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## ***Delegation Dilemmas: Coalition Size, Electoral Risk, and Regulatory Governance in New Democracies***

This article addresses the determinants of regulatory agency design in multiparty-coalition governments. Previous research has mainly focused on U.S. institutions, producing context-specific findings. We found electoral uncertainty, government turnover, and coalition size to be key factors explaining the bureaucratic autonomy of 31 state regulatory agencies recently created at the subnational level in Brazil. The legislative support that chief executives enjoy only acquires explanatory power when it is interacted with government turnover. Because Brazilian governors have great ability to build oversized majority coalitions, coalition strength influences the governor's strategy when the governor faces credible threats from rival elite groups.

This article addresses the political determinants of the varying degrees of bureaucratic autonomy that are enjoyed by regulatory institutions in the Brazilian states. We believe that the main motivation for an incumbent governor to delegate powers to an independent regulatory agency lies in the governor's need to tie the hands of the next administration. Our analysis shows that the perceived electoral risk faced by the governor and the strength of that governor's support in the state legislature are key explanatory factors in his or her strategy regarding such agencies.

Ever since McCubbins, Noll, and Weingast's (1987, 1989) and Moe's (1990) seminal works on the subject, a growing literature has explicated the broad issues of delegation and political control of the bureaucracy. More recently, scholarly attention has extended to

the politics of administrative procedure and agency design. Much theoretical progress has been made on the topic, and many studies have advanced our empirical knowledge of the ways in which legislative and executive branches seek to influence the bureaucracy across issue areas. Despite a few notable exceptions, however, most of the theoretical developments and empirical research have focused on U.S. political institutions.

At the core of the new wave of research is the concept of congressional delegation and forms of indirect control, which have been explored with principal-agency models. With the new analytical lenses provided by these models, what was previously construed as congressional abdication has been reinterpreted as a rational strategy for controlling bureaucracies and minimizing representatives' investments of time and energy.

A related but separate thread of inquiry examines the incentives that legislators have for granting autonomy to bureaucratic agencies, which, in principle, legislators would have an incentive to control directly. A body of research on agency design has found that bureaucratic insulation has political origins and is the by-product of rational politicians making choices about their political survival. The extent to which these theoretical models are context dependent or applicable to other political settings remains obscure in the current research. In fact, many questions of conceptual and empirical interest have been left unanswered. We still do not fully understand the logic of delegation in multiparty-coalition-based separation-of-power systems where executives set the agenda, hold legislative powers, and wield great power to build majority coalitions by controlling the congressional agenda and dispensing pork, patronage, and cabinet positions to coalition members. What are the incentives for executive delegation under multiparty-coalition governments? Current research regarding the United States case has emphasized the different incentives facing executives under unified and divided governments, but when one studies coalition governments, one must refer to the effects of coalition size and political uncertainty on delegation choices (Huber and Shipan 2002).

The new democracies, particularly in Latin America and Eastern Europe, provide real-world conditions for exploring these and related questions, because many new institutions and agencies have been created in the wake of the democratization process. The comparative politics literature has not investigated these themes systematically, and only a few studies have investigated the executives' incentives for delegating to the bureaucracy at the national level in presidential democracies (Baum 2007; Eaton 2003). We understand that a focus on

subnational institutions is appropriate, for reasons we will later discuss. Thus, we chose to explore this issue with data on state institutions in Brazil.

Conventional wisdom asserts that Brazilian governors are extraordinarily powerful—even more powerful than any national president. In the last few years, each of Brazil's states has created independent regulatory agencies. The degree of autonomy these agencies possess varies from state to state. This variation raises a puzzle for theories of Brazilian politics and a good test of principal-agent theories of bureaucratic delegation: if the governors' power is truly constant across Brazil's states, then we should not see variation in bureaucratic autonomy. In fact, we should have seen resistance to agency autonomy in each and every state; we would expect fairly low and constant degrees of delegation of power to regulatory agencies. What explains this variation in agency autonomy?

We studied 31 newly created independent regulatory agencies. By “independent,” we mean these agencies enjoy political and financial autonomy from politicians, as indicated by agency features such as tenured and staggered directorships and the ability to control its own budget. We focused on Brazilian state governments because, by doing so, we could control for variation in political institutions that are similar across the states and for other possible omitted variables specific to individual countries. By pursuing a research strategy focused on the state level, we followed the examples set by Huber and Shipan (2002) and Volden (2002). The agencies we studied vary significantly in their degrees of autonomy from the executive, as well as in other analytically relevant institutional features. These agencies therefore provide a valuable opportunity to discuss the effects of political variables and endogenous preferences of politicians on institutional choice and agency design in a new presidential democracy where executives enjoy great powers.

This article focuses in particular on the incentive structure that Brazilian state governors face when they must choose how to control the new regulatory organizations and what institutional structure and process to impose. The state chief executive is the key actor in this process, since Brazilian governors are the true agenda setters: they are responsible for taking the regulatory initiative, and they have several ways to compel state legislatures to cooperate with them, specifically via the distribution of pork, patronage, and cabinet positions.

When delegating regulatory tasks, politicians may wish to grant substantial discretion to an independent regulatory agency. But because of the information asymmetries and costs of monitoring inherent in these

relationships, politicians run the risk that bestowing this discretion will result in policy outcomes counter to their interests (*agency costs*). It seems somewhat counterintuitive that governors would be willing to delegate so often to independent regulatory agencies, since the same tasks could be accomplished by other nonautonomous bureaucratic organizations, which politicians could much more easily control. What can the independent regulatory agencies do for the governors that counterweigh the potential agency costs?

Delegation theory provides several possible motivations for governors to take this risk: information provision (Epstein 1997; Gilligan and Krehbiel 1987; Krehbiel 1991), blame shifting (Fiorina 1982), credible commitments (Levy and Spiller 1996; Mueller and Pereira 2002), preservation of Congress's intertemporal preferences regarding the bureaucracy (McCubbins, Noll, and Weingast 1989), political risk and uncertainty (De Figueiredo 2002; Moe 1990), power parity among political elites (Geddes 1991), and transaction-costs politics (Epstein and O'Halloran 1999; Huber and Shipan 2002).

One of the greatest contributions of the supply-side theory of regulation (particularly in McCubbins, Noll, and Weingast 1989) was to open the regulatory "black box" by rejecting the assumption that regulators faithfully respond to the legislators' commands. McCubbins, Noll, and Weingast assumed that the principal-agent problem between legislators and regulators would not be solved without monitoring and oversight costs. The analytical focus thus shifted from a conflict between regulators and regulated firms (which would try to capture the regulatory process) to a conflict between legislators (the suppliers of regulation) and independent bureaucratic regulatory bodies. In addition to legislators, Moe and Caldwell (1994) brought another player, the executive, into the discussion. Subsequently, Lewis (2003) incorporated the effects of divided government (contingent on the size of the majority and presidential popularity) on agency design. Unlike these previous studies, our study focuses on delegation in coalition-based presidential regimes where the executive, in addition to playing the role of agenda setter, also enjoys several governing tools to keep a majority coalition stable over time.

We drew from the basic insights of earlier contributions—in particular the attention to the intertemporal dimension of delegation and the role of uncertainty—but departed from previous work in a fundamental way. We incorporated the executive branch as a fundamental player in the delegation game (see Lewis 2003), thereby changing the focus of the discussion from the legislative branch, which is at the center of discussions in U.S. scholarship. We chose to build on

Lewis's basic insight, but we expanded the theoretical and empirical analyses beyond his contribution.<sup>1</sup> Specifically, we hypothesized that there is a distinct logic of delegation in contexts where the executive is dominant and there are multiparty-coalition governments. Our hypothesis contributes to the comparative scholarship on delegation by suggesting that the U.S. case is an example of a broader class of phenomena. Two points deserve highlighting. First, where the executive is dominant, there are hardly any cases of divided government, which is a key element of Lewis's analysis. Second, we expected coalition size to matter in multiparty-coalition governments but for its importance to be contingent on the executive's powers. Therefore, we expected the primary factor underlying delegation to be political uncertainty.

In this article, we devote special attention to the hypothesis that political uncertainty plays a fundamental role in the governor's decision to delegate discretionary powers. In our view, the main motivation for an incumbent governor to delegate powers to an independent regulatory agency is that governor's need to tie the hands of the next state administration. The greater the autonomy delegated to board members of new agencies—who arguably share policy preferences with the incumbent governor, since these agency members were appointed by the governor—the weaker the political influence wielded by the new governor over the agency. Specifically, we hypothesized that electoral uncertainty and the size of the government majority within the legislature are important factors explaining basic features of the bureaucratic structure, such as autonomy and functional scope.

We tested this hypothesis using data from two different sources and various measures of political risk. The article makes four distinct contributions to the field. First, it investigates current hypotheses about the determinants of bureaucratic autonomy beyond the U.S. institutional context; in our sphere of study, the executive, at the federal and subnational levels, must build multiparty coalitions in order to govern. Second, this article demonstrates that existing theories of presidential (or gubernatorial) incentives must be reframed to account for delegation choices under separation-of-powers democracies where executives are powerful. Third, our article shows how the adoption of independent regulatory institutions is important in its own right, informing the literature on the institutions of regulation in postprivatization contexts. Last but not least, the article offers an empirical innovation by posing an interaction between government turnover and the size of the governing coalition. The results of this interaction reveal that, in an institutional environment where the executive is the agenda setter, especially on regulatory matters, the main component driving a governor's decision

regarding how much power to delegate to independent regulators is the governor's risk of losing the upcoming election.

The article is organized as follows. In Section 1, we review the literature on the politics of agency design and bureaucratic delegation, and we show how these themes can be fruitfully explored in other institutional contexts. In Section 2, we provide some background information on the Brazilian institutional context and on the newly created regulatory agencies. Section 3 presents the econometric tests and results. Section 4 summarizes our results and suggests avenues for future research.

### 1. Explaining Bureaucratic Insulation

Although recent literature focuses on different aspects of the politicians-bureaucracy nexus, the cornerstone of the literature is the notion that politicians may deliberately insulate administrative agencies from political control—including their own control—in order to maximize their policy interests. Delegation of autonomy, the literature reminds us, does not imply abdication but constitutes a rational strategy for many political actors to ensure that they exert influence over public policy.<sup>2</sup> This simple intuition forms the basis of the congressional dominance literature that asserts that Congress wields procedural control over the bureaucracy (McCubbins, Noll, and Weingast 1989). Other researchers have explored the determinants of delegation in separation-of-powers systems and found, among other things, that delegation is greater under unified governments (Epstein and O'Halloran 1999).

Moe (1990) and Moe and Caldwell (1994) called attention to the fact that political actors make intertemporal choices when attempting to ensure political control of the bureaucracy. An enacting coalition in Congress tries to guarantee not only its own current political control over the bureaucracy but also the inability of tomorrow's Congress to control the bureaucracy. Political uncertainty may motivate the enacting coalition to reject most opportunities for external control. Electorally weak groups will most likely heavily insulate policies in those periods that they momentarily hold power (De Figueiredo 2002, 2003).

Lewis (2003) and Howell and Lewis (2002) built on these insights but criticized the literature for looking at agency design only indirectly, through a focus on *congressional* delegation. When previous studies took presidents into account, they characterized presidents as part of an enacting coalition with preferences similar to those of legislators. By introducing presidents as key actors, Lewis and Howell's studies have opened up interesting avenues for comparative empirical research

regarding other separation-of-powers democracies, where chief executives have substantial powers. More important for our purposes, Lewis has shown that intertemporal choice is key to understanding intrabranched delegation and the delegation game more broadly.

Specifically, Lewis (2003) claimed that separation of powers directly affects the design of bureaucratic agencies, because the president and members of Congress view the administrative state from different vantage points, given their institutional positions and their policy preferences. Presidents are held accountable by a national constituency for the functioning of the entire government. Legislators represent individual districts, and their perspectives derive from constitutionally parochial concerns. Lewis tested a set of hypotheses and propositions to predict the level and probability of public bureaucracy insulation as a function of two variables: presidential durability (turnover) and size of the majority (divided government).

According to Lewis's hypotheses, in a divided government, agencies are more likely to be insulated if the president appears electorally safe. If the president is electorally vulnerable, however, then members of the majority will delay insulation until they can work with a president who shares their preferences. In a unified government, the majority prefers greater presidential control, so long as the president or someone of similar preferences will be in office for awhile. If the president is electorally weak, then the majority will be more likely to insulate in anticipation of a new opposition president.

Lewis (2003) also predicted that a divided government would exhibit a higher probability of insulating a new agency, provided that the opposition majority was large enough. The opposition majority would have incentives to keep the new agency free from the influence of the minority president. A small opposition majority would not be able to overcome presidential opposition to insulation. In a unified government, the probability of insulation would be low, provided that the majority was large enough. A small majority, however, would be forced to compromise with a minority wanting insulation in order to protect the agency from presidential control.

Structural features of presidential systems alter the roles of policy proposition and disposition and, consequently, the whole political game of delegation. Epstein and O'Halloran (1999, 241) have argued that these differences in the powers of the president can sometimes reverse the roles of the proposer and the administrator: "where presidents can propose legislation, they may choose to push unilaterally politically difficult problems onto the legislature to maximize their own political advantage." As Huber and Shipan (2002) demonstrated

in a comparative study of delegation in the U.S. states and in European countries, delegation incentives differ across separation-of-powers and parliamentary regimes.

These contributions mostly focus on the U.S. case and so suffer from important biases (Huber and Shipan 2002, 39–41). In addition, except for Lewis's (2003) work, most analyses have attempted to model the delegation of powers from the legislature to the executive. In presidential systems such as Brazil's, however, in which executives enjoy legislative as well as agenda powers, the basic parameters underlying the delegation game must be reframed. In these settings, delegation is primarily a decision by the executive branch (Baum 2007; Eaton 2003).<sup>3</sup> In this article, we explain the empirical and conceptual implications of the fact that the chief executive (in our particular case, each state governor) is the primary regulatory agenda setter, and we demonstrate the benefits of studying delegation from a comparative perspective.

In Brazil, presidents and governors have the exclusive prerogative to initiate bills that propose the creation or dissolution of administrative agencies. In addition, executives have a line-item veto, constitutionally reserved decree powers (limited at the subnational level), budgetary powers that include the exclusive preparation of a budget or a proviso that the legislature may reduce but not increase spending on any one item, and the exclusive power to introduce legislation in certain policy areas, sometimes coupled with privileged parliamentary procedures for considering this legislation. In addition to these legislative powers, governors can unilaterally appoint and dismiss their cabinets (Shugart and Carey 1998). Readers should note that state constitutions mirror the federal constitution, with very little variation across them. Moreover, executives at the national and subnational level in Brazil can dispense patronage in the form of public-sector jobs or the discretionary execution of budgetary amendments, as well as allocate cabinet positions to coalition partners (Alston et al. 2008; Ames 2001; Pereira and Mueller 2004; Samuels 2003).

In the Brazilian states, the chief executives can exert great informal influence on the other branches of state government (Santos 2001). Indeed, in the smallest states, some governors enjoy a dominant position in policymaking.<sup>4</sup> Yet in contexts of high electoral uncertainty, executives appear to relinquish power by delegating discretion to agencies. This puzzle begs for an explanation. Because the state political game is essentially based on the exchange of pork, patronage, and cabinet positions for legislative support, Brazilian governors are not as dependent on partisan support as are their U.S. counterparts. When facing the delegation dilemma, the governors' incentive structure

contrasts markedly with that of U.S. governors (Volden 2002). We hypothesized that in this scenario—namely, when the chief executive enjoys great legislative powers and controls pork and patronage on a large scale—the governor’s decision is driven by interelite competition for the gubernatorial position. The governor’s calculus hinges upon any competitor’s strengths and weaknesses in the gubernatorial race.

We investigated the process of institutional choice for the new independent regulatory agencies by focusing on the roles played by electoral risk, governor durability (electoral turnover), and the size of the government’s coalition. We expected that the greater the executive’s possibility of turnover and the larger the electoral risk, the more insulated agencies would be. On the other hand, we expected a governor with the support of a large majority coalition in the state assembly to be discouraged from delegating autonomy to independent regulators. When the governor enjoys a large majority coalition but faces great electoral risk, increasing the chances of power alternation, we expected the governor to have incentives to propose legislation that would tie the hands of future, rival administrations.<sup>5</sup>

## **2. Governors and Regulatory Agencies**

Brazil was a reform laggard with respect to privatization. The country started privatizing its utilities in the late 1990s, unlike neighboring countries, whose authoritarian rulers jumped on the privatization bandwagon in the early 1980s. Brazil’s state governments created independent regulatory institutions at approximately the same time that the federal government established these institutions’ federal counterparts.<sup>6</sup> Between 1997 and 2006, 31 agencies were created in 23 of Brazil’s 27 states. Thus, there occurred massive institutional change in a short span of time.

Most states established multisector agencies, responsible for overseeing more than one industry. Three states (São Paulo, Rio de Janeiro, and Paraíba) created more than one sectoral agency. The government of São Paulo created two agencies: one for energy (CSPE) and another one for intermunicipal transport (ARTESP). The government of Paraíba set up two different agencies: one for energy, and another for water and sanitation (AAGISA). Rio de Janeiro created a multisector agency in 1996 (ASEP). In 2005, that agency was extinguished and two other agencies were created: AGETRANSP, responsible for regulating transport, and AGENERSA, which regulates energy, and water and sanitation.

All of the federal agencies are single-industry regulators, whereas most of the state agencies are multisector. The sectors covered by

these state-level regulators include public transportation (all types in the states; that is, intermunicipal transportation and waterways transportation), water and sanitation, natural gas, telecommunications, and electricity. Except for transportation, none of these sectors are under the exclusive jurisdiction of the states. The state agencies regulate these sectors only by virtue of agreements with the federal government (for energy, telecommunication, and food and pharmaceuticals) or the municipal government (in the case of water and sanitation).

Because of energy's importance, the power companies (electricity distributors) were the driving force behind the privatization process. These companies were the largest state-owned enterprises in the states, and their privatization followed a stick-and-carrot strategy on the part of the federal government. The companies were offered strong incentives for privatization. Indeed, in most cases, the states would qualify for up-front disbursements of future auction revenue. Only the states that did not privatize their power companies did not create regulatory agencies for energy (Table 1).

The state regulatory agencies vary significantly in their institutional designs. They were essentially established via executive bills proposed to the state legislature by the governors. The assembly has the power to amend such bills, and those amendments would be subject to the governor's veto, but the assembly does not have the power to propose the legislation in a particular policy area. In some states, the autonomy of the agency's board members is very high. Directors have tenure, legislative authorization is required for appointment and removal of directors, and strict eligibility requirements for directors must be met. In other states, governors can dismiss board members *ad nutum*. Moreover, there are soft constraints on eligibility, and the state assemblies play no role in nomination or dismissal of directors. The courts have upheld these rules, giving political actors incentives to attempt to shape bureau structure.

One of the agencies with the highest score in the autonomy index is AGERGS in the state of Rio Grande do Sul. The case of AGERGS illustrates an unsuccessful attempt by a newly elected governor to interfere in an agency's autonomy and shows how the courts play a role in safeguarding this autonomy. The conflict began when the new state administration of Governor Olívio Dutra dismissed the directors of AGERGS without the vote for approval of a qualified majority of the state assembly. (Note that the previous governor introduced this provision in the bill that created the agency.) The agency board appealed to the higher courts. Not counting on a majority in the state assembly, the governor filed an Action for the Declaration of Unconstitutionality (ADIN) in the Supreme Court, alleging that Articles 7 and 8 of laws

TABLE 1  
Selected Data on State Regulatory Institutions

State	Regulatory Institution	Sector	Date of Creation	Date of Privatization
AC	AGEAC	E, G, Tel, S	January/03	not privatized
AL	ARSAL	E, G, S, Tr	September/01	not privatized
AM	ARSAM	E, G, Tel, S	November/99	June/00
AP	None			not privatized
BA	AGERBA	E, G, R, Tr	May/98	July/97
CE	ARCE	E, G, S, Tr	December/97	April/98
DF1	AGDF	Generic	June/01	not privatized
DF2	ADASA	S	June/04	not privatized
ES1	AGESP	Generic	August/98	July/95
ES2	ASPE	E, G	September/04	July/95
GO	AGR	E, S, Tr, W	December/99	September/97
MA	ARSEP-MA	E, S, Tr	April/02	June/00
MG	ARSEMG	G, GTr	July/98	not privatized
MS	AGEPAN	E, G, Tr	December/01	November/97
MT	AGER	E, G, S, Tr	January/99	November/97
PA	ARCON	E, GTr	December/97	July/98
PB1	AGEEL	E, G	November/01	November/00
PB2	AAGISA	I, S, W	November/01	not privatized
PB3	ARPB	Generic	July/05	November/00
PE	ARPE	E, G, Tr, W	January/00	February/00
PI	None			not privatized
PR	Infrastructure Agency	GTr	July/02	December/96
RJ1	ASEP	G, R, S, Tr	February/97	November/96
RJ2	AGETRANSP	GTr	June/05	November/96
RJ3	AGENERSA	G, W	June/05	November/96
RN	ARSEP	E, G	December/99	December/97
RO	None			not privatized
RR	None			not privatized
RS	AGERGRS	E, R, Tr	January/97	October/97
SC	ARCO	Generic	January/00	not privatized
SE1	ASES	E, G, GTr, W	June/98	December/97
SE2	AGERSE	?	June/02	December/97
SP1	CSPE	E, G	October/97	November/97
SP2	ARTESP	Tr	January/02	March/98
TO	ATR	E, G, GTr	December/00	September/89

*Note:* E = electricity, G = natural gas, GTr = ground transportation, I = irrigation, P = petroleum, R = railroads, S = sewerage, Tel = telecommunications, Tr = general transportation, W = water, and WTr = water transportation.

*Source:* Brazilian Association of Regulatory Agencies. Privatization refers to the electricity distributor.

0931 and 11292, which stipulated tenure and staggered terms of office, were unconstitutional.<sup>7</sup> The government argued that the permanence of directors who could act against the state government's policies jeopardized the governability of the state (*Petição Inicial da ADIN 1449*, 8). The government also argued that AGERGS was an arm for the materialization of the state government's economic policies. The

lower court sustained the appeal and sent it to the Supreme Court. The governor then backtracked, and the directors remained in their posts.

Another example of interference by a state governor in agency autonomy occurred in the state of Rio Grande do Norte, with very different results. The newly elected governor, Wilma Maia, sacked two directors of ARSEP (the Rio Grande do Norte regulatory agency), one of the agencies with the lowest score in the autonomy index. The state assembly agreed to the changes and no contest ensued. The AGERGS episode clearly illustrates the role of the courts in safeguarding regulatory institutions; the ARSEP case shows the ability of state executives to interfere in the agency's autonomy when no safeguard exists in the legislation.

The varying institutional landscape of the regulatory agencies prompts the question, Why do states differ in terms of the degree of autonomy enjoyed by these new regulatory institutions?

Despite the decline of their importance in national politics, the key actors in the Brazilian state political system remain the governors (Samuels 2003). The states vary substantially with respect to a number of analytically relevant political dimensions, including the size and nature of state coalitions and the level of electoral uncertainty faced by governing elites. Typically a governor relies on coalitions of parties that gravitate around the governor's party. The large number of political parties in the coalitions stems from the country's electoral institutions. Brazil uses open-list proportional representation, which creates a large number of effective political parties. The basic institutional rules are uniformly adopted by all states. For instance, all of the states share the same electoral institutions, including the electoral timetable—that is, elections take place simultaneously all over the country. This uniformity allows for great comparability across states. State coalitions are usually oversized (Table 3) and consist of ideologically distinct parties, which trade pork, patronage, policies, and other benefits for political support. Coalitions are driven by interelite rivalries.

### **3. Econometric Tests and Results**

To estimate the determinants of agency autonomy, we used an index of autonomy of the new regulatory agencies as our dependent variable. This index is based on answers to a survey of top-ranked officials—usually the president of the agency or one of its directors. The questionnaire consisted of three sections, each of which focused on a specific dimension of autonomy. The political autonomy section asked questions regarding tenure of the directors, appointments, and

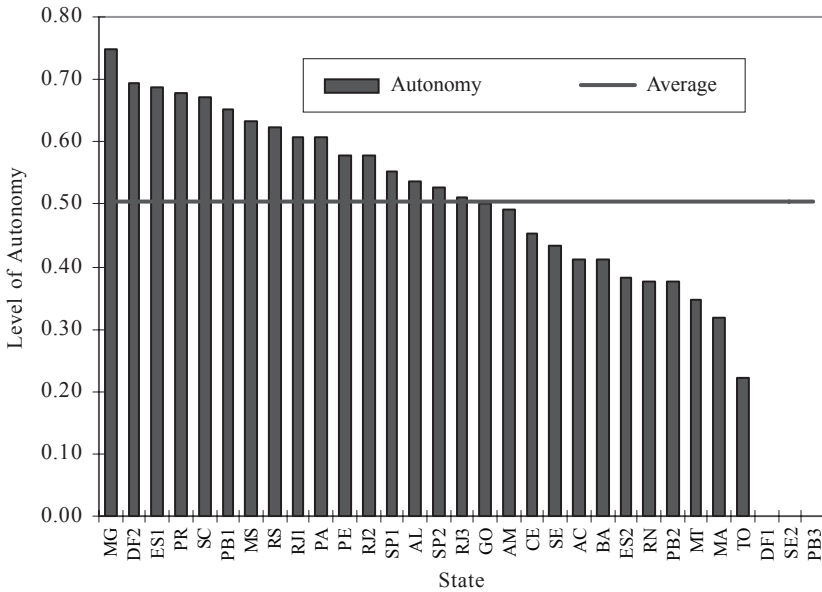
TABLE 2  
Indexes of Autonomy of Regulatory Agencies

State	Agency	Index of Autonomy
MG	ARSE-NI	0.7500
DF2	ADASA	0.6944
ES1	AGESP	0.6889
PR	Infrastructure Agency	0.6778
SC	ARCO-NI	0.6722
PB1	AGEEL	0.6507
MS	AGEPAN	0.6326
RS	AGERGRS	0.6217
RJ1	ASEP	0.6078
PA	ARCON	0.6074
PE	ARPE	0.5787
RJ2	AGETRANSP	0.5778
SP1	CSPE	0.5519
AL	ARSAL	0.5374
SP2	ARTESP	0.5275
RJ3	AGENERSA	0.5111
GO	AGR	0.5022
AM	ARSAM	0.4907
CE	ARCE	0.4543
SE1	ASES	0.4333
AC	AGEAC	0.4111
BA	AGERBA	0.4109
ES2	ASPE	0.3833
RN	ARSEP	0.3768
PB2	AAGISA	0.3754
MT	AGERMT	0.3478
MA	ARSEP	0.3196
TO	ARESTO	0.2222
DF1	AGDF	
SE2	AGERSE	
PB3	ARPB	
Average		0.5040
Standard Deviation		0.1628
Max		0.7500
Min		0.0000

*Note:* The table was sorted from the largest to the smallest value. The agencies without an index did not respond to the survey.

circumstances under which a director can be fired. The second section concerned clarity of rules, with questions regarding the instruments available for state governments to exert control over the agency, the degree of delegation, and the duties and responsibilities of the regulator. The financial autonomy section dealt with budgets, and asked questions regarding budget sources, the agency's financial autonomy to execute

FIGURE 1  
Index of Autonomy of Regulatory Agencies



expenditure decisions, and whether or not the agency's resources had been impounded—*contingenciados*—by the chief executive.<sup>8</sup>

Table 2 and Figure 1 show the distribution and descriptive statistics of the index of autonomy, providing a ranking of the agencies according to each agency's overall level of autonomy. One can see that state regulatory agencies exhibit a great deal of variation in their levels of autonomy, and that autonomy is ultimately determined by the governor (it is defined in the original bill the governor sends to the legislature).

Concerning political autonomy, the survey indicates that one-third of the agencies' directors can be dismissed for a vague reason, such as "threatening the agency's integrity." (Five agencies had directors who did not complete their terms.) For one-fourth of the agencies, a director with no previous experience in the sector may be appointed. With the exception of three state agencies (AGERBA, ARCE, and ARPE), directors' terms do not coincide with that of the executive. To mitigate political risk, legislatures require that 47% of the state agencies attain legislative approval for their appointed executives. For almost half of the agencies, no legal restriction prevents politicians from being appointed for agency positions during their terms of office.

With regard to financial autonomy, the survey demonstrates that the great majority of state agencies control their expenses throughout the year. The main sources of budget revenue are fees and fines. Only two agencies rely on the state government for their single source of revenue. But 61% of the agencies reported having their revenues impounded (*contingenciados*) by the executive, and these impoundments undermine the agencies' ability to operate and function well. Only three agencies claimed that the impact of those impoundments was not significant (medium to very low). When asked if the governor had actually directly intervened in the agency, six agencies replied positively.

Our model contains three key explanatory variables:

(1) *Turnover* reflects the uncertainty generated by elections. This variable takes into account the stability of the governor's faction (or lack thereof) and its likelihood of maintaining power in that state. We referred to the last three consecutive elections of state governors in Brazil: 1994, 1998, and 2002. This index varies from 0 (the same political group was the winner in all three consecutive electoral episodes) to 4 (no single political elite was able to win two elections). A score of 0 implies that the electoral uncertainty is null; a score of 4 implies that electoral vulnerability, or turnover, is at its maximum. The intermediate values correspond to the following situations: an electoral coalition won two consecutive elections but lost the third (1); the first elite group in power was defeated and a new elite won the following election (2); or an elite group's electoral dominance was interrupted by a rival elite group that won office for a single electoral period, after which the original elite returned to power (3). The turnover variable captures what we call electoral uncertainty. Our hypothesis predicted a positive coefficient for turnover: the larger the electoral uncertainty, the greater the probability of a state governor delegating regulatory power by creating an independent regulatory agency.

(2) *Risk* is an indicator for electoral risk for the incumbent governor. We used data from 1998 and 2002 election polls regarding a candidate's chances in the gubernatorial race in the relevant elections. For agencies created in 1997, 1998, and 1999,<sup>9</sup> we used the poll results for the week of September 12–20, 1998 (Brazilian Institute of Public Opinion and Statistics (IBOPE)). For agencies created between 2000 and 2003, we used IBOPE's results for the same week in 2002. If the opposition candidate was more than 20 percentage points ahead of the incumbent (or the incumbent's preferred candidate),<sup>10</sup> then Risk = 5. If the opposition candidate had more than 10% but less than 20% of the vote, then Risk = 4. If the incumbent was ahead or behind the opposition by less than 10%, Risk = 3. If the incumbent was ahead

of the opposition candidate by more than 10% but less than 20%, Risk = 2. Finally, if the incumbent was ahead by more than 20%, Risk = 1.<sup>11</sup>

(3) *Coalition Size* is the percentage of seats held by parties that provide political support to the governor's administration within the state assembly in the particular year that the regulatory agency was created. In other words, Coalition Size measures the majority strength of the governor's coalition in the state assembly. As we can see from Table 3 and Figure 2, although the size of the governor's coalition varies from one state to the next, only two governors—in the states of Minas Gerais (MG) and Mato Grosso (MT)—were not backed by a majority in the state assembly. Most governors (13 states) enjoyed an oversized coalition (holding more than 70% of the seats), and in 11 states, governors held workable majorities (holding between 50% and 70% of seats) when the agency in question was created. Table 3 also shows that, regardless of the size of the governor's party, governors do not face much trouble building a majority-governing coalition in the state assemblies. The striking example is the governor of Espírito Santo, whose party had no seats in the state assembly but whose coalition held 73.3% of the seats in August 1998. As we mentioned before, governors are very powerful at the state level and have several governing tools at their discretion that encourage political parties to gravitate under their political umbrella in exchange for political and financial benefits.

We predicted a positive relationship between electoral vulnerability (Turnover and Risk) and the delegation of autonomy powers to regulatory agencies. The greater the uncertainty faced by the political elite in power, we postulated, the greater the incentives would be for the elite to delegate powers to an agency in order to perpetuate the elite's preferences in the upcoming administration. On the other hand, we predicted a negative correlation between a governor's coalition size and the degree of autonomy delegated to regulatory agencies, because the greater the control that governors wield over state legislatures, the weaker their incentives for transferring power to a new regulatory institution.

In addition, to estimate the effect of those variables on the governor's decision regarding how much power to delegate to regulatory agencies, we included in the model the state per capita gross domestic product (GDP) as a controlling variable. We thought this variable might be a good way to measure the level of autonomy of the states vis-à-vis the national government. We expected that the greater the GDP per capita, the less inclined and constrained the governor would be to follow the national executive's preferences.<sup>12</sup>

TABLE 3  
Governor's Party Composition, Party Size, and Coalition Size  
(in percentages)

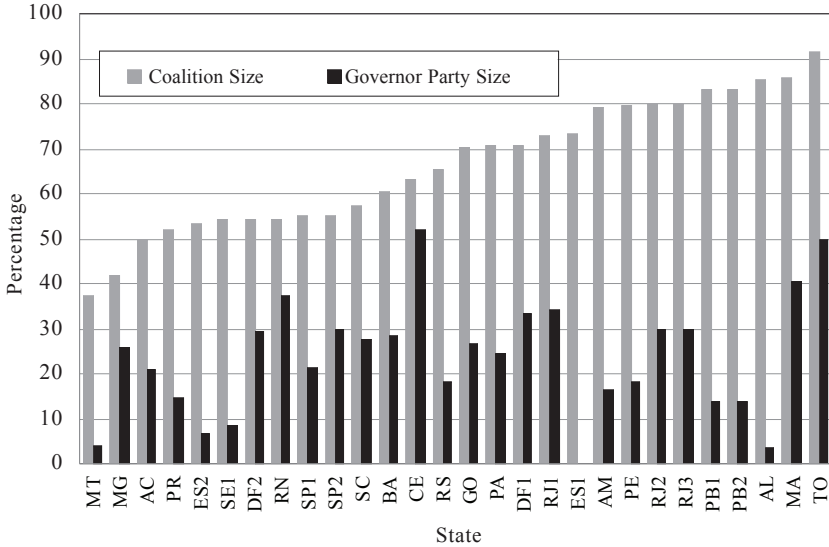
State	Governor's Party	Coalition's Parties	Governor's Party Size (%)	Governor's Coalition Size (%)
TO	PFL	PFL/PL/PPB/PSB/PSDB/PTB	50.0	91.7
MA	PFL	PFL/PMDB/PTB/PL/PSD/PSC/PT do B/PSDC	40.5	85.7
AL	PSB	PDT/PL/PMDB/PRTB/PSB/PSDB/PSL/PST	3.7	85.2
PB1-2	PMDB	PDT/PMDB/PSDB/PP/PFL/PPS/PTB/PV	13.9	83.3
RJ2-3	PMDB	PMDB/PSC/PP/PDT/PPS/PC do B/PRONA/PRTB/ PSB/PSL/PT do B/PTB/PTN/PV	30.0	80.0
PE	PMDB	PMDB/PFL/PP/PL/PSDC/PSDB/PSL/PPS/PSC	18.4	79.6
AM	PFL	PFL/PTB/PMDB/PST/PSC/PL/PSDC/PMN/PRN	16.6	79.2
ES1	PV	PFL/PPB/PSDB/PTB/PMDB/PDT	0	73.3
RJ1	PSDB	PSDB/PFL/PMDB/PPB	34.3	72.9
DF1	PMDB	PMDB/PPB/PFL/PTB/PSDB/PSC/PSD	33.3	70.8
PA	PSDB	PSDB/PFL/PTB/PSD/PDT/PL/PPB	24.4	70.7
GO	PSDB	PSDB/PFL/PPB/PL/PST/PSD/PPS/PC do B/PDT/ PSC/PSL/PST	26.8	70.3
SP2	PSDB	PSDB/PFL/PSD/PTB/PL/PRP	29.8	70.2
RS	PMDB	PMDB/PSDB/PPB/PTB/PFL	18.2	65.4
CE	PSDB	PSDB/PDT/PL/PSC/PTB	52.2	63.0
BA	PFL	PFL/PL/PTB/PPB	28.6	60.3
SC	PPB	PPB/PFL/PSDB/PL/PTB	27.5	57.5
SP1	PSDB	PSDB/PFL/PSD/PTB/PL/PRP	21.3	55.3
AC	PT	PT/PMN/PC do B/PSDC/PSB	20.8	54.2
DF2	PMDB	PFL/PRONA/PL/PMDB/PSDB/PRP	29.2	54.2
RN	PMDB	PMDB/PP/PSDB	37.5	54.2
SE	PSDB	PMN/PPB/PMDB/PSDB	8.3	54.2
ES2	PSB	PFL/PTB/PSB/PL/PSDB/PMDB/PMN/PSC	6.7	53.3
PR	PFL	PFL/PL/PPB/PPS/PSC/PSL/PTB	14.8	51.8
MG	PSDB	PSDB/PTB/PDT	26.0	41.6
MT	PDT	PSDB/PSB/PDT	4.2	37.5
MS	PT <sup>a</sup>			

Source: Superior Electoral Tribunal (TSE) website and state assemblies.

<sup>a</sup>No data available.

Our principal theoretical expectation was confirmed in all model specifications, as reported in Table 4.<sup>13</sup> We found that the more electoral uncertainty the political elite faced (measured both in terms of electoral risk and elite turnover), the more incentives they had to delegate powers to an autonomous agency in order to perpetuate their policy preferences in the upcoming administration. Even when they run the risk of later facing agency costs, electorally vulnerable governors prefer to delegate authority to independent bodies in order to tie the hands of their possible successors.

FIGURE 2  
Governor's Party and Coalition Size



Each of the two variables that estimate electoral uncertainty (Risk and Turnover) are statistically significant and positive, as we predicted, even when we control for state GDP per capita. In other words, under higher risks of losing office, governors have greater incentives to delegate powers to independent regulatory institutions in anticipation of a new opposition governor. In substantive terms, an increase of one standard deviation in Risk (which extends from 0 to 1) entails a rise in the autonomy score of 0.085. Should the electoral risk faced by an incumbent governor rise from very low to very high, an agency would see its autonomy score increase from 0.45 to 0.70—a very substantial increase. These are the expected values of the dependent variable when Risk changes but all other values remain at their means. Similarly, a change in one standard deviation in Turnover implies an increase or decrease of 0.49 to 0.72 in the autonomy score (taking into account Turnover's effect via the interactive term).

Although Coalition Size is not statistically significant, its coefficient is always negative, a result that endorses our theoretical prediction. Governors backed by majorities in their state assemblies face fewer incentives to delegate powers to independent regulatory bodies. A possible explanation for why the size of the governor's coalition is not a significant predictor of the degree of agency autonomy involves

TABLE 4  
 Ordinary Least Squares Estimation  
 of the Level of Regulatory Autonomy  
 (robust standard errors in parentheses)

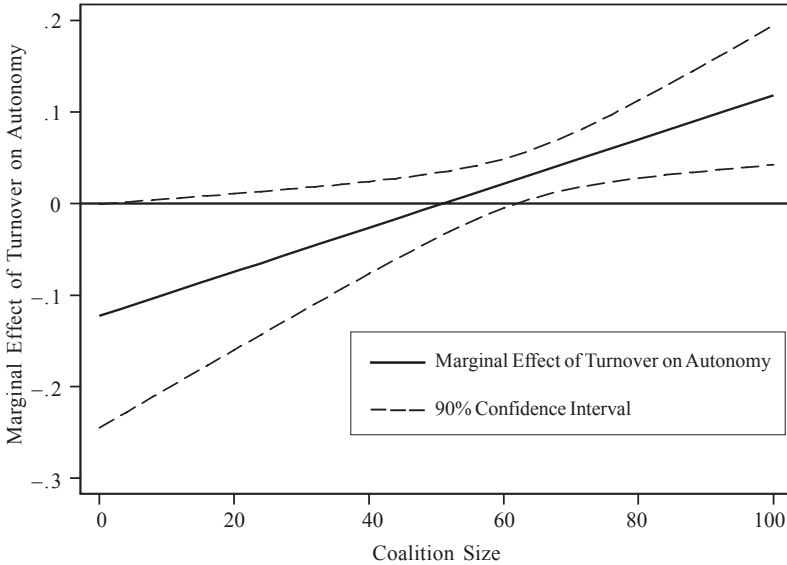
	Models					
	1	2	3	4	5	6
Constant	.4037*** (.0526)	.3135*** (.0713)	.4465*** (.1332)	.4828*** (.1428)	.8092*** (.1604)	.8090*** (.1611)
Risk	.0411** (.0185)	.0487*** (.0181)	.0506*** (.0172)	.0472** (.0190)	.0594*** (.0176)	.0593*** (.0206)
Turnover		.0355** (.0169)	.0336** (.0163)	.0329* (.0170)	-.1230* (.0700)	-.1227 (.0740)
Coalition Size			-.0020 (.0020)	-.0021 (.0019)	-.0078*** (.0027)	-.0078** (.0029)
GDP per capita				-4.0000 (7.0008)		7.000 (8.000)
Turnover × Coalition Size					.0024** (.0010)	.0024** (.0011)
N	27	27	26	26	26	26
R <sup>2</sup>	0.1157	0.2176	0.2659	0.2761	0.3486	0.3486

\*\*\* $p < .01$ ; \*\* $p < .05$ ; \* $p < .10$ .

the tools that the governor has when seeking to build and sustain a majority coalition. Recall that only two governors (in the states of MG and MT) were not backed by a majority. In most states, the governor can command the support of an oversized coalition even when the governor's political party is extremely small.

To capture the influence of power alternation and coalition size, we estimated the effect of the interaction between Coalition Size and Turnover on governors' decisions to delegate power to independent regulatory agencies. The multiplicative interaction term (*Turnover* × *Coalition Size*) allowed us to quantify and draw inferences from the varying marginal effect of Turnover on the amount of autonomy delegated to regulatory institutions as Coalition Size changes. We could then determine whether the effect of Turnover on autonomy becomes more or less restrictive as states exhibit increasing levels of legislative support for the governor. If the marginal effect of Turnover grew stronger (that is, larger in

FIGURE 3  
Marginal Effect of Elite Turnover on Regulatory Autonomy



absolute terms) in more-unified state legislatures with bigger coalition sizes, then we would conclude that Turnover in power and Coalition Size are complements. If the marginal effect of Turnover grew smaller or became statistically equal to 0, then we would conclude that both of these dimensions are substitutes.

We predicted that the greater the executive's turnover and the larger the size of the majority under unified government, the greater the insulation of agencies would be. The results of Models 5 and 6, shown in Table 4, confirm our expectation. The coefficient of the interaction term Turnover  $\times$  Coalition Size is positive and statistically significant, suggesting that these variables are complementary. Figure 3 also helps to demonstrate this complementary effect.<sup>14</sup> Turnover has a positive marginal effect on political autonomy when Coalition Size exceeds 60% of the seats in the state legislature. When Coalition Size is smaller, Turnover has a negative marginal effect on autonomy. But because the 90% confidence interval crosses the zero line from about 2 to 60, the effect of Turnover on autonomy in this range of coalition is insignificant (at the .10 level).

In other words, in a unified government with large support in the legislative branch (a characterizations that seems to fit the majority

of Brazilian states), the governor prefers more executive control over agency design so long as the governor or someone from the governor's elite group is likely to be in office in the near future. On the other hand, if an incumbent governor is backed by a majority in the state assembly but, at the same time, is electorally weak and not expected to win the upcoming election, then the governor and supporting majority are more likely to insulate the regulatory agency to anticipate the policy preferences of a new opposition governor.

#### 4. Conclusions

What factors explain the different degrees of autonomy of the independent institutions found in multiparty-coalition presidential systems? We investigated this question by examining Brazilian state regulatory agencies. We proposed that the institutional design of new regulatory agencies is an endogenous choice of governors that is driven by electoral risk, potential for governor turnover, and the size of the coalition supporting the governor within the state assembly. We found support for current theories of delegation that have addressed the institutional foundations of bureaucratic autonomy. But we would assert that fundamental building blocks of the argument must be reframed when political scientists wish to test the theories in a new democracy where executives are powerful both in institutional terms and in their ability to build supporting coalitions by promising pork and patronage.

We investigated whether or not institutional choice is a function of electoral uncertainty and risk. We predicted that the more stable the electoral game is—and, consequently, the smaller the electoral risk for the elite group holding power—the weaker the incentives will be for governors to lock in their policy preferences via administrative and organizational arrangements, since governors will prefer simply to maintain discretionary control. On the other hand, the greater the electoral competition among state elites—and, consequently, the more electorally vulnerable the governor is—the higher the chances that an insulated framework for regulatory agencies will be adopted. Therefore, we argued that the autonomy enjoyed by independent regulatory agencies may be interpreted as an intertemporal safeguard for the preferences of the governor (or the governor's elite group or faction).

We found empirical support for our hypotheses in a series of econometric tests. The dependent variable in these tests was an index of autonomy built from responses to a survey of state regulators.

All independent political variables behaved according to our theoretical predictions. Because governors can easily build large coalitions

in nearly all state assemblies, the size of the governor's coalition in the state assembly is not statistically significant, a result suggesting that governors do not take the legislature into account when making choices about how much autonomy should be delegated to regulators. Governors are essentially concerned with their rivals for the gubernatorial position. When we interacted the governor's durability in office (Turnover) with the size of the governor's majority within the legislature, however, we observed that Turnover has a positive marginal effect on political autonomy when Coalition Size exceeds 60% of seats in the state legislature. Because governors have great ability to build oversized majority coalitions, coalition strength influences the governor's choice only when she or he faces credible threats from rival elite groups.

We examined a case of separation of powers where the chief executive enjoys great legislative power. Further research is necessary to explore how variation in legislative powers affects incentives for delegation. In addition, it would be fruitful to extend the research to other new democracies that have undergone similar processes of economic reform and agency creation.

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## NOTES

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1. The way we operationalized political uncertainty is also new. Instead of using the government's popularity as a proxy of its durability, we used poll results regarding the vote preference of citizens in the forthcoming gubernatorial election in the relevant year. Using popularity data is not suitable for countries that enforce term limits, as Brazil does.

2. A related argument builds on the notion of credibility. Independent institutions that result from great delegation reflect the degree to which the executive, the legislature,

or each has agreed to bind their hands in order to acquire credibility (Levy and Spiller 1996; Mueller and Pereira 2002; Spiller and Tiller 1997). By delegating powers to independent regulatory agencies or to central banks, the executive (or some combination of the executive and legislature) gains, by assuring third parties (e.g., investors, market operators) that it will not be able to intervene in that institution's business (for example, by lowering interest rates or administratively expropriating investors after privatization through lower tariffs). According to this argument, delegation typically involves an intertemporal choice: by relinquishing short-term interests, political actors can benefit in the long run. We can expect different degrees of credibility or reputational problems to lead to different levels of delegation.

3. Cheibub (2007) argues that chief executives are the formateurs of coalitions, and where these executives enjoy extensive powers, the equilibrium outcomes in the coalition-formation game depend primarily on the president's ability to offer pork and portfolio participation to coalition partners. Other relevant factors affecting executives' equilibrium include the distribution of preferences in the policy space, the reversion outcome, and the expected electoral fortunes of the other parties.

4. Although governors are the dominant players at the subnational level, that characterization no longer seems accurate at the national level, as was asserted in the "hyperpresidentialism" interpretation of Brazilian politics (Abrucio 2002). In fact, throughout most of the last decade, the national executive has been able to implement its agenda by recentralizing the political game. There is no evidence that state loyalties on the part of legislators undermine party lines or create trouble for the executive (Cheibub, Figueiredo, and Limongi 2002).

5. In the U.S. context discussed by Lewis (2003), the minority or majority (divided or unified government, respectively) status of the parties is crucial. By contrast, in multiparty presidential regimes the executive's party rarely enjoys majority in the legislature. However, executives do not face difficulties to build and sustain majority coalitions and therefore majority status plays a lesser role in delegation incentives than electoral risk.

6. Most of the federal regulatory agencies exhibit very similar institutional designs.

7. *Gazeta Mercantil*, 19/11/1999.

8. The questionnaire used in the survey was made up of 26 questions (see the online Appendix: [http://www.uiowa.edu/~lsq/Melo\\_etal\\_Appendix.pdf](http://www.uiowa.edu/~lsq/Melo_etal_Appendix.pdf)). The authors applied the questionnaires during visits to 31 agencies from April to June 2005 or during the Conference of Brazilian Regulatory Agencies in Manaus held May 16, 2005. Similar indexes aimed at measuring agency autonomy have been widely used in the literature on regulatory agencies (Andres, Guasch, and Azumendi 2008; Gutierrez 2003; Holder and Stern 1999; Stern and Cubbin 2003).

9. For 1999, the risk would change, because it would be calculated for the incumbent. The risk for a newly elected opposition governor in a landslide victory in January 1999 would be 1, but the risk for the incumbent in 1998 in the same state would be 5.

10. Because only 19 governors sought reelection in 1998, in a small number of cases, we dealt with an incumbent's candidate rather than the incumbent.

11. For all cases, the votes for the two candidates reached at least 80% of the total. In the rare cases in which the vote was split among three candidates (as occurred in São Paulo, Rio Grande do Sul, and Mato Grosso), we added the votes for the candidates

according to ideological criteria (for example, Social Democratic Party (PSDB) and Worker's Party (PT) against Paulo Maluf, that is, Progressive Party of Brazil (PPB)). Thus, Risk captures the ex ante electoral risks.

12. The descriptive statistics for all variables used in the models are available from the authors upon request (contact Carlos Pereira at pereir12@msu.edu).

13. The econometric tests rely on only 26 or 27 observations, so their results should be interpreted as suggestive but far from definitive. The fact that we found significant results with so few observations is noteworthy and encouraging, however. The results are robust to the use of a censored regression model (Tobit) to correct for estimation errors resulting from the fact that the autonomy data come from an index normalized between 0 and 1 (Greene 2008, 869–81).

14. We created this figure with the help of code provided as an accompaniment to work by Brambor, Clark, and Golder (2006). The code is available at <http://homepages.nyu.edu/~mrg217/interaction.html>.

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