

State and university in Chile: problems of distinction about their public function

Estado y universidad en Chile: problemas de distinción en torno a su función pública

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Abstract

The article examines the evolution of the legal regulations about Chilean universities, in order to understand the present uncertainty surrounding the understanding of the public function of these institutions. First, we describe the economic and philosophical political approaches to the concept of public in relation to universities and criticize the lack of historical studies on the changing definitions of the public good. Then, after examining the academic debate about the public role of Chilean universities, we will analyze the evolution of the main regulations concerning university activities. Having described the legal regulations about the role of Chilean higher education institutions, we propose an interpretation of these historical changes. Finally, the article summarizes the ideas explored and presents possible lines of research and policy recommendations.

Keywords: public good, university legislation, educational discourse

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Resumen

En este artículo examinaremos la evolución de las normativas legales acerca de la universidad chilena, de modo de comprender la actual incertidumbre respecto a la definición de lo público en relación a estas instituciones. En primer lugar, describiremos las aproximaciones tradicionales en torno al concepto de lo público de las universidades: desde la economía neoclásica y la filosofía política y criticamos la falta de una reflexión histórica acerca de lo público. A continuación, tras examinar el debate académico sobre los atributos públicos de las universidades chilenas, analizamos la evolución de las principales normativas relacionadas con estas instituciones. Una vez descritos los distintos énfasis que el Estado ha tenido en torno al rol de estas universidades, proponemos una hipótesis interpretativa en torno a esta evolución. El artículo finaliza con un resumen, posibles líneas de investigación y recomendaciones de política pública.

Palabras clave: bien público, legislación universitaria, discurso educativo

“Menard –I recall– stated that censoring and praising are sentimental operations completely unrelated to criticism.”

Borges, J.L.

Over the last years, discussion on the role of universities has focused on the ability of these institutions to contribute to the public good. Doubtlessly, this can be due to the link between this debate and funding and regulation issues. Precisely due to this, it is not surprising to note that, especially in university systems with a high degree of privatization, discussion on the subject has gained enormous importance (González, 2006; Marginson, 2007; Pusser, 2005).

Nevertheless, historical analyses of the concept of public good have been rather limited (Desai, 2003). As will be observed, most analyses of the public domain in connection with universities belong to analytical traditions whose reflections are embedded in an a-historical and decontextualized definition of the meaning of the public good, either based on the assumptions of political philosophy or neoclassical economics. In consequence, the analysis of the public contribution of universities tends to adopt an external position: after defining some of these institutions' activities as public, researchers assess whether they meet these expectations in their functioning.

Thus, in general, such approaches regard universities as ‘organizations in a deficit state’. In our opinion, it is more advisable to analyze universities upon the basis of a historical principle: “the criteria through which these institutions are evaluated and criticized are internal to society and depend on it” (Luhmann & Schorr, 2000). In this regard, evolution in the comprehension of public goods, political and academic conflict regarding them, and their use as an assessment criterion provide valuable information about the position of universities in modern society.

In the present article, we will apply these notions and reconstruct the evolution of the legal definitions of the Chilean university. As noted by Daniel Levy (1986), until reforms were implemented in the 1980s, the State had not defined a specific treatment for private and State universities, an exceptional case in Latin America. The persistence of this arrangement throughout several forms of government and its historical stability, as well as the dramatic rift caused by the 1981 university reform and its subsequent consolidation, suggest that the relation between the State and universities constitutes an interesting case for analyzing the social factors underlying the legal definitions of these institutions and how this has influenced reflection on the public nature of the activities of Chilean universities.

The article is organized into the following sections. First, we will analyze the main views on public goods, from the perspective of economics and political philosophy. We take into account their criticisms and point out their limitations for our analysis. Afterwards, we examine the academic debate in Chile about the public role of universities. Third, we conduct an in-depth review of the legal definitions of Chilean universities and propose a hypothesis to interpret these transformations. The article ends with a

summary that suggests future lines of research and highlights the consequences of the analysis conducted for the implementation of the higher education reform.

The definition of the public goods of universities

The concept of the public good has become increasingly important in the reflection on higher education institutions (Marginson, 2007; Marginson 2011; Pusser, 2005). A look at the specialized literature reveals two commonly used meanings of the public domain in connection to universities, the first derived from neoclassical economics and the second from the philosophical notion of the public sphere.

The neoclassical economic approach is based on the contributions of Paul Samuelson (1954). In the 1950s, this US economist defined public goods according to two central characteristics: non-rivalry and non-excludability. The first of them –non-rivalry– refers to the idea that the individual consumption of these goods does not entail a decrease in their availability for other consumers. In contrast, the second attribute –non-excludability– concerns the difficulty of excluding anyone interested in enjoying these goods. Thus,

public goods are those whose benefits extend individually to the whole community, regardless of whether individuals wish to purchase them. Private goods, in contrast, are those that can be divided and provided separately to individuals without producing external benefits or costs to others” (Samuelson & Nordhaus, 1996, p.356).

Some of these goods are free-to-air television (Samuelson, 1954), national defense (Samuelson & Nordhaus, 1996), knowledge (Stiglitz, 1999), and education (Labaree, 2000).

This concept has had a significant influence on economic reflections about the public domain (Cornes & Sandler, 1994; Ecke, 1999; Rosen & Gayer, 2009; Gruber, 2011). Nevertheless, scholarly approval has not been unanimous, as criticism of this concept shows. Several authors have stressed that such an analysis reduces public goods to the institutional definitions advanced by actors linked to the State (Rothbard, 1981) or that, in practical terms, no good can be really public inasmuch as goods can be converted, through privatization processes, into goods characterized by rivalry and excludability (Malking & Wildavsky, 1991).

With respect to universities, this view of public goods has had some influence. After criticizing the economic analysis of the concept due to its implicit pro-privatization bias and a-historical nature, Simon Marginson (2007) reviews its key characteristics from an economic perspective (non-rivalry and non-excludability) in order to introduce a definition of public goods that is useful for conducting research and formulating public policies. Based on this, the author defines ‘public goods’ as follows: “public goods are goods that (1) *have a significant element of non-rivalry and/or non-excludability, and (2) goods that are made broadly available across populations. Goods without attributes (1) or (2) are private goods*” [emphasis added] (Marginson, 2007, p.316). Afterwards, Marginson provides examples of the goods of this type produced by modern higher education institutions: knowledge, literacy, cultural education, and social mobility opportunities (Marginson, 2007, pp.318-319).

However, as noted early on by critics of analyzing the public sphere based on non-rivalry and non-excludability (Buchanan, 1965; Cornes & Sandler, 1994), this notion appears to ascribe insufficient importance to context when defining what is understood by *public*. At least from a sociological perspective, this approach presupposes a definition of the public domain (as that which is non-excludable and non-rival), an operation used to determine which activities possess these qualities. Nevertheless, merely defining certain activities as public, such as noting that one of the public goods of universities is their contribution to the social opportunity structure (Marginson, 2007), fails to explain which forms of society value universities as agents of social mobility or how such institutions have come to be associated with the meeting of these expectations. Certainly, this socio-economic idea is not present in the reflections on the function of higher education institutions of previous centuries (Scott, 2006; Humboldt, 2012).

A second alternative, linked to the conceptualization of neoclassical economics, assesses the public aspects of universities according to their owner. The central premise in this approach is the existence of an intrinsic link between the State and public goods. As pointed out by José Joaquín Brunner and Carlos

Peña (2011), this national idea of the public domain is rooted in a conceptualization of State institutions as representatives of an emancipation project. Despite its importance for generating public policies, this view of the public sphere appears to pay little attention to the advanced degree of differentiation of the education and science systems, as well as to the relative independence of university dynamics regarding the territorial limits of states (Morandé, 2011; Labraña, 2016). Likewise, the case of Chile and its acknowledgment of the public function of private universities before the 1980s, although exceptional within Latin America (Levy, 1986), reveals the problems of conducting an analysis based on the link between the State and the publicness of universities.

On the other hand, the political-philosophical perspective provides an alternative to this conceptualization of the publicness of universities. In his study *“The public sphere: An encyclopaedia article”*, Jürgen Habermas (2010) regards the public domain as a space where all citizens can analyze, criticize, and debate in a rational manner the issues affecting them. With certain variations, this conceptualization is developed by Hannah Arendt (2009), who identifies the public domain as a political space that differs from labor (activity linked to the reproduction of the biological substrate and whose end is to reproduce life itself) and work (activity with which human beings construct a world of things and artificiality). Therefore, from this perspective, the public sphere is the space in which humans exercise their freedom, based on plurality and discourse as means of interaction with others. In this regard, political activity is the dividing line between public and private: while private space is based on “being with the other” due to biological needs, public space is the particular space of freedom and equality (Arendt, 2009).

This conceptualization has influenced the notion of the public domain with respect to universities. These higher education institutions are regarded as having an unavoidable responsibility in the defense and preservation of values such as democracy, research, equality, or the generation of critical awareness in students (Altbach, 2002; Giroux, 2002; Giroux, 2006; Giroux, 2014; Silva, 2001), principles used to argue that public authorities should have a key role in terms of their regulation and funding.

The renowned founder of critical pedagogy, Henry Giroux, is a representative of this approach. This author stresses that, in a time when neoliberalism predominates, it is essential to engage in resistance practices preventing the capture of the public sphere by *de facto* powers. University is regarded as an institution that must promote social change, following the democratic values of justice and equality, and resist the imposition of market-based logics in the activities of its academics and students. Thus, ideally, it must be a “critical university”, aware of its role in the preservation of a public sphere free from pressures guiding its evolution towards particular interests (Giroux 2002; Giroux, 2006; Giroux, 2014).

Criticism of definitions of the public domain from this perspective matches, to some extent, objections to the neoclassical economics approach, that is, the minimization of the importance of the social conditions that make possible certain definitions of the public. As suggested by some objections to this use of the concept, this idea of the public domain is believed to ignore its historical nature, merely listing the ideal attributes of this space (Calhoun, 1998; Fraser, 1990).

In sum, according to their critics, both approaches (neoclassical economics and political philosophy) omit a critical reflection on the historical evolution that makes possible certain meanings of the public sphere in society. In consequence, their analysis tends to focus on the *definition* of the public domain in connection to universities, an operation through which they fail to analyze the historical possibility conditions of these definitions. Either by regarding them as non-rival and non-excludable goods or as the space for fulfilling the promises of modernity, these understandings of the public domain do not consider how these conditions are socially constructed or the degree to which they are explained by social changes. As the following section will show, these problems also affect the analysis of the public domain in connection with Chilean universities.

The academic debate in Chile about the public role of universities

Discussion on the public role of universities is ongoing and, as the section below shows, follows the approaches analyzed above. Specifically, national debate appears to comprise several positions: from those that only identify the State with the public domain to those that associate it with the fulfillment of a certain political and values-related function.

The link between the State and public goods is discussed by several authors. With a critical view of Chilean higher education, Alberto Mayol (2014) emphasizes the need to abandon the neoliberal understanding of the public domain in universities. According to his analysis, only what is State-owned is synonymous with the public domain. In contrast, any arguments defending the ability of private institutions to contribute to the public domain are regarded as mere strategies of private actors to gain access to State resources (Mayol, 2014). The same notion is advanced by María Olivia Mönckeberg (2011), who classifies universities as public or private depending on whether they are owned by the State, thus equating the public domain with State property. Likewise, this interpretation of the public domain is also followed by the OECD (2009) in its description of Chile's current higher education system.

Similarly, José Rigoberto Parada (2010) proposes a classification of universities based on criteria of ownership, legal status, and university products. When analyzing university products, Parada employs Samuelson's conceptualization to determine whether they are public or private goods. The author argues that professional degrees are private goods; academic degrees, public goods; basic research, a public good; applied research and experimentation, both; and outreach, also both.

On the other hand, criticism of the notion that public goods must have a link to the State is also present in Chilean academic debate. According to José Joaquín Brunner and Carlos Peña, it is not possible to support the identification of State property with the public domain (Brunner, 2005; Brunner, 2014). These authors suggest that higher education institutions can contribute to the establishment of a public sphere regardless of their owner (Brunner & Peña, 2011). Thus, after conducting a historical analysis of the evolution of universities, Brunner (2005, p.32) states that "all universities are public". Thus, according to these authors' analysis, the link between the State and the publicness of universities is a historical and contingent arrangement, explained by "the modern narrative that assigns emancipatory and Enlightenment-inspired functions to the national State" (Brunner & Peña, 2011, p.51), presently in decline. The authors point out that this crisis may be the cause of today's poor understanding of the publicness of universities and that, at the same time, it poses the need to generate a public space, open to State and private universities, based on certain conditions (Peña & Brunner, 2011).

The same criticism of the association between the State and the public domain is advanced by other authors. Pablo Soto (2016) objects to the identification of the public domain with the State-owned. According to his analysis, being managed by the State does not ensure that a university's products or processes will necessarily contribute to the public good, because both can be captured and distorted by the institution's private interests.

Similarly, Fernando Atria (2014) criticizes the neoliberal understanding of the public domain and the corresponding privatization of the State and its political engagement in market-driven logics. According to this author, abandoning the neoliberal paradigm does not require assigning the production of public goods to the State, as other authors propose, but instead creating a public space that predates the State, which he labels the *regime of the public domain*. This regime, Atria contends, represents an institutional context that runs parallel to the market, but which differs from it because its prerogatives include the nonexistence of de facto powers and the subordination of individual interests to a common one. Given that these demands have an intrinsic connection to the State, the author argues that all institutions that adhere to this regime, both State- and privately owned, are naturally adapted to this form of government.

With respect to universities, Atria (2014) notes that it would be naive to think that a State university will behave differently from a private institution in a market-driven context. Only an institutional context forming a public sphere outside of the market—as in the case of the regime of the public domain—could guarantee this difference. This entails three requirements for higher education institutions: 1) free access to and direct funding of non-teaching activities whose results are public; 2) autonomy and university government to protect the institution from private interests; and 3) academic and research freedom to foster the development of the public domain.

From a similar perspective, after analyzing the main theoretical approaches to the public domain, Carolina Guzmán-Valenzuela (2016) develops a particular conceptualization of what must characterize a public university. Drawing elements from several traditions, the author describes the need for a "transformative university", an institution that would function as an ideal of contemporary universities thanks to its interest in the democratic values of liberty, inclusion, equity, and justice.

In brief, Chilean scholarly debate comprises several definitions of the concept of the public domain with respect to universities. Some of them are focused on the State, others are anchored in the views of neoclassical economics, and others are linked to the mission of contemporary universities as representatives of the values of modernity. Nevertheless, beyond the debate about which of these theoretical proposals is the most likely to be realized in a context of imposed neoliberal policies –a characteristic of the Chilean higher education system– it is interesting to note the absence of historical studies on the meaning of the public domain in the country. As in the international literature, the concept of the public domain is used as a model for assessing university activities in the present and suggesting future courses of action. In our opinion, this must be complemented with a description of the possibility conditions that make certain views on the public domain more or less likely, a point to be discussed in the following sections based on an examination of the legal definitions of university.

The Chilean State and the public goods of universities

At first sight, it might appear contradictory to focus on the definitions of State, considering its peripheral position regarding the scope of action of universities due to the globalization of education and science systems, on the one hand, and the implementation of neoliberal reforms, on the other. However, we will argue, this contradiction is only apparent. As noted by Joanna Williams (2016), the concept of public good has historically been associated with definitions of State, through a view of universities as institutions that generate knowledge, contribute to national development, or increase social mobility.

Considering the above, the Chilean case is especially interesting to analyze for three reasons: 1) the historical link between universities' orientations and political powers, 2) the State's historical indifference regarding the ownership of institutions (State/private), and, finally, 3) the impact of neoliberal reforms on this association between the State and universities over the last decades.

In contrast with Europe, where universities tended to evolve in opposition to royal and ecclesiastical powers, Latin American institutions underwent this process forming an alliance with such powers (Brunner, 1990). The transference to Latin America of Spanish models, such as those of the universities of Salamanca and Alcalá de Henares, was mainly intended to assist the royal powers through the training of civil servants to take part in the nascent bureaucracies of the colonies or evangelize the population (Arocena & Sutz 2000; Brunner, 1990). This association between universities and political powers remained unchanged after independence. From that point onwards, universities were mainly considered in terms of their contribution to the consolidation of nation-states through the education of political elites and the training of civil servants (Bernasconi, 2008).

This political orientation of university activities is a peculiar trait of the Latin American model. An additional particularity of the Chilean case is that the State chose not to differentiate between State and private universities. Due to this, the State-public association, characteristic of most countries in the continent, tended to lose strength. Private and State universities confirmed the validity of this undifferentiated treatment through the adoption of similar characteristics in terms of government, funding, and functions performed (Levy, 1986).

Finally, changes in the legal definitions of Chilean universities are also relevant due to the transformations that the State-university relationship underwent after the neoliberal reform imposed by the military dictatorship and its consolidation over the following decades. Nowadays, this system displays one of the highest degrees of privatization in terms of the number of students attending private institutions, with the State playing a relatively minor role in the funding of university activities, be them State-owned or private.

These particularities make Chile an excellent case for analyzing changes in the public domain. Due to an evolution historically linked to the State, irrespective of the ownership of the institution, changes in the role of the State resulting from neoliberal reforms have disrupted the traditional understanding of the public domain with respect to universities. In the following section, we will argue that the understanding of the public work of Chilean universities has been based on the relationship between the State and higher education institutions and on the orientation of their activities towards the fulfillment of nationally-relevant objectives. This relationship was manifested in two ways: 1) through the Universidad de Chile as

the supervising entity of private institutions recognized as contributory to the State's educational function and 2) through the funding of State and private universities whose functions were similar. The higher education reform imposed by the dictatorship in the 1980s and its subsequent consolidation through the creation of remote regulatory mechanisms and their association with funding eliminated this relationship between the State and universities and turned the public domain into a matter of conflict.

Documents studied

In order to study these definitions, we analyzed the main norms regulating the relationship between the State and Chilean universities. Our analysis was focused on the State's expectations regarding universities and the evolution of regulation and funding mechanisms. A list of the documents analyzed has been included under the heading "Primary sources" at the end of this article.

Results

Education received special attention in the reflections of pro-independence intellectuals (Gutiérrez, 2011). According to the predominant views at the time, education was considered to play a key role in the preservation of social order and the establishment of the new nations (Bernasconi, 2008; Brunner, 1990; García-Guadilla, 2008). In line with this political function assigned to higher education, one of the first actions of the new Republican governments was to replace the Spanish Universidad de San Felipe with the Universidad de Chile. This institution began functioning on November 19th, 1842, thanks to the enactment of the Organic Law of the Universidad de Chile. This law highlighted the functions that this institution should fulfill. First, it was intended to become the "body in charge of education and the cultivation of letters and sciences in Chile" (art. 1). In addition, the university was expected to oversee the whole of the educational system by "managing Chilean literary and scientific centers and inspecting all other educational institutions" (art. 1). Lastly, the Universidad de Chile was also tasked with providing academic consultancy services to governments through its Faculties of Philosophy and Humanities, Mathematical and Physical Sciences, Law and Political Science, and Theology (articles 8 to 12).

In this respect, the law initially regarded the Universidad de Chile as a Superintendency of Education and as a Scientific Academy (Serrano, 1994). The way in which these tasks had to be conducted was established by a later document: the University Council Guidelines (1844). According to these norms, a Council, composed of the President and the deans of the university, two members selected by the government, and a General Secretary, would be in charge of improving studies in all areas of knowledge, writing administration and disciplinary codes for schools, and overseeing the fulfillment of the norms of the national educational system.

On the other hand, the scientific work of the university was given less importance in legal definitions. The difficulties associated with establishing scientific academies in Chile meant that later regulations ascribed more relevance to professionalization and superintendence tasks. This change was confirmed in the Law of Secondary and Higher Education (1879), a set of norms that oriented the activities of national universities in this direction. First, it established that "higher education requiring the exercise of the scientific and literary professions" (art. 1) would be funded with national resources. Afterwards, it replaced the Council of the University with the Public Instruction Council, which was more independent (articles 6, 7, and 8), and whose specific functions were to dictate the syllabus and regulations of public educational establishments; to determine, with the approval of the President of the Republic, the final examinations for awarding university degrees; and to exercise "its vigilance and policing powers regarding morality, hygiene, and the safety of students and employees in secondary and higher education establishments, both public and private" (art. 9), among other educational matters.

The next relevant State definition of the role of universities was contained in the Political Constitution of the Republic (1925). Following the constitutional reform of 1874, which guaranteed academic freedom by introducing it into the Constitution of 1833, the 1925 Political Constitution preserves and reaffirms this principle along with the right to education (León, 2015). Its third chapter defines academic freedom as one of the constitutional guarantees; in addition, it notes that public education is a central concern of the State, defines primary education as mandatory, and establishes the existence of a Superintendence of

Public Education, in charge of inspecting education in Chile under the guidance of the authority of the government (article 10, 7th point).

During this period, the creation of new private universities appears to have increased the complexity of the university system. In 1888, the Pontificia Universidad Católica de Chile was created (recognized by the State as a private university in 1928) due to the need of stakeholders linked to the Catholic Church to deal with the growing secularization of the State (Krebs, Muñoz, & Valdivieso, 1994); in 1919, the Universidad de Concepción (recognized by the State in 1928) was created by a group of professionals in the area who did not obtain a response from the State to their project of a regional higher education center (Molina, 1945); in 1926, the Universidad Técnica Federico Santa María (recognized by the State in 1929) was founded in accordance with the will of the regional businessman whose name it bears (UTFSM, 2016); and, in 1928, the Pontificia Universidad Católica de Valparaíso (recognized by the State in 1929) was also founded as a product of a will, although its specific objective was to increase the cultural level of the lower classes within a Christian framework (Urbina & Buono-Core, 2004). Except for the Pontificia Universidad Católica de Chile, all the institutions mentioned were created in response to the public's concerns about the disadvantages of the regions due to the migration of students to the capital.

The State responded to this situation through two complementary mechanisms: on the one hand, it recognized all universities, both State-owned and private, as institutions that “contribute to educational functions” and as “public law entities” and, on the other, subjects private universities to the control of the Universidad de Chile. Thus, Decree-Law number 7,500 (1927) recognizes the administrative autonomy of universities and their ability to define “all that concerns their organization, location, and functioning” (article 26). Also, this decree establishes that “State universities and private ones, recognized as contributors to educational functions, are public law entities” (article 38). However, at the same time, this decree established that the public contribution of private universities was subordinated to the Universidad de Chile's control over the degrees issued by them. Decree-Law number 4,807 (1929), the Organic Statute of University Education, which came into effect once number 7,500 was derogated, further develops this idea. This decree stated that the Universidad de Chile would be in charge of “the cultivation and teaching of Sciences and Letters”, along with the “creation and direction of scientific research institutes and of public Higher Education centers and associated organizations” (article 1). The norm ends by noting the central role of the Universidad de Chile in the development of the country through the “improvement of education and general culture in the nation” by means of “a) Free courses; b) Post-graduate courses; c) Conferences within and without the University; d) Seminars, scientific research, and publications” (article 53).

Specifically, with respect to the relation between private universities and the State, the norm establishes the key role of the University Council. This body is composed of the President, the Deans of each Faculty, the Secretary General of the Universidad de Chile along with the general directors of Secondary and Primary Education, and two advisors selected by the President of the Republic (article 4). Its functions include “creating regulations for enrollment into higher education centers” (article 14, i) and “proposing to the Supreme Government [...] the number of students that private education centers can send to be examined” (article 14, j; also article 79). Thus, the creation of any teaching institution “intended to prepare students for examinations leading to the attainment of degrees issued by the Universidad de Chile” required the Government's authorization, after a report by the University Council (article 77). The very operation of these institutions was therefore subjected to this Council, because all teaching whose end was to become eligible for degrees awarded by the Universidad de Chile had to follow “syllabuses and programs approved by the University Council for the schools of this University” (article 78). Specifically, the norm stated that “in order to receive degrees, students from private higher education institutions must take examinations before committees selected by the University Council from a set of names proposed by the Dean of the Faculty” (article 80).

The importance of the subjection of private universities to the Universidad de Chile's supervision should not be underestimated, especially considering that this determined the validity of the professional degrees obtained in higher education. The same norm states that the professional degrees awarded by this University were required

1) To perform public functions or jobs necessitating the special competences that such degrees certify, or to obtain temporary or transitory positions of the same nature, assigned by judiciary or administrative authorities or with the approval of such authorities; 2) For the authorized practice of medicine, pharmaceuticals, or dentistry; and 3) For special acts in which the law requires the participation of a lawyer (article 46).

Nevertheless, afterwards, this document added that such regulations did not affect the ability of private institutions to operate “with no other limitations than those imposed by the laws in force”, a point that paved the way for the validity of the degrees of private university graduates to be recognized, first in practice and later through laws and decrees (Bascañán, 1960, p.18; Campos, 1960, pp.190-193).

Over the following decades, this arrangement between the State and private universities –mediated by the Universidad de Chile’s control over degrees– lost relevance. In practice, professionals from private universities were valued regardless of whether their degrees had been previously validated by Universidad de Chile academics (Campos, 1960). However, this rupture in the traditional relationship between the State and universities did not lead the former to start differentiating between the contributions of State and private higher education institutions. In fact, the State confirmed its willingness to treat them equally by providing resources to both types of institutions in order to gear their activities “towards cooperation with the Corporation for the Promotion of Production, the State’s technical bodies, and private entities and companies”, as pointed out in Law number 11,575 (1954). This norm states that, from January 1st 1956 onwards, “0.5% of all direct and indirect State taxes and of all customs and export fees” must be deposited, for 20 years, in a special account aimed at forming the Fund for University Building and Research (article 36). These resources were to benefit the Universities of Chile (10/18), Concepción, and Católica de Chile (2/18 each), and Católica de Valparaíso, Técnica Federico Santa María, Técnica del Estado, and Austral (1/18 each). Specifically, the norm states that these funds should be used to

build, furnish, prepare, and equip experimental stations, plants, laboratories, and institutes of scientific and technological research, aimed at strengthening and improving the productivity of agriculture, industry, and mining, *promoting the inventorying and the rational use of the country’s resources, and ensuring the proper organization of economic activities* [emphasis added] (article 36, a).

This peculiarly undifferentiated treatment of State and private universities, now without the Universidad de Chile’s control over degrees, can be understood by examining the similarities between both types of institutions¹. As noted by Daniel Levy (1986), after independence and until the Unidad Popular government, the Chilean university system was characterized by homogeneity between public and private institutions. According to this author’s analysis, this uniformity was manifested in terms of: 1) funding, due to the direct State subsidies benefiting private universities; 2) government, because the Universidad de Chile, the “national university”, was established as a model of institutional government and management for its private peers, which were also subjected by law to State control through the supervision of the Universidad de Chile; and 3) orientation of their functions, given that, despite diverging more than in the previous aspects, this differentiation was never drastic. Thus, distinctions regarding religiosity (secular/religious), politics (left/right wing), fields of study (social/natural sciences), and socioeconomic makeup (elitist/mass), do not result in marked differences in terms of the education provided, the activities conducted, or the relationship established with the State.

The review conducted thus far confirms that the public nature of universities was not questioned in the legal definitions of universities. In practice, there was no difference between the public and private activities of universities, because all these higher education institutions, due to the mere fact of being universities, were recognized as organizations that contributed to the common good. As previously noted, this relationship was founded on the Universidad de Chile’s control of degrees and the similarity between the activities conducted by these institutions. Even though the State displayed a preference for its own universities, an issue reflected in their institutional aims and in the larger amount of resources allotted to them, the public role of private universities was still recognized through the absence of regulations within a context of “privileged autonomy” and unconditional direct funding (Brunner & Briones 1992).

¹ Of course, this influence also operates in the opposite direction. As neo-institutionalist authors point out (Rowan, 2006; Meyer & Rowan, 2006), the State is one of the most important factors in the creation of an environment that encourages different institutions to acquire similar characteristics. With a similar financial and regulatory relationship with the State, it was not surprising for universities to develop similar functions.

Initially, the neoliberal reform of the 1980s did not change this situation. The field of higher education was no longer composed of State universities and “traditional private universities”, the name assigned to the universities created before 1981 and its associated campuses, as it incorporated other tertiary education institutions –technical education centers and professional institutes– and new private universities. Nevertheless, it is relevant to note that during this period a distinction of a historical-legal nature was introduced to differentiate the old and the new private universities in terms of funding and regulation. Decree-Law number 4 (1981) establishes that

[. . .]the State will contribute to the funding of the universities existing by December 31st 1980, the institutions derived from them, and those created by law, through State contributions whose annual amount and distribution will be determined in accordance with the norms of the present document (art. 1).

This was complemented by Decree-Law number 2 (1986), which defined which higher education institutions would comprise the Council of Presidents of Chilean Universities and receive this State funding. Likewise, during this period it was also established that the new universities were required to obtain the approval of a traditional university for their syllabuses and to present their first five generations of graduates to take final examinations and degree examinations before mixed committees composed of professors from the new university and a traditional university, with the latter making the final decision in case of any discrepancies (Bernasconi & Rojas, 2004).

However, at the same time, Decree-Law number 1 (1981) expresses the abandonment of the notion that universities are entities directly linked to the country’s development. Due to the military’s rejection of the supposed politicization of universities in the 1960s and 70s (Brunner, 1981), this norm limits the activities of these institutions, preventing them from “harboring” or “encouraging actions or behaviors incompatible with the law” or “allowing activities intended to disseminate, either directly or indirectly, the views of any political group” (article 6). In the same vein, this decree established that university facilities “may not be assigned or used for acts intended to publicize or conduct activities that disturb university work” (article 7).

This desire to de-politicize universities is accompanied by a merely procedural definition of these higher education institutions. The same Decree-Law number 1 (1981) characterizes universities as the exclusive issuers of Bachelor’s, Master’s, and Doctoral academic degrees (article 10). Thus, universities are the only entities able to award the professional degrees for which the law establishes the need to have obtained a Bachelor’s degree (articles 11 and 12).

Upon this basis, the decree lays out the requirements for a university’s creation, recognition, and attainment of autonomy. The new universities were expected to be established as “non-profit private law entities” (article 15). After obtaining the Ministry of Education’s approval (articles 18 and 19) and meeting certain conditions –1) “necessarily excluding students and administrative staff from participating through their vote in management and government bodies” and preventing them from voting in “the election of unipersonal or collegiate authorities” (article 22), and 2) awarding at least three professional degrees requiring the prior attainment of a Bachelor’s degree (article 23)– the new private universities were required to submit their syllabuses to be reviewed by a traditional university (article 24). At the same time, this norm established that the first five generations of graduates of academic programs requiring the prior attainment of an academic degree had to take final examinations on each subject and a degree examination before mixed committees, composed of professors from the new university and from the traditional university in charge of the examination, with the latter making the final decision if any divergences arose (article 26).

Later legislation follows this procedural definition of the role of universities. Apart from characterizing universities as non-profit private corporations (article 30) that are able to award professional degrees requiring the prior attainment of a Bachelor’s degree (article 31) and that should not host political party activities (article 77), Law number 18,962, the Constitutional Organic Law of Education (1990), sets out the formal requirements for the creation and recognition of these higher education institutions. First, this norm creates the Higher Council of Education, an organization tasked with evaluating the institutional projects of universities and professional institutes in order to grant them official recognition and verify their fulfillment of the accreditation guidelines established by this law (article 37).

This accreditation process was defined as being under the responsibility of the Higher Council of Education and consisted in assessing the level of “progress and completion of the educational project of the new entity” in terms of “significant developmental variables of a teaching, didactic, and technical-pedagogical nature, along with its syllabuses, infrastructure, and economic and financial resources” (article 39, 1st item). If after six years the institution had not fulfilled its project satisfactorily in the Council’s opinion, it would not become autonomous and would be unable to award degrees independently, although its accreditation period could be extended for up to five years (article 42).

This procedural definition was not changed by the democratic governments and the relevance of the separation between traditional and non-traditional universities was weakened in terms of regulatory and funding mechanisms. With respect to assessment, the examination system of the new private universities, under the charge of academics from traditional universities, collapsed due to its inability to meet the increasing evaluation demands of the new institutions (Bernasconi & Rojas, 2004). This system was replaced by the Higher Council of Education (currently the National Council of Education), whose assessment focused, in accordance with the norms currently in force, on determining the alignment between the institution’s aims and its academic, administrative, and financial means. Therefore, the point of reference previously provided by the activities of the traditional universities, historically linked with national objectives, lost relevance within the system.

Funding followed a similar course. As noted by Enrique Fernández (2015), Concertación governments chose to promote gradual changes through funding laws due to the impossibility of achieving political consensus. In this vein, and in line with the historical reflection on universities, during the 1990s and in the early 2000s, access to State funding was almost exclusively reserved for traditional universities. In the case of student aid, the main scholarships and loans (the Solidarity University Fund and the Bicentennial Scholarship) could only be assigned to students from these institutions. Likewise, only traditional universities were able to apply for the most relevant grants (Institutional Development Fund and the resources of the first Program for the Improvement of Higher Education Quality).

The creation of the Quality Assurance System (2006) changed this form of distribution. Later on, State funding would no longer be assigned depending on the origin of each university. Replacing this criterion, the results of accreditation processes gained more importance. Even though the Solidarity University Fund is still exclusively aimed at students attending traditional universities, nowadays most financial aid is available to all students from accredited universities or academic programs. Examples include the State-Guaranteed Loan or the Teacher’s Vocation, New Millennium, Academic Remediation, Juan Gómez Millas, Academic Excellence, and Bicentennial Scholarships, among others, apart from full tuition fee coverage. Similarly, other grants have gained more relevance. They can be accessed by all universities regardless of their origin and include the Performance Agreements of Regional Higher Education, the Institutional Development Fund, the Fund for Innovation in Higher Education, and the funds allotted to University Internationalization, among other State resources.

In contrast, very few norms affecting the definition of universities were enacted during this period. In line with the Constitutional Organic Law of Education, the General Education Law (2009) did not result in any major transformations regarding the regulation of higher education institutions. Only recently, thanks to the impact of the student movement on public debate, some norms about universities have been introduced. One such piece of legislation is Law number 20,843 (2015), which eliminated the ban on student and employee participation in the government of higher education institutions.

[As a result of the above-mentioned changes in regulatory and funding mechanisms, the State has lost the arrangement that used to characterize its relationship with traditional universities. In fact, on the one hand, by losing their function of examining new private universities, they are no longer the entities charged with safeguarding the quality of the system and representing a normative benchmark for Chilean universities. On the other hand, the State, by restricting student aid and university grants according to institutional or per-program accreditation, created an environment in which higher education institutions must compete on equal terms to obtain State and private funding, thus abandoning the standard represented by State universities or traditional private universities.

The specialized literature characterizes the Chilean university system in terms of the diversity of its academic programs, target populations, reputation, values, and guiding principles (Lemaitre &

Zenteno, 2016). The correlate of this *diversity* is the loss of homogeneity regarding the academic level of higher education institutions. Nevertheless, this loss of homogeneity is not addressed by the State's current definitions, given that this actor has been replaced in its role as decider by remote coordination mechanisms such as accreditation systems. Thus, the delimitation of the public domain in connection with universities (a task traditionally carried out by the State) has become a controversial issue, especially during a period of reform that requires distinctions allowing for the definition of public policies. Legal solutions attempted in the past, such as tasking a State university with overseeing the system or ensuring its organizational homogeneity through the unconditional allotment of State resources, do not appear to be possible nowadays given the trajectories followed by the norms regulating quality and the ever-increasing importance of higher education funding contingent on each institution's results and accreditation status (Araneda-Guirrman & Pedraja-Rejas, 2016; MECESUP, 2016).

In this regard, the multiplicity of definitions of the public domain in connection with universities appears to be a product of the regress of the State regarding its financial and regulatory roles and its replacement by quality assurance systems. Even though this is a general problem, as the discussion on the postmodern nature of contemporary universities shows (Barrantes, 2011; Bauman, 1997; Neave, 1998; Nguyen, 2010), it has become more acute in Chile due to the absence of a State definition of its own institutions. As a result of the neoliberal reforms and the implementation of remote coordination techniques, the identification of the public domain with traditional universities has lost validity.

In addition, as has been noted above, the Chilean State plays a passive role with respect to universities. Beyond the exclusive ability to provide certain academic programs, there is no State definition of the role of universities in Chile. In addition, the State does not currently have a special relationship with certain institutions –e.g. State or traditional universities– that makes explicit any specific expectations regarding their role. Likewise, quality assurance mechanisms prioritize the assessment of self-regulation in universities and not their contributions in terms of teaching, research, or community service at a national level. Thus, given the lack of a standard establishing which universities represent the State within the system as a whole, it is not surprising that the concept of the public good has become indefinite and controversial (Martinic, Pérez, Barbosa, de la Vega y Argüelles, 2014).

The loss of plausibility of State-driven solutions to the problem of the diversity introduced by private universities has transformed the public domain into a matter of dispute. A large part of this debate can be observed in academic reflection (Brunner, 2005; Parada, 2010; Morandé, 2011; Peña & Brunner, 2011; Atria, 2014; Guzmán-Valenzuela, 2016) and in opinions issued in the media (Eyzaguirre, 2013; Figueroa et al., 2014; Martínez, 2014; Mayol, 2013, 2014; Montes & Carbone, 2013; Peña, 2014a, 2014b; Pérez, 2014; Sánchez, 2014; Valle, 2014).

According to our analysis, the issue of the public domain in connection with universities reveals an unprecedented phenomenon for these institutions in Chile, a consequence of the establishment and strengthening of neoliberal policies in the 1980s and 90s leading to the loss of the traditional role of the State and the imposition of techniques for governing higher education derived from the *new public management* ideology (Olssen & Peters 2005). Due to these transformations, historical points of reference regarding the public domain (the State and the Universidad de Chile, the State and traditional universities) became a choice among many others, currently subjected to the dispute among stakeholders in the Chilean university system.

Chile's legislative history confirms this view. Projects intended to create a standard for the operation of universities –such as Message number 392-324 for modifying Law number 18,962, the Constitutional Organic Law of Education (1992)– or to establish a model for university activities –such as the Framework for State Universities bill (1997)– have been abandoned in political debate. On the other hand, most of the initiatives that eventually became norms – such as Law number 20,027, which regulated the funding of higher education studies (2005), or Law number 20,129, which established a national quality assurance system for higher education (2006)– lost their explicitly normative aspects during the legislative process, in response to the criticism of several stakeholders regarding the risk of homogenizing the activities of higher education institutions if any definitions were issued.

Conclusions

Especially after the student movements of the years 2006 and 2011, the issue of the publicness of Chilean universities has gained relevance in academic and political debate. The specialized literature, both in Chile and abroad, proposes two ways to approach the concept: one based on neoclassical economy, which characterizes these goods through their non-excludability and non-rivalry, and another linked to the conceptualization of the public sphere in political philosophy, which stresses the role of universities in terms of the promotion of values associated with modernity. However, as we argued, both perspectives evaluate the presence of these goods based on an a priori examination that is used to determine whether higher education institutions meet such expectations. In contrast, a historical analysis was proposed which focused on the norms through which the Chilean State has defined the role of universities. Considering this, we suggest that the public work of Chilean universities has been based on the relationship between the State and universities and on the orientation of their activities towards the fulfillment of nationally-relevant objectives, either through the Universidad de Chile or the private institutions supervised by the Universidad de Chile or through State and private universities whose activities in terms of functions were understood by public authorities to be similar. This regulatory and financial agreement between the State and Chilean universities was transformed by the imposition of neoliberal reforms, whose main effects are the encouragement of self-regulation as a form of institutional control (in contrast with the adjustment of private universities to the standard defined by *traditional universities*) and the granting of State funds on the condition of taking part in institutional and per-program accreditation systems (instead of direct State funding to certain institutions).

This analysis has significant theoretical consequences for the sociological discussion on universities and poses new research challenges. First, it is necessary to analyze how these transformations affect the understanding of the public domain by the actors interested in the educational debate. For instance, in the case of students, it would be necessary to analyze to which extent a common understanding of the activities that characterize higher education institutions still exists, as it did in Chilean universities during the higher education reform process of the 1960s or 70s (Huneus, 1988), or if, due to a loss of points of reference for national development connected to universities, new discourses about their functions have emerged in the process. Likewise, it would also be expectable to find less homogeneity among academics regarding the identification of universities with national political aims (Jaksic, 1989). Future analyses should expand this historical examination of the evolution of the public domain, considering the perspective of several actors.

Secondly, it is also necessary to delve deeper into the structural factors mediating this transformation. To different degrees, the regress of the State and its replacement by technical instruments of remote coordination (Neave, 1998) has resulted in a conflict regarding the roles of contemporary higher education institutions in the university systems of several countries (Barnett, 1993; Buckner, 2016; Delanty, 2008; Kwiek, 2005; Kwiek, 2006; Piironen, 2013). With respect to this, it could be interesting to link studies on higher education to further-reaching theories, such as the social systems theory developed by Niklas Luhmann and his idea of the transition to a functionally differentiated society in which politics is no longer the way to coordinate the system (Luhmann, 1987), and explore how universities react to these transformations.

In addition, this analysis has relevant consequences for the generation of public policies. The most important of them is to recognize the historical role of the State, through its regulation and funding mechanisms, in defining the publicness of the activities of higher education institutions. However, in our opinion, it no longer appears to be possible to return to previous arrangements between the State and universities, such as the Universidad de Chile's control over the issuing of degrees, the undifferentiated financial treatment with no academic supervision granted to universities with similar characteristics, or the preferential State funding of traditional universities and their definition as the entities charged with assessing new institutions. On the one hand, diversity in the functions of the universities within the system is too high, a fact that makes it unlikely for a common standard to be accepted for all higher education institutions. On the other, the evolution of these universities in terms of their number of students, academics, or researchers, has increased their importance for policymakers.

In this respect, we consider that a consensus definition of the public domain is a necessary condition for any public policy intended to reform this sector. Certainly, the Chilean specialized literature advances

several proposals, most of which, consistent with the history of the relationship between the Chilean State and universities, regard publicness as a trait unconnected to the ownership of the institution (Atria, 2014; Guzmán-Valenzuela, 2016; Morandé, 2011; Parada, 2010; Peña & Brunner, 2011; Soto, 2016). Even though these approaches are necessary for debating on the public domain, such a distinction may generate reactions similar to those encountered by many of the initiatives intended to establish clear criteria for the evaluation of universities. Given the replacement of their definitions by the results of quality assurance mechanisms, the State is now in a position to delimit, for the first time in its history, the public and private elements of the activities of higher education institutions, with all the consequences that such an action entails in terms of the funding and regulatory relationships to be generated between both entities.

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