Chapter 14
Higher Education Policies in Brazil: A Case of Failure in Market Regulation

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14.1 Introduction

Higher education policies in Brazil have been primarily concerned with expanding participation and controlling a huge private sector. As seen in previous chapters, private higher education constitutes a very significant component of Brazilian higher education. In 2011, 89 % of the 2365 higher education institutions were private and 73.6 % of the students were in private institutions. Most of these institutions are for profit and increasingly controlled by large business groups. In 2011, the size of the ten largest providers ranged from 50,000 to 450,000 students. In 2013 two large providers merged and now enroll about 1 million students[1], probably the largest private, for profit teaching institution in the world.

Nonetheless, the leading position in terms of national and international prominence belongs to the full-fledged graduate education and research segments concentrated in a few universities, mostly public, which graduate more than 10,000 PhDs a year. According to Carnegie Foundation criteria, 23 Brazilian universities (1 % of the total) qualify as research universities, offering 15 or more doctoral programs and graduating a minimum of 50 doctors per year (Sécca and Leal 2009).

The expansion of higher education has been a shared goal for both the government and the private sector since the 1970s. However, net coverage is still below 15 % of the 18–24–year-old age group, while the target set in 2000 was to attain a 30 % participation rate by 2010. Three factors account for most of this difficulty: the poor quality of primary and secondary education, which limits the stock of qualified candidates for higher education; the high cost of public universities, which are free

[1] In tertiary and lower level schools.

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for students but limited by budgetary constraints; and income concentration, which hinders the demand for private higher education.

Besides expansion, higher education policies have been consistently driven to keep the private sector under strict control. But they have failed in this realm. Since the 1996 Education Law, such control has been sought through a variety of quality assurance mechanisms whose implementation led to the deterioration of the private institutions' relationships with the federal government and to a process of merging and acquisitions that led to the high concentration of the private sector today.

This chapter deals, thus, with a case of failure in regulating a relatively small higher education system, one which is embedded in a still undereducated and unequal society. The first section presents the current regulatory framework and the two subsequent sections deal with the post-1996 developments by contrasting the different orientations that shaped the higher education sector with regard to expansion and market regulation, which also entails quality assurance policies. Section 2 deals with the 1995–2003 period under President Fernando Henrique Cardoso, which witnessed major efforts to couple expansion with the establishment of a quality-driven environment. Section 3 deals with the current Worker's Party administrations and its continuous efforts to tighten the control over the private sector as well as to expand access, including, to the public sector and to students from lower socioeconomic groups.

14.2 The Legal Framework: A Complex World of Public and Private, National and State, Autonomous, and Nonautonomous Institutions

Brazil is a federation of 27 states. Higher education can be provided by the federal and state governments, and also by private providers, for profit or not for profit. Higher Education institutions can be organized as *universities* and *university centers*, *independent faculties*, or *associations of faculties*. Most institutions provide professional degree programs, which are legally equivalent regardless of the type of institution, or of the teaching system (in person, or distance education). There is no undergraduate, college-type education, and postsecondary, vocational education is very limited. More recently, the federal government created a network of Federal Institutes that combine existing and new higher education, postsecondary vocational, and secondary vocational and regular courses and degrees.

By law, all public institutions are free from tuition and private institutions are forbidden to receive public money. Therefore, they charge full prices. Access is provided through selection procedures established by each institution and, increasingly, in public institutions, according to the results of a national exam for secondary education promoted by the federal government, called Exame Nacional do Ensino Medio (ENEM).

Education policies at the national level are managed by the Ministry of Education and the National Council of Education, which establish general guidelines and

Table 14.1 Enrolment in Brazil by type of institution and jurisdiction (2010).(Source: Ministry of Education)

	Total	Universities (1)	University centers (2)	Colleges	Federal institutes
Total Brazil	5,449,120	2,809,974	741,631	1,828,943	68,572
Private (a)	3,987,424	1,537,003	727,465	1,722,956	–
Public	1,461,696	1,272,971	14,166	105,987	68,572
Federal (b)	833,934	763,891	–	1471	68,572
State (c)	524,698	471,269	1199	52,230	–
Municipal (d)	103,064	37,811	12,967	52,286	–
Federal jurisdiction (a+b)	4,821,358	88.48%	–	–	–
State jurisdiction (c+d)	627,762	11.52%	–	–	–
Autonomous higher education institutions (1+2)	3,551,605	65.18%	–	–	–

The University Centers were created in 1997 as non-research universities. They are autonomous institutions and provide undergraduate and graduate education (masters programs).

oversee the federal and private institutions. Most states have their own public universities that are under the state governments and state councils of education, which also oversee a few municipal institutions. There is some overlap of attributions and conflicting interpretations of the authority of federal and state governments over the universities, which are considered autonomous by the Brazilian constitution. Also, most municipal institutions are being reclassified as "private" because they charge tuition and are pressed to migrate from the state systems to the federal jurisdiction. Table 14.1 shows the distribution of federal and state jurisdictions as well as of autonomous institutions—which encompass the universities and, since 1997, the "university centers." "Autonomy" refers to the entitlement to create or close down courses, branches, or campuses, as well as to determine the number of students to be admitted.

The federal government has nominal authority over 89% of the institutions, but this authority is limited by the autonomy granted by legislation to universities and university centers. It also has to deal with a large variety stakeholders that are active in barring or promoting legislation and specific policies. Thus, the Education Commissions in both Houses of Congress have been able to bar legislation and have had variable leverage over the initiation and negotiation of laws. Lobbies of the private sector, the unions, professional councils and corporations in the scientific community, among others, have postponed and altered the main bills since 1996. The professional corporations in law and medicine have attained legal participation in policy making over the creation and reaccreditation of programs in these areas. And, since federal universities were established by law, are autonomous and part of the civil service, they are mostly immune to eventual sanctions regarding their performance. The legal landscape today was settled by two landmark legislations: the 1968 University Reform and the 1996 Education Law.

14.2.1 The 1968 University Reform's Paradigm of a Public Research University (Ideal) System

Until 1968, Brazilian higher education institutions, universities and others, consisted of sets of schools or faculties providing professional degrees along the traditions of Continental Europe. The University Reform Act introduced several features of American higher education, including the credit system, the departmental structure, graduate schools, and research. It also established full-time (and tenured) employment for professors in public universities, with salaries paid by the national and state governments, and research grants, laboratory materials, equipment, and infrastructure granted by science and technology (S&T) agencies (federal and state). In 1985 the federal S&T agencies were brought together under a Ministry of Science and Technology, which added "Innovation" to its name in recent years. This created a parallel channel of investments and policies targeted to the scientific community whose vast majority worked, and still does, in the research universities. More importantly, it stressed the values of competitive, merit-based funding systems, including a regular peer review evaluation system of graduate programs conducted by the Coordination for the Improvement of Higher Education Personnel (CAPES) an agency linked to the Ministry of Education (MEC), since the mid-1970s.

The assumption of the 1968 legislation was that all higher education institutions, public and private, would abide by this new format, with a strong emphasis on research. In practice, only public institutions, and a few among them, benefited from these resources. These universities are the main basis of the achievements of the Brazilian S&T in fields such as deep sea drilling, aircraft, agricultural research, and biotechnology, in partnership with public and private companies such as Petrobrás, Embrapa, and Embraer.

The 1968 University Reform represented a strategic choice with important consequences, namely:

- It assured the country a small but very relevant group of world class research universities. Almost all private institutions, as well as most of public institutions outside Brazil's more developed Southeast-South region, never received research funding resources, and did not have the conditions to compete for them.
- It heightened significantly both the *costs* of the public sector (with full-time professors, research and graduate schools, and scholarships for graduate studies abroad), and *competitiveness* for access to these higher education institutions (free of charge and with the best quality). Such dynamics created significant *equity issues* because only the best-prepared and well-off applicants were admitted to them.
- It left to the private sector the role of absorbing the remaining demand for higher education. These institutions had to compete for low-income students and invested mostly in low cost evening courses in the social professions.
- It established a two-tier regulatory environment by depriving the private sector from access to the array of programs that were crucial for the development of a research and graduate school system.

- Finally, the Reform caused a cleavage inside the research university institutions between the scientific community's competitive and merit-based ethos and the Ministry of Education's bureaucracy and the "lower clergy" of teaching staff with little or no participation in graduate and research work.

The complexities of these consequences were not fully acknowledged because the university research institutions became the idealized standard for all higher education institutions. Almost 30 years later, the 1996 Law embraced the research-university "paradigm" as the standard used to assess all institutions and courses, creating tensions that are still far from being solved. This tension affects the public institutions that cannot develop graduate education and research, and, much more strongly, the private sector, which is often considered a temporary, unavoidable evil, guilty of bringing market interests and concerns to the field of education—an intriguing feature considering the long lasting presence of private higher education in the country. The 1996 Education Law was built upon the 1968 Reform and was released by the Cardoso government, as presented below.

14.3 The 1995–2002 Years: Private Growth and Quality Control

Cardoso's government tried to improve quality *and* push expansion by creating a quality-driven environment while, at the same time, reducing the bureaucratic controls that kept the private sector from developing.

14.3.1 The Construction of a Quality-Driven Environment

By releasing the new Education Law in 1996, this government instituted periodical reaccreditation of all institutions and undergraduate programs every 5 years. Besides, it linked expanded autonomy for private institutions to new requirements: they had to qualify as universities and, for that, they had to provide graduate education and develop scientific research within the standards set by CAPES, and to establish a career path for its academic staff. Besides, at least a third of the teaching staff needed to hold a master's degree (or higher) and at least a third had to be in full time contracts.

Other key initiatives enacted to promote quality were the creation in 1996 of "Provão" exam: a compulsory national examination designed for each undergraduate program, to be to be taken by all students in the last year of study in every institution giving that program (Schwartzman 2010). A few months later, a sizeable bonus began to be granted to professors of the public federal sector according to their undergraduate teaching loads. The "Provão" exam was strongly opposed at the beginning, but in a few years it became a powerful instrument to promote teaching quality because it influenced the market: private programs with higher scores used them as publicity to attract students (Durham 2005, p. 227)

A third important quality assurance mechanism was the peer review committees set up by the Ministry of Education and sent to the higher education institutions for different purposes: to accredit or reaccredit institutions and undergraduate programs, as well as to authorize and, after the three first years of functioning, to recognize new undergraduate programs. The assumption was that these committees would interact with the academic staff in the institutions to help them improve the quality of their programs. However, an unfortunate combination of excessive formalism, on the one hand, and occurrences of corruption, on the other hand, aborted this experience of interaction between professors from the public and private sectors. These visits became mostly a rigid bureaucratic inspection procedure of questionable value.

Finally, the provision of more and better public information on higher education completed the policies to create a quality-driven environment. Rankings of Provão's scores began to be published in newspapers, the many higher education databases were integrated, and the annual census was updated to an online and audited platform. Assistance to help the higher education institutions to use the information produced was also provided. Regional meetings with the chairpersons in charge of the programs evaluated by the Provão were held for each career, every year.

Behind these accomplishments was the stability of this administration's team at the Ministry of Education. Since its creation in 1931, only 3 out of 56 ministers of education stayed in office for a full term. Cardoso had the same minister for the whole 8 years (two terms) period and a very steady technical team with him. Under this administration, the National Institute for Educational Studies and Research (INEP) became the "development agency" for education congregating expertise in data collection, statistics, and an array of evaluation instruments, methods, and logistics.

14.3.2 Pushing Expansion

The new standards imposed on universities proved to be too high and costly for most private institutions, neutralizing the incentive it was supposed to create for expansion. In 1997 this threshold was lowered by the creation of "university centers" (Centros Universitários) that were released from research requirements but expected to excel in teaching. Furthermore, a "professional" master's degree format was introduced as an alternative to the academic graduate programs, which could only be conducted by PhD holders. These programs could work with part-time lecturers, thus reducing the costs for private institutions. These new MA programs were placed under CAPES jurisdiction, unlike the MBAs and other *lato sensu* postgraduate programs, which remained unregulated.

Also in 1997, a new law was released allowing private higher education institutions to declare themselves "for-profit." Since then, nonprofit institutions, eligible for tax breaks, had to prove their philanthropic nature and new kinds of entrepreneurs were attracted to the for-profit sector. With expanded academic autonomy and legal permission to seek profits, the Brazilian private higher education sector boomed.

Table 14.2 Gross revenues of selected companies and sectors (2002, in R$ million). (Source: Stock Exchange of São Paulo (from Nunes and Carvalho 2004))

Petrobrás (oil and gas)	99,164,118
Telecom companies (total)	48,413,253
Private higher education	15,786,386
Vale do Rio Doce (mining)	15,267,167
Airline industry	13,129,826

Because these institutions competed for low-income students who did not qualify for free education in public institutions, they were much more concerned with gaining efficiency and lowering prices, than with investing in quality.

As the pool of new entrants started to stagnate (due to lack of income), the more efficient and capitalized groups bought or drove the smaller ones to bankruptcy. Private universities and university centers used their autonomy to open new campuses (or buildings) so as to get closer to potential students and reacted to the saturation of the market in the metropolitan areas by creating new branches in smaller places all over the country. Faced with the MEC's attempts to comply with standards typical of public institutions, they resisted by finding loopholes or inconsistencies in the regulations, and increasingly by taking the Ministry of Education to court. The size and economic weight of the higher education sector in Brazil had grown sharply. In the last year of the Cardoso administration, the four largest airlines and the country's largest mining company (Vale do Rio Doce) had lower revenues than the private higher education sector as a whole (Table 14.2)

14.3.3 Closing Remarks

The assumption that the government could, at the same time, release the market forces and control its quality through periodical assessment and regulation did not work. The task of overseeing and assessing each higher education institution and course program and revalidating them periodically became too large for the Ministry of Education. Besides, the private higher education institutions did not adhere to the quality standards (and the financial costs) imposed on them and strengthened their ranks through concentration, gaining scale, and litigation. The government also had problems to regulate its own public institutions, for it lacked the power of threatening them with closure. Private institutions could be closed down by the government if they came out too poorly in the assessments, but public institutions, created by law and legally autonomous, with resources assured in the national budget, could not be affected. As for expansion, the net result was disappointing. By the end of Cardoso's government, the private sector was facing idle capacity and the participation rate remained around 11 % of the age group (amounting to 2.4 million students).

14.4 2003–2012: The Quest for Public Education against the "Market"

In 2003 the opposition Worker's Party (PT) won the presidential election with Luis Ignácio Lula da Silva and shifted the higher education policies in response to its main constituencies—social movements and unions, including those in the public sector and in the public universities. The teaching bonus was incorporated to the wages, the Provão was replaced by a new and supposedly broader system of assessment, ENADE (Verhine et al. 2006), and emphasis was placed now on democratizing access to higher education and on increasing the control and supervision of the private sector. Democratization meant expanding access to *free* higher education, particularly for students from low income families. Market control was sought through evaluation mechanisms and intense regulation to enforce compliance and apply legal penalties on private higher education institutions with low performance.

14.4.1 Expansion and the Quest for Equity

During Lula's administration many initiatives were taken to expand access by removing its two most immediate obstacles: lack of income to afford tuition in private institutions and unpreparedness to face the very competitive admission exams in the free, public institutions.

14.4.1.1 Addressing Income Limitations

In 2004, after about 10 months of negotiations, which included the discussion of 292 amendments, Congress approved the legislation proposed by the government called "University for All," which became known as "Pro-Uni" (Law 3582/04; Catani et al. 2007). For the first time, a tax exemption was offered to all private institutions in exchange for the granting of full or half tuition scholarships for low income and minority students.

A parallel effort was initiated regarding the public federal sector. These universities were encouraged to implement quota programs for students coming from public high schools, which generally have poor standards, and for minorities as well. In 2008 the Programa de Reestruturação e Expansão das Universidades Federais (REUNI) program was launched, providing additional funding for federal universities to increase undergraduate enrolment and the provision of evening classes. In 2010, 113,200 new places for undergraduate programs were created, doubling the 2003 intake of 109,000 students. To support such an expansion, the REUNI program created 28,000 new places for professors and 38,500 for administrative staff in federal institutions, and more institutions were established, with the creation of new campuses, the upgrading of 38 federal technical schools to higher education status and the creation of 14 new ones. The ProUni has been by far the largest mechanism for democratizing access to higher education. Since 2005, this program has already

granted more than 1 million scholarships to students who were below the income requirements adopted by the official student loan system (FIES).

Other initiatives complemented these programs. In 2010, the loan program was transferred from a federal bank, Caixa Econômica Federal, to the Ministry of Education, with lower interest and income requirements for takers. In addition, the coverage was raised from 70 to 100% of the tuition costs and the repayment time was expanded. This doubled the volume of loans from 75,603 in 2010 to 152,406 in 2011 (Monteiro 2011). Also, the Ministry introduced a small allowance to low income students in public institutions to pay for transportation and meals.

14.4.1.2 Addressing Unpreparedness

To deal with the unpreparedness of low-income students coming from public secondary schools, the government introduced a quota system and an alternative entrance exam for federal universities. The National Assessment for Secondary Education, ENEM, which was already used as a selection mechanism for students receiving the benefits of ProUni since 2005, became also, in 2010, a door for access to public universities that agreed to receive students according to their achievements in the assessment.

A "Quotas' Act" was enacted by Congress on August 29, 2012, reserving half of the places in the federal sector to applicants from public high schools with low income and minority background. This legislation was preceded by several initiatives by public universities to introduce quotas of different kinds, and in 2012 the Supreme Court decided that race-based quotas in higher education did not go against the Constitutional provision of no discrimination. The federal institutions have 4 years to fully comply with this new Act. As of this writing, only 11 out of the 59 federal universities offer half of their places to affirmative action applicants, 21 offer some system of affirmative action, and 14 have not yet created any kind of affirmative action policy.

Outcomes For the private sector, the use of ENEM to select students for ProUni meant that these students could be more qualified than others that were admitted without any selection procedure. But to the public universities it has the opposite effect, since they had now to admit students that would not otherwise pass their entrance examinations. The unified selection system based on ENEM allowed students to move from their state of residence to other regions, particularly in more competitive fields like medicine.

Comparing 2003 and 2010 in Fig. 14.1 we see a net increase of places in every segment of the system. But, despite all the efforts to expand the public sector, the private sector increased its relative participation from 69% in 2001 to 75.2% in 2013. Behind these figures is the disparity of costs per student: R$ 18,000 in the public federal sector as opposed to R$ 5,000 in the private sector (Schwartzman 2011). Expansion of the public sector hit its limits, while the consolidation of the private sector (and commoditization of its services) picked up from 2005 onward.

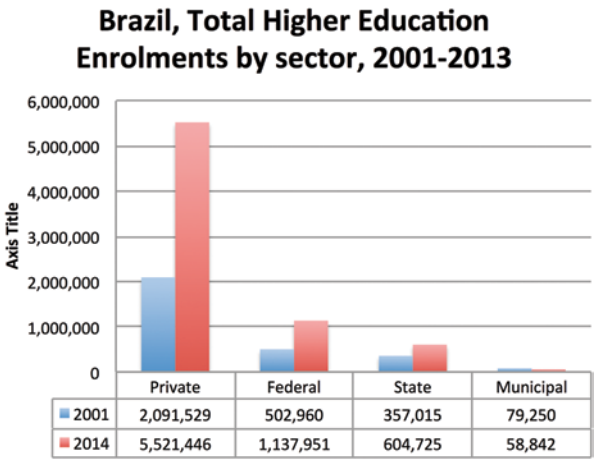

Fig. 14.1 Total enrolments in Higher Education by sector, 2001–2013

Another contributing factor was the development of distance education, which reached 15.8% of the enrolment in 2013.

Indications are that the post-2005 expansion was pushed too far. After noting that 462 out of the 923 worst undergraduate programs were in the ProUni system, the government gave them 2 years to leave the program. Other criticisms that made media headlines concern the insufficiency of the support provided for the expansion in the federal system. The installations were not adequate, the newly hired professors did not have office space, nor the conditions to remain involved in research and graduate education, since they were mostly hired to teach in the new evening courses. This, plus salary and career complaints, led to a prolonged, 3-month-long strike launched by the university teacher unions in May 2012.

A much brighter side of this expansion has been revealed by various studies comparing the academic performance of regular and affirmative action students. They consistently show that the latter has achieved as good or higher academic progress than the former, wiping out prejudices and establishing new grounds to interpret quality of teaching and the impact of motivation in students' outcomes (Ferraz et al. 2010; IPEA 2008; Velloso 2009; Waltenberg and Carvalho 2012). These are, though, preliminary assessments that need to be compared and consolidated into more representative evidence.

In the end, the intended expansion to 30% coverage of the age group fell short, despite being the single shared interest between the government and the private sector entrepreneurs. This points to the presence of other structural problems, particularly the secondary education quantitative and qualitative shortcomings. In June 2012, a new National Plan for Education was approved by Congress after a lengthy discussion, doubling the federal funding for education from 5 to 10% of GDP. Among the targets is the tripling the enrolment in secondary technical and vocational schools. As of this writing, the plan is still pending to be enacted by the Presidency, although the indications are that it will be.

14.4.2 Horizontal Escalation: More Quality Assurance for More Market Control

Quality control policies went through successive changes under the Workers' Party administrations. At first, the government dismantled the assessment mechanisms created in the previous years, but gradually replaced them with a more ambitious system that, while stressing the value of self-evaluation, introduced very controversial rankings based on quantitative indicators. The National System of Higher Education Evaluation Law (Law 10,861, known as the SINAES Law) seemed to represent a move forward in providing a more complete framework for quality development. SINAES intended to evaluate student proficiency, academic programs, and institutions. The coordination of the evaluation processes was assigned to a new National Commission for Higher Education Evaluation (CONAES) and the operations, to the Ministry of Education's Institute for Education, INEP. The guiding principles of SINAES were the respect for the diversity of institutions and programs; multiple perspectives on the evaluation process; self study as the core piece for the evaluation of institutions and academic programs; analysis of the value added by the institutions to the academic performance of the students they admitted; the autonomy of CONAES to represent both the government and the academic community (the private sector was somewhat underrepresented) as well as the transparency of processes and results.

In practice, the high turnover of the Ministry of Education's teams—four Ministers, seven presidents of INEP, and six of the national undersecretaries of education since 2003—along with the full centralization of the evaluation processes made it impossible to meet the initial expectations of SINAES. This led to the gradual replacement of SINAES' initial intentions with more controlled or standardized procedures—routine paperwork (filling out of forms) and the development of indexes to rank the institutions, strongly contested by the private sector.

The current assessment system includes an evaluation of student achievements, measured by the ENADE exam; course assessments provided by peer review committees; student opinions, cast in surveys applied together with ENADE; and statistical information on the proportion of professors with post-graduate degrees and full-time contracts, among others. A comparison between the test achievements of students entering the courses and those concluding it is used to estimate the educational value added by the courses to its students. All this information is quantified and used to produce a combined ranking called "Preliminary Ranking of Courses," a five-point scale that adds all this information with different weights, and the scores of each institution are again combined with data on the assessment of graduate education to produce a general ranking for the institution as a whole. In spite of being "preliminary," these rankings are made public and used by the Ministry of Education to decide which institutions are at the bottom and should be the first to receive the visit of external evaluators, since it would be impossible to do it for all.

The already adversarial atmosphere that evolved between the private sector and the government from the evaluation initiatives of Cardoso's administration was

so greatly aggravated that in 2011 a new office, the Secretary for Higher Education Regulation and Supervision (SERES) was created to specifically oversee the evaluation processes and enforce sanctions on private institutions that were poorly evaluated. Indications are though that this toughening of the government's attitude toward the private sector did not suffice, because in August 2012, a new bill (PL 4372/12) was sent to Congress proposing the replacement of SERES for a new National Institute for Higher Education Evaluation and Supervision (INSAES). This institute would concentrate further the regulation over the market. It would also take over CONAES authority to devise guidelines and instruments of evaluation and INEP's responsibilities over in loco evaluations. It would be partly financed by higher fees and penalties charged to the private higher education institutions, through a supervision fee that would be created and charged every semester to private institutions according to their enrolments. The INSAES project is slowly moving through Congress and does not seem to have the presidential or partisan support that is needed for approval. In the meantime, the existing evaluation fee was raised, and new penalties and fines introduced for delayed payments and other faults.

The regulation environment became too tough for individual providers, and small private institutions started to sell out to larger organizations. The Brazilian higher education sector became a global big business. Instead of controlling market behavior and making it better, the quality assurance policies provoked the capture of private higher education by investment funds and global groups. This sector is increasingly controlled by international holdings and large financial companies with open capital on the stock exchange.

A fair account of the Workers' Party administration must acknowledge the huge novelty brought by the democratization of access to higher education. The participation rate grew only two percentage points, from 11 to 13 %, of the age group, but this meant the incorporation of more than 2 million students who would not have been admitted without ProUni and the other affirmative action policies (Fig. 14.2).

The presence of this new and larger population of undergraduate students as well as of a new generation of professors without office space and participation in the graduate and research programs challenge the research universities' modus operandi. Its impacts are still to be appraised. It might have a win-win outcome with both the quota students and new professors on one side, and the research universities on the other side meeting the challenge, or it may inflict a big loss if the few research universities are turned into mass undergraduate education institutions.

14.5 Conclusions

Despite all the differences in orientation and in the ways of ruling the higher education system, all governments converged since the 1990s on the three issues below:

- They tried to expand participation, but were limited by the narrow pipeline of basic and secondary education. The Worker Party administration moved more

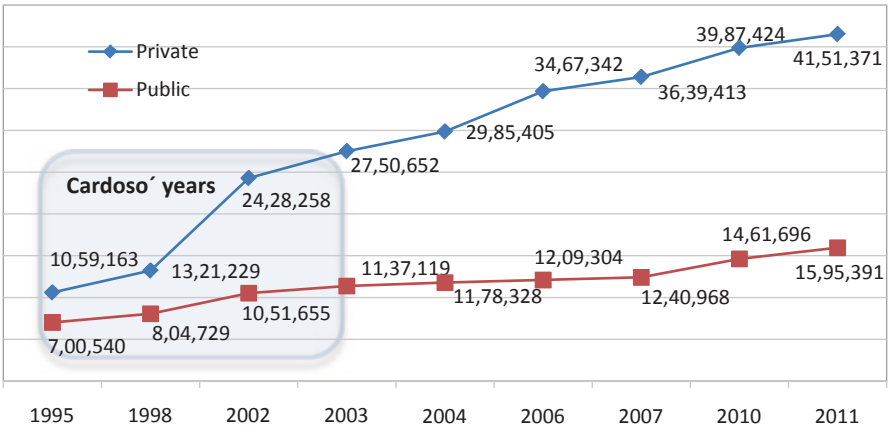

Fig. 14.2 Public and private enrolments in undergraduate programs (1960–2010). (Source: DAES/INEP-MEC)

forcefully to expand access, but could not deal with its main bottleneck: the ineffectiveness of school education.

- They enforced top–down evaluation as an instrument for market control. This aggravated the confrontation between government and the private sector, and may have pushed market consolidation. This caused losses of institutional diversity and increasing standardization of higher education services, which are becoming a commodity. Indications are that the market is running out of control, being globalized by the financial market. The lesson is that centralization, top–down policy making, and intensive regulation could not be more inappropriate to deal with a sector that has the economic weight and political leverage as the private higher education institutions in Brazil.

Table 14.3 shows how intensive the regulation has been since 1997. There are seven different types of enforceable norms and an average of 87 (Cardoso) and 82 (Lula) new regulations per year, reaching a total of more than 1500 between 1997 and 2012. Besides, hundreds of bills related to higher education have been proposed in the House of Representatives and the Senate, which are sometimes approved without proper consultation and assessment of their implications.

One account of what was happening in March 2012 is quoted below from a document that resulted from a Seminar held by the ABMES, the main association of private institution owners.

> The evaluation system is nearing collapse. INEP holds approximately 5,000 assessment visits per year, or about 100 per week. The logistics to support an operation of this size, nationwide, and every day is overwhelming. For example, there are more than 400 flights per week to be scheduled, budgeted, accounted for, and issued by INEP. Yet, for a system with nearly 30,000 undergraduate programs and 3,000 institutions, not counting new authorization and accreditation procedures for courses and institutions, 5,000 visits are insufficient. This causes crowding of the evaluation system and a growing backlog. There are higher education institutions with applications for recognition awaiting for years the visits of committees. (…) At the root of this scenario is a succession of problems, both in the

Table 14.3 Higher education legal acts (1997–2012). (Source: ABMES. Ensino Superior Legislação Atualizada nº 14)

Year	Laws	MP	Decrees	Resolutions	Portarias inter-minist	Portarias MEC	Pareceres CNE	Total
1997	9	4	28	7	4	39	20	111
1998	15	1	41	4	0	13	8	82
1999	4	5	30	3	0	5	7	54
2000	3	42	24	7	0	15	29	120
2001	8	14	14	5	0	4	32	77
2002	0	0	12	25	0	0	39	76
Cardoso	*39*	*66*	*149*	*51*	*4*	*76*	*135*	*520*
2003	5	4	10	5	0	58	22	104
2004	5	2	5	7	8	105	17	149
2005	3	2	2	2	0	166	0	175
2006	5	0	10	28	79	0	5	127
2007	4	1	12	16	63	0	2	98
2008	1	0	0	14	30	0	0	45
2009	0	0	0	0	1	1	1	3
2010	1	0	1	2	10	0	2	16
Lula	*24*	*9*	*40*	*74*	*191*	*270*	*49*	*657*
2011	9	0	10	32	48	57	1	157
2012	8	1	7	22	2	78	0	118
Dilma	*17*	*1*	*17*	*54*	*50*	*135*	*1*	*275*
Total	***80***	***76***	***206***	***179***	***245***	***481***	***185***	***1452***

CNE Conselho Nacional de Educação

> technical and the legal spheres. (…) The consolidation of jurisprudence will transform the lack of dialogue between MEC and the institutions in battles in the Courts. Overcoming this scenario does not mean throwing away the evaluation effort performed to date. Brazil managed to build an evaluation system that stands out in the international arena. Few countries can, for example, apply a test to all students in all courses. But adjustments are urgent. …, surely the Courts are not the best places for such a dialogue. The disputes are accumulating with the understanding that the institutions are being harmed by MEC's conduct. (Garcia et al. 2012)

Despite the litigious relationships with the government, the private higher education sector continued to be highly profitable as big business. In 2009 the "for-profits" segment declared a R$ 24 billion (US$ 11 billion) annual revenues, which almost doubled the 2005 revenue of R$ 15 billion. Also in 2009, 9 among the largest 20 higher education groups had financial market partners or investors. Figure 14.3 compares the 2003 and 2009 rankings of Brazilian higher education institutions in terms of enrolments. In 2003 the ten top higher education institutions were largely surpassed by new open capital groups and by holdings of institutions (international, as Laureate, or not, as Kroton). In 2009, only a few were still in the hands of the

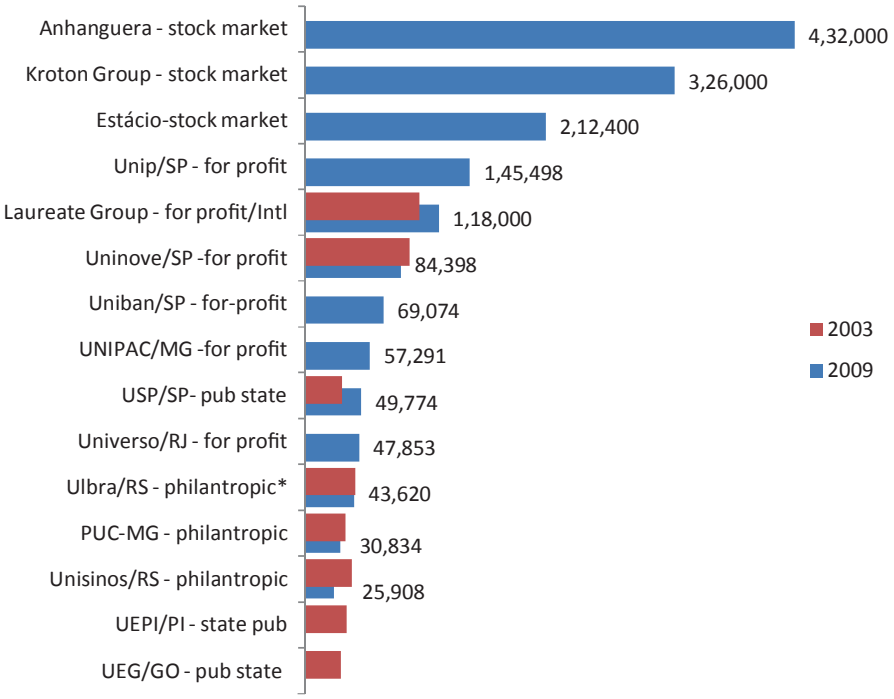

Fig. 14.3 Enrolments in the largest Higher Education Providers in 2003 and 2009 (Source: Nunes and Carvalho 2004; Sécca and Leal 2009, Table 14.2 p. 113–114, and the institutions' (Anhanguera, Estacio, Kroton, and Laureate) websites)

2003 owners.[2] Two state-universities lost their places in this group, while five "for profits" stepped in.

One account of this market in 2011 is quoted below from the newspaper Valor Econômico.

> Since 2007, when the largest groups began to open capital there was not one year with so outstanding deals as 2011 in the higher education sector. According to an assessment prepared for Valor, just the acquisitions made by the four open capital groups amounted to R$ 2.4 billion. This is the amount invested by Anhanguera, Abril Educação, Estácio and Kroton groups only. (Koike 2012).

14.5.1 Microregulation and Macrogaps

Today, the Brazilian higher education sector is marked by the high concentration and gigantic size of its private higher education institutions. Microregulation over academic inputs neither controlled the evolution of the market nor addressed some

[2] These are the cases of Whitney, DeVry, Apollo, and Laureate.

very important aspects of higher education. It has left out, for example, the provision of information on graduates' professional life—their acceptance in the job market, their careers, salaries, and time needed to compensate for the investment in tuition. Also, the *economic dimension* of private higher education institutions has been overlooked by the Ministry of Education:

> Despite the economic relevance of higher education, this regulatory policy has given little attention to economic issues. MEC only collects information on academic matters—pedagogical project, faculty, and facilities. Nothing captures the economic dimension of the institutions. (…) not one out of the 445 variables used in the four assessment mechanisms—*Capes, Enade*, accreditation and re-accreditation of *institutions* and of academic *programs*—deals with economic aspects of private higher education institutions or their sponsors. (Nunes et al. 2005)

A third underregulated area is *internationalization*. To be sure, there has been much internationalization in academic research since the establishment of graduate education and research in the public universities in the 1970s. CAPES and CNPq (Brazil's National Research Council) along with other agencies have provided fellowships for study abroad, supported the flows of visiting professors, their participation in and organization of international scientific events, and the reception of Latin American and Portuguese speaking nationals through specific programs and bilateral agreements. Much incentive has been placed on publications in international scientific journals. Indeed, the country's records are impressive: 32,100 articles in 2009 and the 13th position in the ISI Web of Science ranking (Knobel 2011). With regard to Brazil, Russia, India, China, and South Africa's (BRICS) shares of the world publications, China accounts for 9.9%, India for 3.4%, Brazil for 2.7%, and Russia for 2.4%, according to a 2010 Thomson Reuters survey.

Apart from this, data on internationalization are scarce and scattered. The existing statistics do not cover the number of international students and professors received in Brazil—their home countries, field and level of studies, and host institutions. Even CAPES, which has a dozen international cooperation programs and bilateral agreements with 22 countries, does not include internationalization in its statistics, except for the distribution of students with CAPES scholarships abroad from 1998 to 2010 and some information on the "exchange student" programs for undergraduate and graduate levels.

With regard to the validation of foreign diplomas, there is just one system in place, an annual exam for holders of foreign degrees in medicine. A pilot experience inspired in the ERASMUS scholarship program covalidated courses in six areas among Mercosur countries and allowed for the exchange of a few dozen students during 2010 and 2011. The main initiative is the "Science Without Frontiers" program, launched in July 2011 intending to grant 100,000 scholarships abroad for undergraduate, doctoral, and postdoctoral studies, especially in the science, technology, engineering, and mathematics (STEM) fields (Castro et al. 2012). One-fourth of the scholarships are being granted by private firms and an unspecified amount (below 20%) will be granted to either repatriate Brazilians or to attract foreign scientists. No provisions were made to bring back students sent abroad

The last and most worrying aspect is the lack of information and regulation regarding the international providers that are already established in Brazil. They do not show in higher education statistics because they maintain the identities of the institutions they buy and the official information does not register the owners, just the institutions' names. They operate with closed capital that makes it difficult to follow their growth. There is a proposal in Congress limiting the participation of foreigners to 30% of the shares of a higher education institution. It is, however, part of a higher Education Reform Bill (PL 7200/2006) that has been blocked in Congress since 2006.

In short, there is no strategy for the internationalization of higher education institutions in Brazil. It is possible, but difficult for a foreigner to be hired through the public examination system of access to public university careers, which requires written and spoken Portuguese. Student exchange programs are scattered and some private institutions have developed their own mechanisms. For the public sector the inability to charge fees and the full financial dependence on government make it difficult to create the proper means for registering international students and professors—except those already funded and channeled through official programs. The bureaucracy for obtaining visas, opening bank accounts, and renting apartments, as well as the noncoincidence between Brazil's school calendar and the one adopted in the northern hemisphere pose additional difficulties. Another aspect is the language barrier, which has not been addressed.

We have seen very intensive, although not very successful, efforts to regulate the higher education market in Brazil. The microregulations of academic inputs raised the costs for private higher education institutions, but not its quality. It led to increased use of legal action to deal with the government, along with the concentration of private higher education institutions. The standard has become the provision of low-cost mass education. The market is doing well, but not higher education. The majority of courses focus on the social sciences which are more amenable to evening classes and do not require investment in equipment and labs. One consequence is the growing unmet demand for STEM professionals.

The policy makers have underestimated the complexities and immense attractiveness of the higher education market in Brazil. Some analysts point to the resilience of the ideological bias against markets and the payment for a public good such as education (Nunes et al. 2005). According to this view, strategic solutions for higher education have not been envisioned because the post-1996 governments refused to embrace the option made since the 1968 University Reform to let the private sector take care of the expansion of the system. For decades the private sector has been a major actor but not entitled to participate in government's numerous quality development programs offered to the public sector, or invited into the policy making arenas. As long as the government does not act positively with the private sector to set strategies for higher education, the odds are that the market will endure by its own means and for its own ends.

The subordination of the higher education administration to political control, high turnover, and discontinuities with each new holder of an office only has aggravated the situation. It has prevented the learning from experience, and the consolidation of a more technical orientation, a stable environment, and interactive processes that

are crucial to facilitate adherence to the policies. The country has ended up with a jungle of norms, often conflicting with each other—leaving space for legal action—that did not go beyond detailed bureaucratic verification of academic inputs, fuelling battles in the courts. Centralized regulation has overwhelmed the Ministry of Education agencies and impoverished evaluation. The proposed INSAES insist on the same bad formula: a new top–down policy creating a new government agency to curb the private sector.

However, there are also brighter sides to Brazilian higher education, related to the expansion of research and graduate education, and the quality of many public and private professional courses and the growing but limited access for persons coming from poorer backgrounds. As far as regulation and quality assurance are concerned, there is much to be revised.

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