

Regulation of Brazilian higher education: the Technological Innovation Act and the Public-Private Partnership Act

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Abstract

This article problematizes the public-private articulations included in the debate about the concept of higher education in virtue of the regulatory framework launched by the Technological Innovation Act (Act 10,973/2004) and the Public-Partnership Act (Act 11,079/2004). I start from the premise that this regulatory framework recovers key ideas from Plano Diretor da Reforma do Aparelho do Estado [Master Plan for the Reform of the State Apparatus] (BRAZIL, 1995), particularly the concept of higher education as a tradable service, the regulation of which is established, at a global level, by the General Agreement on Trade in Services (WTO, 1995) conceived at the World Trade Organization (WTO). The delivery of the so-called higher education services is not exclusively attributed to the State according to the Master Plan in the Brazilian context, which is different from the concept of higher education as a right granted by the State, according to Article 205 of the 1988 Brazilian Federal Constitution). In the current regulatory framework, a conception oriented towards the production of technological innovation is reinforced; the productivity of universities is measured according to the logic regulated by the Technological Innovation Act (2004a), which sets forth the establishment of partnership agreements between universities and the market according to the rules of the Public-Private Partnership Act (2004b). Such regulatory framework brings continuations and a deepening of the construction of a concept of higher education as a commercial service, redefining the citizen as a user or a consumer of those services.

Keywords

Higher education – Public-private partnership – Technological innovation – Tradable service.

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Regulação da educação superior brasileira: a Lei de Inovação Tecnológica e da Parceria Público-Privada

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Resumo

O artigo problematiza as articulações entre o público e o privado, colocadas na pauta do debate sobre a concepção de educação superior a partir do marco regulatório inaugurado pela Lei de Inovação Tecnológica (Lei nº 10.973/2004) e pela Lei da Parceria Público-Privada (Lei nº 11.079/2004). Parte-se do pressuposto de que esse marco regulatório recupera as ideias-chave do Plano Diretor da Reforma do Aparelho do Estado (BRASIL, 1995), sobretudo a concepção de educação superior como um serviço comercializável, cuja regulação, no âmbito internacional, encontra-se no General Agreement on Trade in Services (WTO, 1995) – acordo engendrado na Organização Mundial do Comércio (OMC). Os denominados serviços de educação superior terciária são vistos como um serviço não exclusivo do Estado na acepção do Plano Diretor no contexto brasileiro, diferentemente da concepção de educação superior como um direito garantido pelo ente estatal, conforme o art. 205, da Constituição Federal de 1988 (CF/88). Aprofunda-se, nesse marco, uma concepção orientada pela produção da inovação tecnológica; a produtividade dos serviços da universidade passa a ser medida segundo a lógica regulada pela Lei de Inovação Tecnológica (2004a), a qual dita o estabelecimento dos contratos de parceria entre a instituição universitária e o mercado conforme as regras da Lei da Parceria Público-Privada (2004b). Tal marco regulatório traduz continuidades e aprofundamentos no tocante à construção de uma concepção de educação superior como um serviço comercial, redefinindo-se o cidadão como usuário ou consumidor desses serviços.

Palavras-chave

Educação Superior – Parceria público-privada – Inovação tecnológica – Serviço comercializável.

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Introducing the problem

In the recent debate concerning higher education, particularly after the publication of the Technological Innovation Act, Act 10,973, of December 2nd, 2004, and the Public-Private Partnership Act, Act 11,079, of December 30th, 2004, a major issue, in light of the new economic, political and social conditions, is the formation of a regulatory framework for higher education in Brazil, with the emergence of new public-private articulations. In this debate's agenda, a certain concept of university is consolidating itself and gaining centrality in the sphere of higher education. Different protagonists strive to legitimate that concept of university considered necessary in a context of greater pressure for expanding this education level amidst the development of globalization processes, both hegemonic and counterhegemonic, in their multiple dimensions (SANTOS, 2002; SANTOS; CHAUI, 2013).

In this context, the present article proposes to analyze a concept of university found in the field of Brazilian higher education, from the viewpoint of its regulation, based on the aforementioned Acts. Such concept expresses conflicting plans of university and their relationship with the capitalist society.

It is, therefore, necessary to reflect critically and analytically about the concept of university as a "social organization" proposed in the body of the Brazilian public administration's reform, which is expressed in the *Master Plan for the Reform of the State Apparatus* (1995)¹. Starting with the Innovation Act and the Public-Private Partnership Act, both from 2004, a debate emerges about the concept of university as a Scientific and Technological Institution (ICT) and about establishing public-private partnerships at a federal administration level, a debate that recovers and deepens questions

posed in the 1995 Master Plan, particularly a concept of higher education as a service not exclusively delivered by the State, a subsidized service, unlike the concept of education as a right granted by the State (BRAZIL, 2014).

Therefore, in this study, we analyze the concepts of university proposed in the *Master Plan* (1995), the Technological Innovation Act (2004a), and the Public-Private Partnership Act (2004b).

University in Brazil: contexts

Speaking about university in the Brazilian society means speaking about a late institution compared to its European counterparts. Consequently, analyzing the conflicting concepts of university in the realm of higher education implies considering this question one that is also receiving a late analytical treatment, with few references in the literature (BORGES, 2009; BORGES, 2010; BORGES, 2013). Therefore, the university and its organization models have to be considered based on its political, economic, and social conditioning factors, particularly the factors that influenced the creation of the Brazilian State Reform in the 1990's, epitomized by the Master Plan for the Reform of the State Apparatus (BRAZIL, 1995).

The state reform proposed in the mid-1990s, during president Fernando Henrique Cardoso's administration, is part of the movement of reformulation of the state role in a context of public expenditure reduction recommended by neoliberal policies guided by multilateral organizations. In this frame, the problematics referring to the concept of university proposed in that state reform context, during the aforementioned administration, and the question of the university's crisis, cannot be analyzed exclusively as a result of the State's financial crisis and the adoption of neoliberal policies in the educational sphere. Such problematics are immersed in the context of crisis of the university itself as an institution

1- The *Master Plan for the Reform of the State Apparatus* was designed by the Ministry of Federal Administration and State Reform. It was approved by the State Reform Chamber on September 21st, 1995 and submitted to approval by then Brazilian president Fernando Henrique Cardoso.

in the frame of the development of capitalist society, oriented to the valuing of a type of knowledge that focuses on technological innovation, thus pressing the university to guide itself by a rationality external to its specificity as a social institution (CHAUI, 1999; 2001). In this line of argument, Trindade clarifies (1999, p. 21):

For the first time in history, the crisis of the university is the crisis of that same multi-century institution in the society of knowledge, where the selection mechanisms for funding scientific or social, basic or applied research, wish to restrict the university to its traditional role of educating multipurpose professionals for the market.

Santos (2004) highlights that it has been difficult to formulate a definition of university crisis not in terms of a crisis of the welfare state and, consequently, an adoption of neoliberal policies. According to him, “[...] it is crucial to define and sustain a counter-hegemonic definition of crisis” (SANTOS, 2004, p. 63). Therefore, from this viewpoint, we offer a definition of crisis in a multidimensional perspective, analyzed with regard to three aspects: hegemony crisis, legitimacy crisis, and institutional crisis (SANTOS, 2003, 2004).

These crises are the result of the accumulated roles the university has come to play, many of which are mutually contradictory. Contradiction and incompatibility between roles have caused tension points to appear in the relationship between the university institution and the state apparatus, as well as within the institutions themselves. The outcome, in Santos’ (2004) view, is the explosion of the university’s crisis in three dimensions.

The hegemony crisis is the result of a contradiction between the social role of an institution that, since the European Middle Ages, had been focusing on producing high culture, necessary for the education of elites, and has

now come under pressure to produce average cultural standards to educate the qualified labor necessary to the development of the capitalism in course. Therefore, “instead of creating ruling elites, (the university) is destined to train docile labor for an ever uncertain market. And the university itself does not feel well-trained for that, hence its ‘crisis’” (CHAUI, 2001, p. 46). The hegemony crisis is, therefore, caused by transformations in the capitalist system that have been challenging the university institution to fulfill new roles for which it does not feel prepared, let alone ‘comfortable’. Thus, in face of the hegemony crisis,

[...] the university [...] risks losing its traditional monopoly in the fields of teaching and research in view of the new competing forms generated particularly by private corporate institutions using new informational resources [...]. (TRINDADE, 2003).

The legitimacy crisis refers to the contradiction between the hierarchization of the knowledge produced and shared by the university and the pressures to open the university for groups marginalized from the higher education process. This crisis is part of a context of booming demand for a more democratic access to university, as well as the implementation of policies to meet claims for equal opportunities for groups marginalized from the university institution. In this perspective, the crisis is

[...] provoked by the fact that the university has ceased to be a consensual institution in virtue of the contradiction between, on the one hand, the hierarchization of specialist knowledge by means of access restrictions and competence certifications, and, on the other, the social and political demands for a democratization of the university, and claims for equal rights for the children of the popular classes (SANTOS, 2004, p. 9).

The institutional crisis challenges the university's specific nature as a social institution. It has come under pressure to adopt management models external to its institutional logic, its academic *ethos* – models imported from other institutions considered more efficient – and to submit to productivity criteria of a corporate nature. In this perspective, the management logic of large companies is put forth as an alternative in order to reformulate the university for the sake of its efficiency and productivity.

The three dimensions of the university's crisis articulate with each other. One cannot understand the hegemony crisis without relating it with the legitimacy crisis, as the questioning of the university institution in terms of its fulfilling of certain roles – no longer considered consensual or a priority in the current stage of development of the capitalist system at a global level – while it is pressed to assume responsibility particularly for educating a qualified labor required by the corporate-productive sector and to produce applied research, is accompanied by the increased demand for higher education. Such demand is characterized by socio-economic groups traditionally marginalized from the university institution, groups that have been pressing the State and institutions to democratize and expand access to university.

The institutional crisis articulates itself in a similar way. The questions regarding the university's institutional logic are part of the context of both the hegemony and legitimacy crises. Therefore, in this context, the new roles and demands put forward to the university cannot be efficiently fulfilled by relying on the academic logic, characteristic of the university as a social institution. The university is thus advised to adopt institutional models external to its logic, arising from the corporate-productive sector, and to assume an agenda of necessities and problems experienced by that sector.

The institutional crisis has come to dominate the reformist purposes since the

second half of the 20th century. This crisis is part of the larger frame of declining priority for the university in the agenda of state public policies, which has caused, among others, the adoption of an economic development model marked by neoliberal policies². In view of this context, the State begins to reduce its investments in higher education, particularly in the university, while stimulating higher education offer via the private mercantile sector, in which profit is the main goal:

In a time [...] when the State [...] decided to reduce its political commitment to the university [...], turning it into a good that, being public, does not have to be guaranteed exclusively by the State, the public university automatically entered an institutional crisis. [...] the university's institutional crisis [...] was provoked or induced by the declining priority of the public good in public policies [...]. (SANTOS, 2004, p. 13).

The discourse of university crisis is a dominant one, present in the documents of multilateral organisms and in plans of interlocutors for the reform of Brazil's higher education. "Captive university" (LUCAS, 1987), "the shipwreck of the university" (FREITAG, 1996), "university in ruins" (READINGS, 1996) and "university in half-light" (GENTILI, 2001) are metaphors that have been produced to describe the state of crisis in the university and the demands imposed on it since the late 20th century (TRINDADE, 2003). Regardless of the existing discourse about university crisis, the conceptions of university and the answers proposed so it can fulfill its role in the society of

2- Just to give one example, in Brazil's 1968 university reform, the question of the relationship between basic and applied research was present and, in that context, nobody talked about neoliberal policies in the field of higher education. However, one cannot forget that this relationship, in the reform in course now, is occurring in different social-historical circumstances, marked by the neoliberal globalization, in which the discourse of "society of knowledge" has been adopted as a justification to reform the university according with the necessities and the logic of the corporate-productive sector.

knowledge diverge. Therefore, the conceptions of reform also diverge, becoming the object of struggle between the protagonists within the sphere of Brazilian higher education.

In this context, a discussion about the notion of reform is necessary.

First, as Trigueiro (2003) warns, the term *reform* has been a byword both in the academic and political debate, without being the object of a conceptual elaboration. In other words, it is not being questioned on its semantic nature or precise definition. Secondly, the analysis of the higher education reform in course requires a historical contextualization, as the changes proposed, as well as their scope, are historically conditioned. Thirdly, one must consider the level of analysis – i.e., macro or micro and/or the relationship between both – in studying the reform proposals.

Few studies have focused on undertaking the conceptual elaboration of the notion of reform. Fernandes (1975, p. 69), in the context of Brazil's 1968 *university reform* discussions, defines the phrase university reform as a set of "quantitative and qualitative measures to be taken in order to adapt higher education to the current demands of the Brazilian historical-social situation". However, in the 1960's and 1970's, the adaptation of this education level to the new social demands would have to be carried out not by means of a reform, but by a revolution (FERNANDES, 1975).

In that context, new social needs required a modernized higher education connected to the capitalist socioeconomic development. The university institution was called forth to play a prominent role in promoting such development, being, therefore, "reformed" – a reform focusing on the university's administrative reorganization, with a view to modernizing it with efficiency and productivity. The framework currently dominant in the Brazilian university is the result of that modernization process.

Bringing the discussion towards the reform conjuncture in course, Trigueiro (2003) warns, as he discusses the reform processes

in course in Latin America, that the notion of *reform* points to a restructuring process. In Brazil's case, in referring to the youth of the Brazilian university institution, he argues that one cannot speak of restructuring something that has hardly become structured or consolidated yet. He thus clarifies that

[...] In the precise case of higher education and universities in Brazil, the correct thing to say is that we are still in a structuring process: in other words, it doesn't make much sense to speak, here, of reforming or (re)structuring something that has hardly stabilized itself yet, whether because of its short existence so far or the many measures suffered by the process of internal maturation and institutional standards consolidation. (TRIGUEIRO, 2003, p. 4).

In this perspective, the analysis of the reform experience should consider the historical specificities of the reality studied. Therefore, Brazilian university's late emergence, the dominant model of constitution of the university institution (via the agglutination of pre-existing courses), and the equally late reform movement in Brazil's university – the first "reform" occurs in 1968, in the context of a military dictatorship – constitute questions to be considered in the analysis process.

In the construction of the reform conception, a few questions are posed. Firstly, university and higher education do not mean the same thing. In a dominant and consensual definition, a university is characterized as an institution responsible for producing advanced knowledge by means of scientific research. In the Brazilian case, such a definition is problematic because the university was predominantly formed from the agglutination of pre-existing professional education courses (CUNHA, 1980). In describing the Brazilian university, Fernandes (1975) warns that this institution is constituted as a cluster of tertiary-level colleges. Therefore, "reforms must start from the assumption that,

in the 21st century, the university exists only where there is undergraduate and postgraduate education, research, and extension. Without any one of those, there is higher education, there is no university” (SANTOS, 2004, p. 64-65).

Secondly, university reform and higher education reform do not mean the same thing either, although the reform of one level is related to that of the other. In Trigueiro’s (2003, p. 6) words, “thinking in terms of a set, changes that affect university institutions will also affect several other organizational forms, such as isolated establishments and integrated faculties [...]”. In this perspective, with regard to reform proposals, it is necessary to highlight the distinctions between university and higher education, as well as the reform alternatives for both levels (SANTOS, 2004; TRIGUEIRO, 2003).

Thirdly, in the analysis of proposals in course in Brazil, the macro level is the analysis level adopted, which considers the regulation by means of laws, decrees and normative instruments, as well as key conditioning factors to the process’ development. As Trigueiro emphasizes, these are changes

[...] that reach the broadest legal normative apparatus – which legally supports the set of institutions designated as universities (as defined in Article 207 of the Federal Constitution) regarding both their structure and internal processes [...] (TRIGUEIRO, 2003, p. 8).

In this context is inscribed the analysis of the regulation of higher education since the enactment of the Innovation Act (BRAZIL, 2004a) and the Public-Private Partnership Act (BRAZIL, 2004b). We start from the assumption that there is a consolidation of a concept of university as a tradable service, proposed in 1995 by the Master Plan and WTO’s GATS.

The Master Plan for the Reform of the State Apparatus and the inclusion of the university in the non-state-only service sector

In the mid 1990’s, during the administration of president Fernando Henrique Cardoso, through the then existing Ministry of Federal Administration and State Reform, under minister Luiz Carlos Bresser Pereira, a state apparatus reform was proposed according to the operation logic of the key sectors that distinguish the State’s action; about those key sectors, the plan identifies “[...] the specific strategies for each segment of the State’s action [...]” (BRAZIL, 1995, p. 40), guided by the public service’s general principles of effectiveness, efficiency, and quality.

In this perspective, this reform starts from the assumption that “[...] the State can be efficient, as long as it uses institutions and management strategies, and uses non-state public organizations to execute the services supported by it [...]” (BRESSER-PEREIRA, 1998, p. 31).

Therefore, along with state property and private property, the plan establishes as necessary the action of non-state public organizations simultaneously with the State, thus characterizing a kind of intermediate property in contemporary capitalism, i.e., the non-state public property, recommended for State action sectors where the State does not exercise its ‘outward power’ [TN.: *poder extroverso*]. Such power is defined as the State’s power “to unilaterally build obligations for third parties, reaching beyond its own limits” (BRAZIL, 1995, p. 41) – a power specific of the Strategic Core and the State-Only Activities Sector. In the non-state-only service sector, which includes higher education, the state presence is justified as this sector of services (italics by the author) involves fundamental rights, as in the case of education and health. “Involves rights” is mentioned in the plan in one of the few passages where it refers to the

question of education as a right. In this case, although education is a right to be guaranteed by the State (BRAZIL, 2014), its 'outward power' is not exercised in this area, according to the *Master Plan's* proposal.

In this perspective, the plan proposes a division of the public administration in sectors or cores according to whether state tasks can or cannot be delegated. It establishes the following action areas: *Strategic Core*; *State-Only Activities Sector*; *Non-State-Only Activities Sector*; and the *Market Goods and Services Production Core*.

The Strategic Core (i.e., State's non-delegable roles– the legislative and judiciary powers, the prosecution authority and, in the executive power, the republic's presidency, ministers and direct assistants) defines public policies and policies in which strategic decisions are made. The *State-Only Activities Sector* is the sector for services that only the state can provide, since they pertain to the State's outward power, such as controlling and inspecting, as well as tax collection. *Non-State-Only Services* refer to roles in which the State operates in combination with both private and non-state public organizations, in the areas of education, health, scientific research, universities, hospitals. The *Market Goods and Services Production Core* is the core in which the privatization of state-owned enterprises is put forth (BRAZIL, 1995, p. 41). The reform of the public administration is made, in this context, according to the logic of benefit-cost ratio, in the pursuit of quality at lower costs in delivering public services.

With regard to the public university, the plan proposed for it to be included in the non-state-only services, redefining it as a social organization³. Classifying the public university as a social organization means that the university institution should seek partnerships

with the market for its own institutional survival, which launches the university-market relations and implies the problematic of imposing a market logic within the public university, a logic external to its institutional specificity.

In the context of the university's redefinition, two conceptions are put forth which form an object of dispute: the university as a *social institution* and as a *social organization*⁴. In Chauí's (1999, p. 3) words, the university as a social institution is:

[...] a social action, a social practice founded on the public recognition of its legitimacy and attributions, on a principle of differentiation that grants it autonomy from other social institutions, and it is structured by a regulation framework, rules, norms and values of recognition and legitimacy internal to it. The legitimacy of the modern university is founded on the achievement of the idea of knowledge's autonomy from religion and the State, therefore, on the idea of a knowledge guided by its own logic, by necessities immanent to it, from the viewpoint of both its invention/discovery and its transmission.

In contrast, the university as a social organization is founded on criteria external to it. These criteria collide with its specificity as a social institution, and begin to drive the activities developed within the institution, however, under a different logic, one that emphasizes the productivity marked by market principles, by the benefit-cost ratio.

The university as a social organization brings within it the concept of a university focused on *providing services* and defined by the market logic. It is, as Chauí (1999) affirms,

3- Social organizations are legal entities of private law that aim to provide public services in the activities encompassed in the Non-State-Only Services Core. Their origins are linked to the English administrative reform adopted during Margaret Thatcher's administration, starting in 1979.

4- Michel Freitag distinguishes between the university as a social institution and as a social organization in his book *Le naufrage de l'université* (1996).

an *operational university*⁵, guided towards defining strategies to seek revenues from, and partnerships with, the market, concerned for accomplishing the means to obtain new funding sources.

The operational university is structured through a logic that does not agree with the production of critical knowledge and is defined by sectors external to it – sectors responsible for defining the university's agenda. The production of knowledge is assessed with regard to time, cost, and the amount produced, its main goal not being the creation of critical thinking.

In contrast, the university as a social institution is defined as “a public institution aimed at the creation and transmission of knowledge” (CHAUÍ, 2001, p. 80), rather than a service provider guided by the principle of benefit-cost ratio.

The Innovation Act and the concept of university as a scientific and technological institution

The Technological Innovation Act (Act 10,973, of December 2nd, 2004), regulates incentives for innovation and scientific/technological research in productive environments. Its purpose is to foster the achievement of the country's technological autonomy and to further industrial development, a goal that the Federal Constitution of 1988 affirms in Articles 218 and 219 (BRAZIL, 2014). To achieve that goal, the universities are called forth to perform new tasks, or their traditional ones, such as scientific research production and extension, are rearranged in the perspective of meeting the demands of the productive sector.

In the Innovation Act, a few notions are defined, such as: Scientific and Technological Institution (ICT); innovation; technological innovation center; and public researcher.

5- Freitag's phrase (1996).

An ICT is “an organism or entity of the public administration whose institutional mission is, among others, to conduct basic or applied research activities of a scientific or technological nature” (BRAZIL, 2004a). In this perspective, university institutions are encompassed in the aforementioned definition of ICT, since the production of research, teaching, and extension are attributions of the university as regulated in Article 207 of the Federal Constitution of 1988. It is worth stressing that, in the 1990's, the public administration reform proposed by Bresser Pereira defines the university as a social organization, which is part of the non-state-only service sector. Under the Technological Innovation Act (BRAZIL, 2004a), the university is redefined as an ICT. In the same line of thought, we pose this question: what are the theoretical and conceptual implications of that redefinition, particularly since the Act in question provides for incentives to innovation and scientific and technological research in productive environments? Would the university be, therefore, redefined to become a productive environment? Under what logic of productivity?

Under the Act, innovation is understood as “the introduction of a novelty or enhancement into the productive or social environment that results in new products, processes, or services” (BRAZIL, 2004a). Therefore, the focus of scientific research is to produce knowledge and technology that can be applied in processes of generation of products or services.

In turn, a Technological Innovation Core is a “core or an organism formed by one or more ICTs with the purpose of managing their innovation policy” (BRAZIL, 2004a). In this perspective, in order for scientific and technological research institutions, including universities, to develop research activities whose focus results in innovation, it is necessary to create a technological innovation core, whether isolatedly or in partnership with other ICTs, to develop their innovation policy. According to Article 16 of the aforementioned Act, “the ICT shall have a technological innovation

core, whether of its own or in association with another ICT, with the purpose of managing its innovation policy” (BRAZIL, 2004a).

A public researcher is “the holder of a position, military position or public service position, who conducts basic or applied research of a scientific or technological nature” (BRAZIL, 2004a). That definition includes the work of university professors, who conduct research activities. According to Oliveira (2004), the Innovation Act introduces mechanisms that flexibilize researchers’ activities at federal universities, as it allows their participation in private-sector projects, or even the creation of their own companies, without losing their link with the federal institution.

One can see that the Innovation Act provides for a conceptual reformulation operation – the university as an ICT. Activities inherent to the university institution are also redefined concerning the processes of scientific knowledge production and extension. The latter is rethought in terms of technological extension (BRAZIL, 2004a).

Therefore, the emphasis falls on producing research that can result in new products that, in turn, can be socially and economically exploited. The priority, therefore, is to produce knowledge in the university in terms of technological innovation.

The aforementioned Act also regulates the construction of specialist, cooperative environments for innovation, by means of partnerships between the State, national companies, ICTs and non-profit organizations. Such partnerships aim at developing research that can result in innovative products and processes (Article 3).

ICTs are allowed to receive payment when they make contracts and covenants (BRAZIL, 2004a). The funds received by the ICT constitute its own revenue and must be applied exclusively in pursuing its institutional research, development and innovation goals (art.18).

As a contribution to operationalizing the university as an ICT, the Public-Private Partnership Act (Act 11,079 of December 30th, 2004) was published to regulate public-private partnerships’ bidding and contracting processes in the public administration. According to the sole paragraph of its Article 1, the aforementioned Act “[...] applies to organisms of the direct Public Administration, special funds, public entities, public foundations, estate-owned companies, mixed companies” (BRAZIL, 2004b).

The Act defines public-private partnership as “[...] the administrative contract of concession in the sponsored or administrative modality” (BRAZIL, 2004b). The sponsored modality is the concession of public services or public works in which there is a financial compensation from the public partner to the private partner. An administrative concession is a service contract in which the public administration is the direct or indirect user, even if this involves executing works or providing and installing goods (BRAZIL, 2004b).

However, public-private partnerships are forbidden when: the contract value is below 20 million reais; involves a service period of less than 5 years; and its sole purpose is to provide labor, equipment installation, or the execution of public works (BRAZIL, 2004b).

The making of public-private partnership contracts follows a few guidelines, such as the question of non-delegability. This brings back up the discussion proposed in the *Master Plan for the Reform of the State Apparatus* (1995). In other words, when the activity is a non-state-only service, the making of a public-private partnership is justified. In contrast, when it is a state-only activity, therefore, such as a non-service, the partnership in question is not justified. As one can see, again, the services the university performs

are not included in the range of state-only activities⁶.

The Public-Private Partnership Act also regulates how the federal agency that manages public-private partnerships should work – an agency created by Decree 5,385 of 2005. This agency is responsible for: defining the priority services addressed in partnership agreements; regulating contract-making procedures; authorizing biddings and their notices; and analyzing contract fulfillment reports (BRAZIL, 2004b).

Together, the Technological Innovation Act and the Public-Private Partnership Act provide a normative set to redefine the university as an ICT in what pertains to scientific research production and technological extension. The Innovation Act does that by placing new emphasis on the knowledge production process and on extension, in the perspective of their economic relevance, represented in the financial sustainability of partnership agreements. The latter Act provides for the execution of partnership agreements between university institutions and the private sector.

In this frame, the university's redefinition as a social organization included in non-state-only services, in the context of the public administration reform proposed in the Master Plan (BRAZIL, 1995), is reaffirmed and even deepened by the Technological Innovation Act (BRAZIL, 2004a), which is supplemented by the Public-Private Partnership Act (BRAZIL, 2004b). In this way, a higher education regulatory framework is shaped in which the university institution's activities are conceived as a non-state-only service, tied to the demands of the productive sector. What is more, under the mercantile logic, the university itself is then restructured as a productive environment,

and its activities, particularly in research and extension, are redefined in terms of technological innovation.

Final considerations

The analysis of the concepts of university found in the regulatory framework launched by the Innovation Act and the Public-Private Partnership Act, both from 2004, indicates the deepening of an agenda initiated in the context of the Brazilian public administration reform, epitomized by the *Master Plan for the Reform of the State Apparatus* (1995).

Dividing the State apparatus in areas of action according to the logic of the exercise of state power ('outward power') is actually a strategy to redefine several fundamental rights, such as education, as a service. In the case of basic education, a subsidized service. In the case of higher education, the logic of public-private partnership and technological innovation is imposed.

Therefore, we are witnessing continuations and deepening in the process of redefining higher education as a service to be submitted to the logic of public-private partnership, founded on the Partnership Act (BRAZIL, 2004b) according to innovation-specific productivity criteria, regulated by the Technological Innovation Act (BRAZIL, 2004a). All the above operationalize a deepening of an agenda – higher education as a tradable service – according to international trade rules, beyond national borders, following World Trade Organization recommendations (WTO) regulated under the *General Agreement on Trade in Services* (GATS, 1995). In Borges' (2009, p. 85) words, GATS (WTO, 1995) is "an agreement that encompasses the commercialization of new sectors, in order to put liberalization into effect and eliminate barriers", particularly in areas not previously regulated within the WTO sphere, such as education.

It is, therefore, a regulatory framework whose core lies in operationalizing an

⁶- The inverted use of words is not casual. The term activity is reserved for the sector of state-only actions. The term service, in turn, is used as a reference to the justification of delegability, even when it comes to fundamental human rights.

ideological consensus on constituting higher education as a non-state-exclusive service. The university is thus submitted to productivity criteria specific of technological innovation, relegating the production of knowledge and extension that do not fit in these rules and recommendations to the field of the unproductive.

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