide Latin American PDOs. Consideration was given to the normative instruments governing the operation of these entities. The characterization of autonomy was based on four dimensions: (1) hierarchical link between the PDO and the parent ministry; (2) characteristics of the position held by the leaders of these entities, such as the existence of a mandate, the form of appointment and the decision-making process; (3) the guarantees of administrative autonomy, such as the budgeting process, the possibility of obtaining resources by their own means, and the policies related to the amount of personnel; (4) the guarantees related to political autonomy, involving the possibility of revoking decisions or possible attitudes of politicians to resort to laws, decrees or legal actions aimed at subverting the autonomy of the PDOs. After observing the variation in the autonomy levels, we ran a multiple regression analysis to observe the factors capable of explaining such variations between countries. The observed factors are related to the institutional and social context, as well as the reputational mechanisms.

This article lays the foundations for the study of PDOs autonomy. It brings four main contributions. First, an instrument for measuring the autonomy of PDOs was built which could be improved in future studies. 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 factors capable of offering a plausible explanation for the differences between the levels of PDOs autonomy in different countries. 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 Entities

The autonomy of public entities 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; Elgie, 2006; Levi-Faur & Jordana, 2006; Maggetti, 2007; Mediano, 2018). There are also studies that use large databases to compare various entities from numerous sectors, without clear distinction of entity type or activity (Bertelli, 2006; Schillemans, 2010; Taratoot & Nixon, 2011; van Thiel & Yesilkagit, 2011; Ozel, 2012; Bach, 2014; Bjørnholt & Salomonsen, 2014; Reichborn-Kjennerud, 2015; 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 a consolidated literature on the topic, questions remain to be answered about the sets of factors that determine the level of autonomy of these entities, as well as the cross countries variations in the autonomy levels of organizations that perform similar tasks (Maggetti & Verhoest, 2014). It is also worth noting that cross-national studies involving countries from developing regions, such as Eastern Europe and Latin America, have shown results that deviate from those found for Western Europe (González & Verhoest, 2016; Mediano, 2018; Tomic, 2018).

Comparative studies indicate that the institutional context and reputational mechanisms induce the level of autonomy. Firstly, the level of autonomy can be influenced by the characteristics of political and administrative systems, such as state structure, decision-making patterns, and administrative traditions (Bach, 2014). In this sense, democratization has been positively related to the level of agency autonomy (Mediano, 2018). The complexity of the political system is a relevant factor (Font, 2015). For example, the number of veto players could influence both the creation of autonomous entities and the level of autonomy of these entities. 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 entities (Gilardi, 2002). On the other hand, the presence of many veto players would lead to greater de facto independence of regulatory agencies (Maggetti, 2007; Mediano, 2018).

Regarding the structure of organizations, there are also conflicting results in the literature about the relevance of this factor for determining the level of autonomy. Some results indicate that the organization's structure makes a difference to its de facto autonomy. Thus, changes in the legal type of the organization could influence its level of autonomy. For example, semi-autonomous 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 autonomy would tend to show a strong bond of loyalty to their own organization, reaffirming itself as an independent state bureaucracy (Peci & Pulgar, 2018). However, there are results that demonstrate the opposite. That is, there would be no link between statutory design and agency behavior (Tomic, 2018). In fact, there is a broad debate about public organizations de facto and formal autonomy. Some studies indicate that formal autonomy is not a sufficient condition to explain variations in de facto autonomy of agencies. Factors related to the institutional context would have a more decisive impact (Maggetti, 2007; Yesilkagit & Thiel, 2008; Eckert, 2010; Tomic, 2018).

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Regarding the factors linked to reputation, it is observed in the literature that the bureaucracy is not necessarily oriented according to the interests of the principal. It may be aimed at a wider range of audiences, such as the electorate in general, experts, as well as various social and interest groups. Therefore, increasing the legitimacy of the bureaucracy before these audiences can increase the cost of the principal to impose sanctions on this bureaucracy, thus increasing its autonomy (Tomic, 2018). Indeed, agency reputation tends to shape administrative discretion and bureaucratic autonomy while also shaping administrative choice (Carpenter & Krause, 2012). Political capital is necessary for autonomy to induce state capacity (Meckling & Nahm, 2018), and it is close related to the core government's confidence in the arm's length entities (van Thiel & Yesilkagit, 2011).

The credibility of the agencies in the formulation and implementation of public policies is a factor related to reputation. The assumption that elected politicians would delegate authority to autonomous entities to express credible commitment is based on the reputation of these bureaucracies, viewed as experts on particular topics (Thatcher, 2002; Ozel, 2012; Bach, 2014; Eckert, 2017). Another reputational factor involves the age of organizations. As agencies get older, they benefit from a process of autonomization. That is, longer established agencies tend to have higher levels of autonomy (Maggetti, 2007).

Thereby, variables related to the institutional context and the reputational mechanisms are expected to induce the level of autonomy. Regarding the institutional context, the level of democratization, the number of veto players and the statement of formal autonomy are expected to have a positive relation with the level of autonomy. As regards the reputational mechanisms, the credibility and the age of the organization are expected to positively influence the level of autonomy. Taking into account the mission of the PDOs, variables related to the social context can also induce the level of autonomy of these entities. That is, regions with higher levels of poverty and inequality would need PDOs with greater institutional capacity.

### ***Measuring Autonomy***

The autonomy of public entities can be operationalized in several ways. There are studies that use surveys to ascertain managers' perception of autonomy (van Thiel & Yesilkagit, 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; Bertelli, 2006; Maggetti, 2007; Taratoot & Nixon, 2011; Hanretty & Koop, 2012; Mediano, 2018; Meckling & Nahm, 2018).

Most of the studies that measure autonomy by the perception of agency managers use the survey of the Comparative Public Organization Data Base for Research and Analysis (Verhoest, Van Thiel, Bouckaert, & Laegreid, 2012). In turn, most of the studies that measure autonomy through the aspects observed in the statutes that institute the agencies are based on the seminal work of Gilardi (2002).

There are also studies that measure autonomy through proxies. In this sense, autonomy has already been measured by the percentage of high level and low level political appointees who are members of political parties. In this case, autonomy would be a measure of the overall polarization of the bureaucracy (Bersch, Praça, & Taylor, 2017). Another proxy used was the number of words in the agency statute, assuming that the agencies with longer statutes would have less discretion (Taratoot & Nixon, 2011).

In the present study, we opted to operationalize PDOs' autonomy 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 (Buta & Teixeira, 2019).

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 defenders general is a political choice, but the greater the politicization, the less 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 entities 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 these boards are captured by agents, in which case ownership and management are confused, as it allows bureaucracy to isolate itself from democratic controls (Buta, Guimaraes, & Akutsu, 2020).

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 entity 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, Van Thiel, Bouckaert, & Laegreid, 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, Maggetti, & Natalini, 2018). Administrative autonomy is fundamental for the exercising of political autonomy, since the organization depends on stability and availability of resources to program its activities and sustain its mission (Mascio, Maggetti, & Natalini, 2018).

Finally, political autonomy refers to the discretionary decision-making on policy implementation without the need for ministerial oversight (Verhoest, Van Thiel, Bouckaert, & Laegreid, 2012). It covers the daily actions of the organization and the self-determination of its preferences (Maggetti, 2007). Aspects that hurt political autonomy involve the possibility of revoking decisions, possible attitudes of politicians to resort to laws, decrees or judicial

actions aimed at subverting the autonomy of the PDOs, or even the extinction of the entities or changes in their organizational types (Mascio, Maggetti, & Natalini, 2018). In addition, aspects related to the range of competences of PDOs were considered, as well as the ability to provoke the legislative process on its own initiative.

### *Autonomy of Public Defender's Offices*

Broadening access to justice accompanies the consolidation of democracy in Latin America (Madeira, 2014). The system of providing free legal assistance through public entities with state-paid lawyers strengthened from the re-democratization of Latin American countries. In the last two decades of the last century, with the fall of authoritarian regimes, several Latin American countries underwent a process of re-democratization. In the meantime, the inquisitorial justice system, already obsolete and contrary to the most basic human rights, was replaced by an adversarial system, which adopted the PDO as a key point (King, 2017). Thus, several Latin American countries have relatively recent official PDOs composed of a state-paid staff (Esteves & Alves, 2018).

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 and state-owned PDOs. It is therefore a model in which there is a delegation of authority to a public entity for the provision of a specialized public service.

In the Brazilian case, it is observed that the Federal PDO is an entity with high autonomy, and low capacity (Bersch, Praça, & Taylor, 2017). The granting of greater autonomy to this entity would be related to the reduction in its performance levels (Buta, Gomes, & Lima, 2020). This finding provokes a reflection about the effectiveness of the autonomy delegated to the PDO. It may have happened, not a delegation, but an abdication by the legislature. In fact, the senior managers of this entity do not perceive internal or external control mechanisms (Buta, Guimaraes, & Akutsu, 2020).

Something similar was observed in the case of the Brazilian Public Prosecution Service, an organization comparable to the PDO, as they both orbit the judiciary and are essential for the functioning of justice. By observing the institutional instruments that guarantee the autonomy of the Public Prosecution Service, it was concluded that there was a quasi-abdication by legislators. That is, there was not a complete abdication, but a delegation that guaranteed a good margin of autonomy and breadth of tasks not common to autonomous entities (Kerche, 2007).

In turn, Argentina has a variety of institutional arrangements for PDOs, with varying levels of autonomy. However, in most provinces the PDO faces difficulties in formulating its own policies, and often does not even have its own institutional leadership. This case also shows an example that higher levels of autonomy do not always imply higher levels of capacity. The PDO of the Province of Salta has a greater degree of autonomy than the offices of the other provinces, with broad decision-making powers regarding their own budget and the formulation of their policies. However, this does not imply more defenders or greater affordability of that PDO to the assisted citizens (Smulovitz, 2014).

In Chile, the establishment of a PDO improved the quality of jurisdictional provision in several aspects, making it faster, more transparent and supported by the public. However, for cultural or resource reasons, public defenders cannot counterbalance the power of the

prosecution service. This imbalance of the judicial system is manifested in the increase of the incarcerated population, tending to mask and legitimate the injustice of the system (King, 2017).

The Mexican public defender system is also recent and still looking for greater institutional capacities. There is still a shortage of public defenders to deal with the growing demand for legal aid services (Fondevilla & Reyes, 2016), as well as problems related to the recruitment and selection of public defenders, as most defenders are not recruited through public tenders, but by refer friends or relatives (Ávila & Fix-Fierro, 2018).

In fact, the fragility of the PDOs is not a feature only of Latin American countries. The United States PDOs also suffer from low levels of institutional capacities and high demand for their services. Such PDOs do not have the resources to ensure that the defendants are assured of competent legal representation. Public defenders often have too many cases to handle and little support staff (Farole & Langton, 2010).

## Methods

The cases selected for this study cover the nationwide PDOs of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, and Venezuela. These are fifteen of the twenty Latin American countries. The case selection covered the possibility of obtaining data on the dependent variable, i.e. PDOs from which data could not be collect were excluded.

The researchers were unable to obtain data for the PDOs of Haiti, El Salvador and Honduras. 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 does not adopt the system of providing legal assistance through PDO, but through a social interest organization of law firms (Fleitas & Alves, 2016).

Data of the fifteen selected PODs were gathered through content analysis of their constituent documents, covering constitutional texts, laws, internal rules, and statutes found on the websites of these entities on the Internet. A list of the documents used can be found in Appendix I. In some cases, information was requested through transparency channels made available by PDOs. Data were collected between June and October 2019.

## 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. The weights of each of the autonomy aspects measured were arbitrarily defined. This should not be a problem for the operationalization, since the number of items in each dimension does not vary considerably.

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. Appendix II brings the autonomy score of each evaluated PDO. Table 1 presents the descriptive statistics of the autonomy degree and each of its dimensions.

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Table 1. Descriptive statistics of the autonomy degree.

Dimension	N	Range	Mean	Standard deviation
Hierarchy	15	0 - 1	0.35	0.32
Office Characteristics	15	0 – 0.75	0.43	0.20
Administrative Autonomy	15	0 – 0.75	0.37	0.21
Political Autonomy	15	0.25 – 1	0.58	0.24
Overall Autonomy	15	0.188 – 0.875	0.43	0.18

### Independent Variables

The independent variables refer to the reputational mechanisms, institutional and social context. Regarding the reputational mechanisms, variables related to age, credibility and political capital were observed. The publication dates of the legislation that created each PDO were considered to assess the age, and reference year for calculating was 2019. Credibility was assessed via the indicator “Trust in the Judiciary” calculated by the organization Latinobarómetro (Latinobarómetro, 2019). In turn, political capital was observed through the indicator “Government Effectiveness”, measured by the Worldwide Governance Indicators (Kaufmann, Kraay, & Mastruzzi, 2010).

With regard to institutional context, variables related to the level of democratization and veto players were observed. We used the indicator “Rule of Law” (Kaufmann, Kraay, & Mastruzzi, 2010) 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<sup>1</sup>. Data for the other countries were obtained from the portals of the respective parliaments.

Other variables related to the social context were also observed, such as extreme poverty and GDP per capita (ECLAC, 2018). Table 2 summarizes the variables. There are missing data for the variable extreme poverty in the case of Argentina, and for effective number of political parties in the case of Panama. For the analysis, the missing values were imputed by the mean.

Table 2. Independent variables

Independent Variables	N	Range	Mean	Standard Deviation
Extreme Poverty (% of population)	14	2.30 - 23.40	8.73	6.04
GDP per capita	15	1914 - 15443	7527.45	3709.17
Trust in the Judiciary	15	15.0 – 49.0	24.07	7.82
Government Effectiveness	15	-1.58 - 1.08	-0.27	0.56
Rule of Law	15	-2.33 - 1.11	-0.52	0.75
Age	15	6 - 49	20.53	9.72

Effective Number of Parties	14	1.61 - 16.46	5.35	3.67
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## 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. The analyzed legislation is listed in Appendix I, and the instrument for measuring autonomy is presented in Appendix II.

After observing the wide variation in the autonomy levels of PDOs, we sought to explore the factors capable of explaining why public entities 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, we carried out a multiple linear regression analyze through the statistical software RStudio. Before running the analysis, we use the scale function to center the variables.

### Autonomy of Latin American Public Defender's Offices

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, 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, Colombia, and the Dominican Republic. In the cases of Argentina, Brazil, 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. In Colombia, the PDO is part of the Public Prosecution Service, and it must report to the Prosecutor General.

The Argentine case deserves attention, as the PDO and the Public Prosecution Service form a two-headed entity 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 case 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 Colombia, the chief of the Executive draws up a threefold list, and the House of Representatives elects a chief for the PDO. 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 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 in which the head of PDO must necessarily be from the career of public defender, which confers greater autonomy to the entity.

The existence of a board of directors is also an indicator of autonomy, since central government control in the presence of a board of directors is farther, allowing agencies to perform tasks and make decisions autonomously (Zahra & Jadoon, 2016). In most cases this structure is absent. 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 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 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 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, Maggetti, & Natalini, 2018), because there will be less interference from external actors on the entity. The mandate may be renewed in some cases. In this regard, the cases of Argentina, Paraguay and Nicaragua deserve to be highlighted, where mandates longer than five years are established and the head of the PDO is allowed to be reappointed more than once. Interestingly, despite the long term of office of the defender general, the overall autonomy score of the Nicaraguan PDO is quite low, indicating a dissonance between formal and de facto autonomy.

With regard to the possibility of removal from office, only four countries 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 term. This does not necessarily mean that such possibility does not exist, but it certainly makes harder to break the mandate. Such countries are Brazil, Colombia, Costa Rica and Mexico.

### ***Administrative Autonomy***

Concerning administrative autonomy, aspects related to budgetary and personnel resources were observed. It was found that 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.

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.

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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, 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***

Four indicators were observed regarding political autonomy: ability to refer bills directly to the Legislature; PDO's scope of operation; possibility of revocation the PDO decisions by another entity; and recent cases of regulatory change to reduce PDO's autonomy. 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.

Recent changes have been identified in the laws governing the PDOs of Bolivia and Venezuela to reduce the autonomy of these entities. In Venezuela, there was a change to establish that the budget proposal of the PDO should be sent to the Executive Branch, rather than to the Defensoría del Pueblo, an ombudsman body linked to the Legislature, as was done before. In Bolivia, the new legislation removed autonomy from the PDO by modifying the appointment of the head of the entity. Previously, the National Director was appointed by the head of the Executive Branch from a threefold list formed by the Chamber of Deputies. After the amendments, the National Director is appointed by the Minister of Justice.

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, Dominican Republic and Colombia are constrained to the area of Criminal Law. About the possibility of revocation of PDO decisions by another authority, this was explicitly observed in Colombia, Peru and Paraguay. This represents a way of limiting the PDO's powers by controlling the decision making.

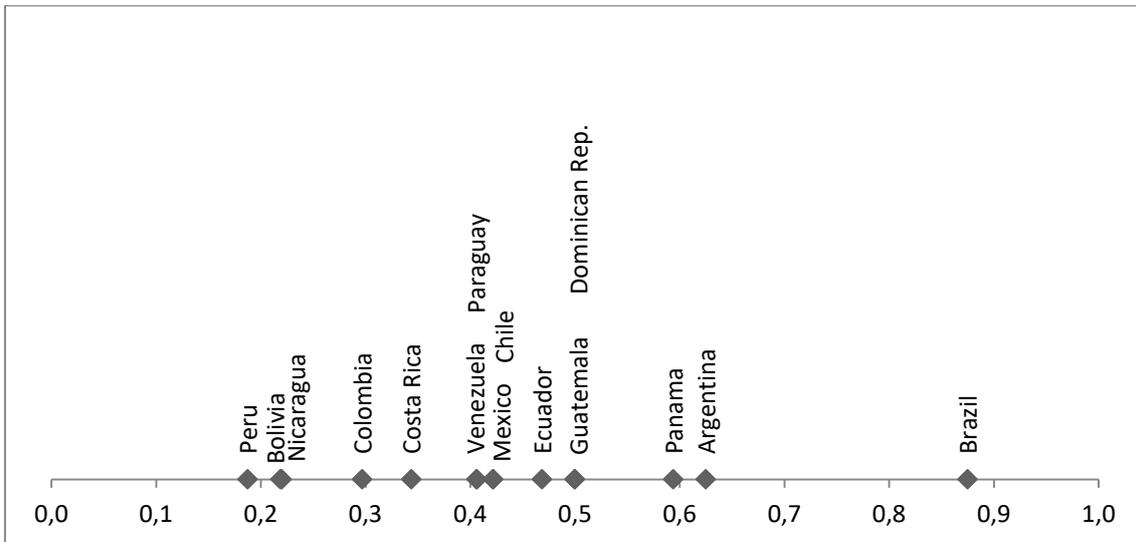
### ***Autonomy Scores***

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 Peru, Bolivia, and Nicaragua with a low degree of autonomy. In short, the autonomy of Latin American PDOs is quite varied, as can be seen in Figure 1. PDOs with lower levels of autonomy tend to be linked to the Executive branch of their countries and subordinate to the Ministry of Justice, while PDOs that are not linked to a branch of the state tend to present the higher levels of autonomy.

Figure 1. Autonomy scores of nationwide PDOs.

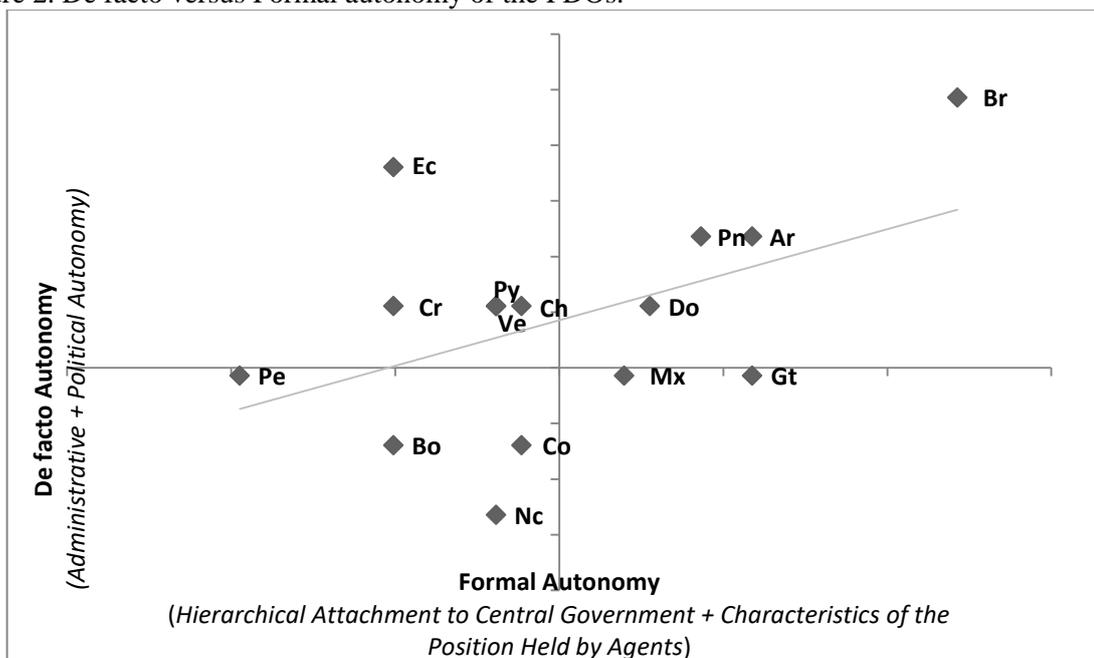
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The formal autonomy of public entities does not necessarily mean de facto autonomy. De facto autonomy is related to the self-determination of the entity's preferences and the autonomy to exercise its competences. In other words, it is the entity's discretion in carrying out its daily activities (Maggetti, 2007). Thus, it can be considered that the dimensions 'Administrative Autonomy' and 'Political Autonomy' reflect the PDOs' de facto autonomy, as they allow discretion in the exercise of the PDOs competences. The dimensions 'Hierarchical Attachment to Central Government' and 'Characteristics of the Position Held by Agents' would be related to the formal autonomy of the PDO. Considering that, Figure 2 presents the relations between formal and de facto autonomy of nationwide Latin American PDOs.

Figure 2. De facto versus Formal autonomy of the PDOs.



The results show that the PDOs' de facto autonomy is not always related to its formal autonomy. The northwest quadrant is the most populous and presents cases where there is much de facto autonomy and little formal autonomy. However, there are indications that the relationship must be positive, as suggested by the trend line in the Figure 2. Note that in most cases PDOs have a combination of high de facto and formal autonomy (northeast quadrant), or low de facto and formal autonomy levels (southwest quadrant), which supports the idea that formal autonomy is positively related to de facto autonomy, but is not a sufficient condition to explain it (Maggetti, 2007; Yesilkagit & Thiel, 2008; Eckert, 2010; Tomic, 2018).

The results related to the PDO in Brazil are noteworthy. The Brazilian PDO has much broader autonomy than any similar body in Latin America. This case innovates in a series of topics that tend to give broad power to the bureaucracy responsible for the policy of access to justice in that country, which indicates that there has been an abdication of power by the elected representatives with regard to this policy. That is, the elected representatives maintain little ability to control the bureaucracy linked to the Brazilian PDO. In fact, the senior managers of the Brazilian PDO do not even perceive the structures and mechanisms of control over them (Buta, Guimaraes, & Akutsu, 2020).

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

In order to explore the factors capable of explaining why public entities that have the same mission present different levels of autonomy, we observed variables related to the institutional context, the reputational mechanisms, and the social context in which the PDO is inserted. Variables related to the institutional context are rule of law and effective number of parties. Age, trust in the judiciary, and government effectiveness are the variables related to the reputational mechanisms. Finally, variables related to social context are extreme poverty and GDP per capita. Table 3 shows the impact of the aforementioned variables in the level of autonomy.

<i>Variables</i>	<i>Estimate</i>	<i>Standard Error</i>	<i>Stat t</i>	<i>P- value</i>
(Intercept)	0.43247	0.02838	15.240	1.26e-06 ***
Effective Number of Parties	0.01437	0.04710	0.305	0.7691
Extreme Poverty	0.10509	0.04728	2.223	0.0616*
GDP per capita	0.17303	0.05384	3.214	0.0148**
Trust in the Judiciary	0.07254	0.05635	1.287	0.2389
Government Effectiveness	-0.45975	0.16781	-2.740	0.0289**
Rule of Law	0.39249	0.18545	2.116	0.0721*
Age	-0.11458	0.06623	-1730	0.1272

Significance: \*\*\* 0.01, \*\* 0.05, \* 0.10. Residual standard error: 0.1099 on 7 degrees of freedom. Multiple R-squared: 0.8111, Adjusted R-squared: 0.6223. F-statistic: 4.295 on 7 and 7 DF, p-value: 0.03675. Shapiro-Wilk normality test indicates that the residuals are normally distributed (p-value = 0.3426). Studentized Breusch-Pagan test indicates that the variance of the residues is homogeneous (p-value = 0.9427).

The results demonstrate that the model is useful to explain the relationships between the variables, and that 62% of the variation in autonomy is explained by the model. With regard to institutional context variables, there are studies that advocate that the number of veto players could influence autonomy both positively (Maggetti, 2007; Mediano, 2018) or

negatively (Gilardi, 2002). However, the Effective Number of Parties, variable related to the number of veto players, had no significant relationship with autonomy. In turn, the level of democratization, observed through the variable Rule of Law, presented a significantly positive relationship with the level of autonomy, converging with the results of Mediano (2018), who studied regulatory agencies in Latin America. In fact, the process of expanding access to justice in Latin America accompanies the consolidation of democracy in the region (Madeira, 2014; King, 2017).

Regarding reputational mechanisms variables, Government Effectiveness was the only variable that presented significant relationship with the level of autonomy. This variable is related to political capital, necessary for effective autonomy (Meckling & Nahm, 2018). It is observed that Government Effectiveness negatively influences the level of autonomy. In other words, the greater the government effectiveness, the less the autonomy of the PDO. Political capital can be related to trust and closeness in the relationship between central government actors and arm's length state entities (van Thiel & Yesilkagit, 2011). Thus, 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 also be perceived by observing the PDO's mission. PDOs often litigate against the government to ensure the right of citizens when public policies are not working effectively. In this sense, the PDOs would have a greater need for autonomy in countries where there is less government effectiveness.

The results also demonstrate that the age of PDOs and the credibility of the system of which they are part do not significantly influence their autonomy. Thus, it is worth noting that several Latin American countries have relatively recent official PDOs (as highlighted by Esteves and Alves, 2018), with the average age measured by the present study of 20.5 years, ranging from 6 to 49 years old. Also, the Costa Rican case may have influenced the results. That country's PDO is the oldest (49 years old, when the average is 20.5), but has a level of autonomy below the average (0,344, when the average is 0,432). About credibility, citizens' trust in the Judiciary did not influence the autonomy of PDOs. In other words, the reputation of the bureaucracy would not significantly influence its autonomy, contrary to what is observed in the literature (Thatcher, 2002; Ozel, 2012; Bach, 2014; Eckert, 2017). It is also possible that the variable used does not measure trust in justice organizations in the broad sense, but only in the Judiciary, in the strict sense.

Both variables related to the social context significantly influence the level of autonomy. Extreme poverty and GDP per capita positively influence PDOs' autonomy. These results may seem contradictory at first. However, the correlation between GDP per capita and extreme poverty, besides being weak, is not statistically significant ( $cor = -0.38$ ,  $p\text{-value} = 0.15$ ). This result may denote an effort by Latin American countries to reduce inequality, through the increasing access to justice. It is worth mentioning that this is a recommendation from Organization of American States, through Resolutions issued by its General Assembly (AG/RES n° 2.656/2011, n° 2714/2012, n° 2.801/2013, and n° 2.821/2014), which indicates international influence for the adoption of a model that delegates autonomy to PDOs as a reliable mechanism to promote access to justice.

Regardless of the PDOs' level of autonomy, the literature highlights in unison the difficulty of these entities in providing legal aid services. Lacks of institutional capacity have been noted in Argentina (Smulovitz, 2014), Brazil (Bersch, Praça, & Taylor, 2017; Buta, Gomes, & Lima, 2020), Chile (King, 2017), Mexico (Fondevilla & Reyes, 2016; Ávila & Fix-Fierro, 2018), and, in addition to Latin America, in the United States (Farole & Langton,

2010). Future studies may look at whether this is indeed a pattern in the case of PDOs, or whether the level of autonomy is capable of influencing its capacities and performance.

## Conclusion

In order to characterize the autonomy of 15 nationwide Latin American PDOs, an autonomy measurement scale was built and applied to these entities. 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 both 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. In addition, there are indications of a positive relationship between de facto and formal autonomy, but the levels of formal autonomy are not sufficient to explain de facto autonomy.

The Brazilian PDO is an interesting case for closer examination, since their level of autonomy is much higher than any other PDO analyzed. Its organization model has several particular characteristics that allow the organization to be captured by the interests of its bureaucracy. Considering high level of autonomy, it can be said that this is not just a delegation of authority to an autonomous entity, but an abdication on behalf of public defenders. This can be problematic from a democratic point of view, since the PDO's leader is not an elected agent, nor controlled by elected politicians. It may also represent problems related to the effectiveness of the services provided by the PDO, since the absence of democratic control may lead to the suboptimal performance of public defenders.

After observing the variation in the levels of autonomy, it remained to explore the factors capable of explaining why public entities that have the same mission present different levels of autonomy. The results showed that factors related to institutional and social contexts, as well as reputational mechanisms are important to understand the levels of PDOs' autonomy. Income level, democratization and political capital are important drivers of the PDOs' autonomy. The social context of a given country is relevant, in view of the institutional mission of PDOs, namely, ensuring access to justice for vulnerable citizens. Factors related to the social context are not widely taken into account by the literature, which focuses on the autonomy of regulatory agencies in developed countries. The credibility of the entities, their age and the number of veto players in the political system had no significant relationship with the PDO's level of autonomy, which contradicts the findings in the mainstream literature.

This study presents relevant contributions to the literature on delegation and to the practice of the administration of PDOs. Firstly, the creation of a scale to measure the autonomy of public entities stands out as a unique 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. Second, this study has a comprehensive scope. It was able to characterize the institutional arrangements of fifteen national PDOs in Latin America, allowing broad comparison between legal aid entities 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 the PDOs level of autonomy, showing the idiosyncrasies of PDOs, whose autonomy is influenced by social context variables.

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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 the researchers. Thus, analyzes were made according to what was observed in the legislation of each country. It is also noteworthy that the research covered only nationwide PDOs, not involving subnational PDOs. In addition, the sample for regression analysis can be considered small, although the model used has shown good adjustment rates.

This article set the basis for the study of PDOs autonomy. It will be useful for future studies seeking enlightenments 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 these entities. The relationship between autonomy, capacities and performance of PDOs may be a relevant aspect to analyze. In addition, it could be interesting to take a closer look at the Brazilian PDO, as this is a very discrepant case in relation to the others.

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