

Repositório ISCTE-IUL

Deposited in *Repositório ISCTE-IUL*:

2025-03-19

Deposited version:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Mineiro, J. (2025). Managerialism and democratic governance in Portuguese higher education: Assessing the impact of the legal framework. *Higher Education Policy*. 38 (1), 106-126

Further information on publisher's website:

[10.1057/s41307-023-00334-z](https://doi.org/10.1057/s41307-023-00334-z)

Publisher's copyright statement:

This is the peer reviewed version of the following article: Mineiro, J. (2025). Managerialism and democratic governance in Portuguese higher education: Assessing the impact of the legal framework. *Higher Education Policy*. 38 (1), 106-126, which has been published in final form at <https://dx.doi.org/10.1057/s41307-023-00334-z>. This article may be used for non-commercial purposes in accordance with the Publisher's Terms and Conditions for self-archiving.

Use policy

Creative Commons CC BY 4.0

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a link is made to the metadata record in the Repository
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

"Managerialism and Democratic Governance in Portuguese Higher Education: Assessing the Impact of the Legal Framework"

João Mineiro

Affiliation

Centro em Rede de Investigação em Antropologia, Iscte - Instituto Universitário de Lisboa, Portugal

Contact

joao.mineiro@iscte-iul.pt

Address

Centro em Rede de Investigação em Antropologia, Av. Forças Armadas, Edifício ISCTE, 1649-026 Lisboa, Portugal

ORCID

<https://orcid.org/0000-0003-0258-9384>

This version of the article has been accepted for publication, after peer review but is not the Version of Record and does not reflect post-acceptance improvements, or any corrections. The Version of Record is available online at <https://doi.org/10.1057/s41307-023-00334-z> and at <https://rdcu.be/dvhDK>.

ABSTRACT

This paper explores the impact of managerialism on democracy in Higher Education by analyzing the implications of the Legal Framework of Higher Education Institutions in Portugal from 2007 to 2022. The findings, drawn from data on representation and electoral participation, reveal deficiencies in democratic governance. Notably, General Councils lacking legitimacy, and there is insufficient representation within the teaching and research community. Consequently, the disparities in electoral representation and labor rights disproportionately affect those facing precarity and job insecurity. The law's inability to strengthen accountability, transparency, and participation underscores the urgent need to promote democratic governance within public higher education institutions. By shedding light on the impacts of the Legal Framework, this research emphasizes the crucial task of evaluating and enhancing democratic governance in higher education for the benefit of the academic community and society at large.

Keywords: Managerialism, Democratic Governance, Higher Education, Precariousness, Electoral Participation, Legal Framework of Higher Education

INTRODUCTION

In the transition to the 21st century, Portuguese Higher Education underwent substantial transformations influenced by the New Public Management approach and the Europeanisation of Higher Education policies (Amaral et al., 2003a; Barrias, 2013; Hood, 1991; Magalhães & Amaral, 2007; Neave & Amaral, 2012). These changes touched upon various dimensions, spanning funding and access policies (B. G. Cabrito & Jacob, 2011; Cerdeira, 2011) to institutional and organizational governance (Barrias, 2013; Lima, 2009; Oliveira et al., 2014).

Influenced by global processes of marketization and corporatization (Chipindi & Daka, 2022; Hemsley-Brown & Oplatka, 2006; Zajda & Jacob, 2022), these reforms represent a pivotal aspect of what some scholars term a 'managerial revolution' in Higher Education (Amaral et al., 2003b). The aim, according to certain authors, is to harmonize liberalization, academic autonomy, and state control (Young, 2002), providing students with increased freedom and institutions with greater autonomy. This overarching goal seeks to establish a more equitable relationship between 'supply' and 'demand'

(Jongbloed, 2003), ultimately fostering the creation of more 'efficient' and 'flexible' institutions (Whitty et al., 1998).

Conversely, alternative perspectives offer a critical appraisal of these trends. Conversely, alternative perspectives offer a critical appraisal of these trends. (Lynch, 2006). This shift is marked by a 'utilitarian,' 'vocational,' and 'commercial' focus (Bertelsen, 1998; Busch, 2017), wherein students are perceived not as learners but as clients or consumers (Molesworth et al., 2009). Consequently, this transformation has resulted in the mitigation of critical vocation (Gibbs, 2001), the reinforcement of elitism (Lynch, 2006), and the diminishing centrality of academic learning processes (Naidoo & Williams, 2015).

In the Portuguese context, one of the most pivotal managerial reforms in recent decades, with far-reaching implications, was the enactment of the Law 62/2007, also known as the “Regime Jurídico das Instituições de Ensino Superior” or Legal Framework of Higher Education Institutions (RJIES). This legislation triggered a profound structural transformation in the organizational model, management, and governance of Portuguese Higher Education Institutions. Simultaneously, it elicited both support and opposition, generating enthusiasm and dissent among different stakeholders. While some hailed it as a modernizing reform, others criticized it for what they perceived as compromising with the dynamics of commodification and/or privatization of public higher education systems, strongly influenced by the managerial approach (Barrias, 2013; Lira et al., 2015; Magalhães & Santiago, 2012; Author, 2016; Oliveira et al., 2014).

From a political-legislative perspective, the new Legal Framework of Higher Education Institutions represents a significant shift, notably by repealing two pivotal acts: the 1988 University Autonomy Act (Law n.º 108/88) and the 1990 Status and Autonomy of Polytechnic Higher Education Establishments ACT (Law n.º 54/90). These acts embodied the demands for autonomy and democratization of higher education, which had been particularly felt since the 1960s and 1970s (Amaral et al., 2013; Cardina, 2008; Lima, 2012; Magalhães & Santiago, 2012).

The governance model instituted by these acts, experimented with from the 1990s to the early 2000s, aimed to ensure democratic and participatory management of higher

education institutions through principles such as representativeness, collegiality, parity, and participation. However, this model encountered varying levels of acceptance among academic leaders and policymakers (Magalhães & Amaral, 2007; Author, 2016). Critics pointed out several issues, including the excessive number of members in the management bodies, which led to difficulties in the decision-making process. Additionally, concerns were raised about excessive collegiality in the governing bodies, which some believed posed obstacles to the autonomy and capacity for action of institutional leadership. Moreover, it was observed that Higher Education Institutions became somewhat insular, lacking openness to external perspectives.

Both the government and certain academic leaders deemed the democratic management model institutionalized in the 1990s as outdated and unsuitable for a higher education system aspiring to be "modern," "flexible," "efficient," and "competitive". This perception gained significance within the context of standardizing European Higher Education Area, the globalization of the university market (Alves & Tomlinson, 2021; Bok, 2003; Rubião, 2013), the neoliberal reforms in Higher Education (Naidoo & Williams, 2015; Sunendar & Adriany, 2023; Varman et al., 2011), and the persistent constraints on public funding (B. Cabrito et al., 2023).

By instigating a restructuring of the organizational, managerial, and governance paradigm within Higher Education Institutions, the new Legal Framework of Higher Education Institutions mandated an evaluation process, as articulated in Article 185 of the Law, scheduled to transpire five years after its enactment. However, even after sixteen years, such an assessment has never been carried out, and a cross-cutting debate on the consequences of the law has yet to take place. This article seeks to contribute to this evaluation by scrutinizing the impacts of the organizational reforms introduced by this public policy on the representation and democratic participation of teachers, researchers, non-teaching staff, and students in Portuguese higher education institutions spanning the years 2007 to 2022".

BALANCING MANAGERIALISM AND DEMOCRACY: THE CASE OF THE PORTUGUESE LEGAL FRAMEWORK OF HIGHER EDUCATION INSTITUTIONS (2007-2022)

The year 2007 marked a pivotal moment in Portuguese Higher Education with the approval of the new Legal Framework, ushering in a comprehensive organizational reform for Higher Education Institutions. This reform, delineated to govern the “constitution, attributions, and organization, the functioning and competence of its bodies, and, also, the authority and public supervision of the State over them, within the framework of their autonomy”, placed governance at its core.

Despite the absence of official government evaluation, scholarly discourse on its implementation has emerged, as evidenced by contributions from researchers (Amaral et al., 2013; Barrias, 2013; Bruckmann & Carvalho, 2014; Oliveira et al., 2014; Pedrosa et al., 2012). These studies focus on only part of the higher education system, highlighting the need to deepen the debate on the consequences of the law, especially from a global, diachronic, and comparative perspective.

While existing academic literature offers limited insights, diverse interpretations of the 2007 Legal Framework's abstract intentions and its practical implications have been noted. Certain studies highlight how this reform engendered a hybridization of public and private management models, particularly within the framework of introducing New Public Management in Higher Education institutions (Barrias, 2013; Lira et al., 2015; Author, 2016). This hybridization manifested practically, leading to consequences such as a reduction in the number of deliberative bodies, the attenuation of collegiality, and a decrease in the participation of academics in institutional governance (Bruckmann & Carvalho, 2014; Lima, 2009; Lira et al., 2015). Concurrently, a concentration of power in the executive leadership of institutions transpired alongside an increasing trend of professionalization in administration and management (Barrias, 2013; Lira et al., 2015; Oliveira et al., 2014). Thus, although the law allowing the creation of collegial advisory bodies like the senate, they are not mandatory, most members are not directly elected (Lima, 2012), and their significance is not prominently featured in the literature.

Another key objective of this new legal framework was to mandate the inclusion of external members in the management bodies, aiming to open higher education

institutions to civil society. However, concerns have been raised regarding the absence of social, socio-professional, and gender diversity among the external members co-opted for the General Councils (Oliveira et al., 2014; Pedrosa et al., 2012). Additionally, observations note ideological continuities between these external members, tasked with an oversight role, and institutional leaders, whose executive powers should be subject to scrutiny by the Councils. Issues related to the lack of a clear separation of powers between executive leadership and management bodies, coupled with a deficit in supervision and regulation by the General Councils, are brought to light.

It is also important to highlight the growing weight of the institutions' revenues in their annual budget in a context marked by the public underfunding of Higher Education (Barrias, 2013; B. G. Cabrito & Jacob, 2011; Mano & Marques, 2012; Nascimento & Cabrito, 2017), the increase in competitiveness values (Lira et al, 2015) and the progressive erosion of the labor stability of teachers and researchers (Amaral et al., 2012; B. G. Cabrito, 2017; Carvalho et al., 2022; Ferreira, 2022).

The impact of these changes is particularly relevant for institutions that choose to assume a new “independent legal status” as public foundations governed by private law (Barrias, 2013; Gonçalves, 2012). This decision triggers the establishment of a novel governing body, known as the Board of Trustees. Composed exclusively of external figures, this council shoulders key responsibilities, including the approval of statutes, the appointment or dismissal of the Council of Management, and the endorsement of decisions made by the General Council concerning the appointment or dismissal of the rector or president. In terms of asset management, the Board of Trustees assumes the role of proposing or authorizing the acquisition or disposal of real estate assets and credit operations. In the strategic and organizational domain, it greenlights decisions tied to the strategic and action plans of the rector/president's mandate, as well as the overarching guidelines of the institution in scientific, pedagogical, financial, and asset realms. This encompasses crucial elements such as activity plans and reports, the budget, and consolidated accounts.

These changes sparked divergences and conflicts within institutions and their diverse communities. On one side were those who believed that the new legal framework ushered in the modernization of the higher education system, fortifying institutional

efficiency and competitiveness in the European Higher Education Area. On the other side were those who argued that this reform led to the commodification of institutions, diminishing participation, collegiality, and democratic representation among researchers, teachers, and non-teaching staff (Barrias, 2013; Lira et al., 2015; Magalhães & Santiago, 2012; Author, 2016; Neave & Amaral, 2012; Oliveira et al., 2014).

While numerous studies have mentioned aspects related to representation and democratic governance, a comprehensive and longitudinal assessment of the evolving dynamics is lacking. This article aims to address this gap by scrutinizing trends in electoral and democratic participation among students, researchers, teachers, and non-teaching staff. Additionally, it sheds light on the inclusion of teachers and researchers in electoral processes and the correlation between their working conditions and democratic rights.

We seek to answer the following questions: Has the organizational reform introduced by the Legal Regime strengthened the participation of academic communities in elections to the institutions' management bodies? Since law enforcement, has this electoral participation increased, decreased, or been similar? Can all teachers and researchers of higher education institutions elect and be elected in electoral processes? Is there a relationship between the precarious hiring modalities and greater or lesser electoral representation of teachers and researchers? In short, what are the consequences of the managerial paradigm on the very democratic experience of higher education institutions?

RESEARCH METHODOLOGY

This article primarily explores the representativeness of the academic community in governance bodies, analyzing their electoral participation at the institutional level. To address the research questions, we characterized the evolution of electoral and democratic participation from 2007 to 2022 for the election of representatives in the General Councils of public higher education institutions. This involved considering different bodies of representatives, such as teachers, researchers, students, and non-teaching staff. Some of these data were not public or were not systematized. Therefore, it was necessary to build an original database from election reports, collected from institutional websites or provided by institutions upon request.

From the combination of the online data with the election reports provided by the institutions, it was possible to build an original database comprising a set of 282 electoral acts, covering a total of 30 of the 34 public institutions, namely 84 elections for representatives of teaching staff, 118 for representatives of students and 80 for representatives of non-teaching staff. Out of the elections analyzed, 98 were from public universities, and 184 were from public polytechnic institutes.

To evaluate the representation of researchers and teachers in institutional management bodies, we gauged their level of inclusion in democratic governance. This analysis was complex since there was no official data on this reality, nor was it reported by higher education institutions. To address this reality, we compared the electoral rolls of teachers/researchers in the last General Council election across 30 public institutions with the corresponding figures in their Social Reports, activity reports, and statements of accounts. By comparing the electoral rolls with the human resources data, we were able to estimate the degree of (dis)proportion between the number of teachers and researchers and their electoral representation.

This methodological strategy facilitated the assessment of the representativeness and participation of the teachers, students, and non-teaching staff in the election to the institutions' internal electoral bodies with decision-making power. The decision to analyze public institutions stems from the fact that private higher education institutions, in most cases, have not made their election reports and balance sheets publicly available, which poses a challenge for future research. Moreover, this analysis will enable us to complement future research into aspects of the law that we cannot address here, including the selection criteria and the role played by external members co-opted to management bodies, and the specific role that advisory bodies, such as the senate, play in advising institutional decision-making processes.

DEMOCRACY AND MANAGERIALISM IN PORTUGUESE HIGHER EDUCATION: EXAMINING ELECTORAL PARTICIPATION AND REPRESENTATION UNDER THE LEGAL FRAMEWORK (2007-2022)

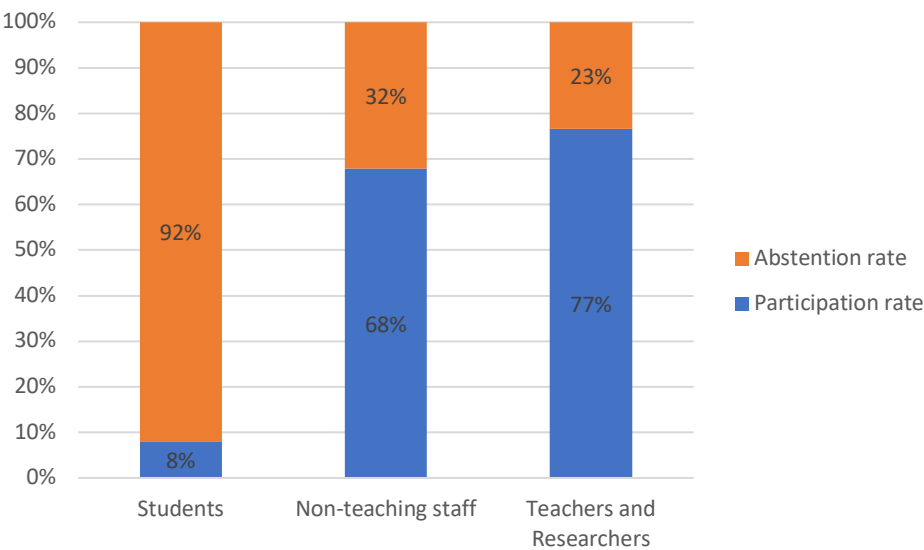
The organizational reform introduced by the new Legal Framework aligns with the principles of New Public Management, emphasizing the centralization of powers within the executive leadership. In the legislator's view, such a change would provide institutions with greater efficiency on decision-making, mitigating the excessive bureaucracy of management bodies that were considered too broad and would be an obstacle to the flexibility and modernization of the higher education system. Concurrently, the framework established the General Council, a new deliberative and supervisory body comprised of 15 to 35 members. The Council includes a minimum of 50% representatives from teachers and researchers, at least 15% from students, and a minimum of 30% from external members.

The creation of new management bodies has implied a change in their composition and functioning. Notably, it reduced the number of council members, modified the proportional representation of students, and revoked the parity between teachers and students. One significant addition is the mandatory inclusion of external personalities in management bodies, which was previously an optional arrangement. This restructuring of the composition and competence of the management bodies also led to a shift in the method of electing institutional leaders. Now, these leaders are appointed directly by the General Council itself, as opposed to being elected by the whole academic community.

Introduced by the XVII Constitutional Government in 2007, these changes aimed to 'guarantee greater responsibility and decision-making capacity.' Interestingly, the legislative text itself omitted terms like 'democratic management,' 'citizenship,' or 'collegiality,' although it stressed the necessity to 'ensure the participation of teachers, researchers, and students in the management of higher education institutions.' Sixteen years later, have the governance changes been accompanied by broad democratic participation in the selection processes for representatives in the new management bodies?

Upon thorough analysis of the electoral acts, it becomes evident that the average electoral participation rate between 2007 and 2021 was 45%. In other words, more than half of the eligible voters abstained from participating in the selection of their representatives for the General Council. Nevertheless, when we delve into the data disaggregated by each electoral body, distinct realities within the academic community come to light.

Figure 1: Average participation and abstention rates between 2007 and 2021 in elections to the General Councils

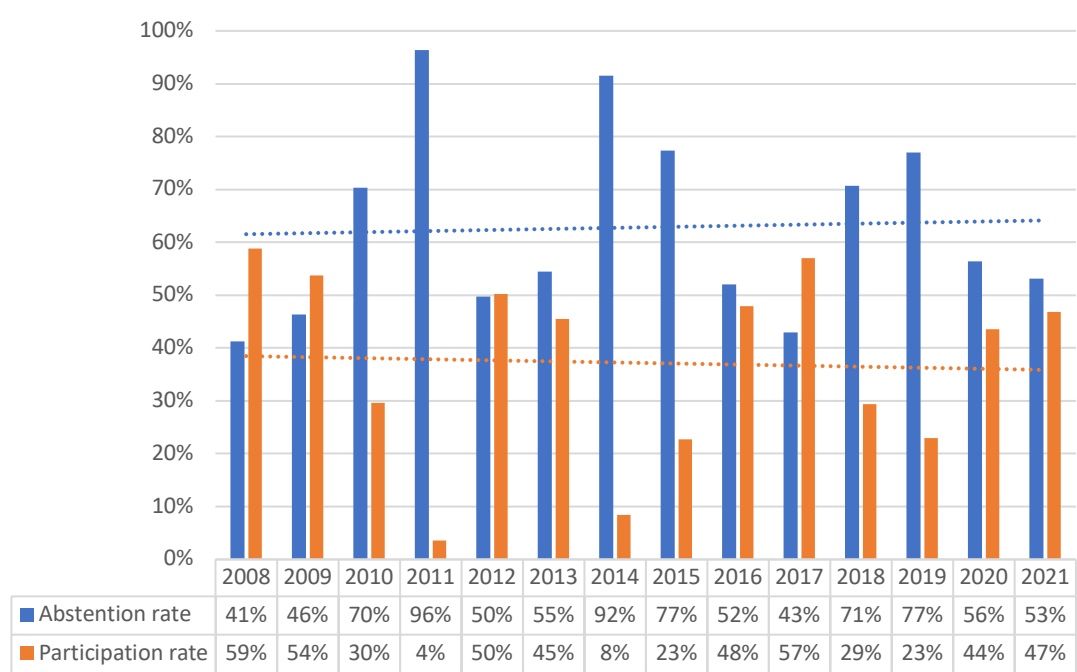


Among the various electoral bodies, teachers and researchers exhibit the highest average participation rate, standing at 76.6%. This can be partly attributed to their direct employment connection with higher education institutions, active involvement in strategic projects associated with elections, and the prevalence of multiple candidates lists for General Councils, often aligned with different candidates for rectors or presidents, fostering a competitive electoral environment. The relatively smaller number of electoral rolls may also contribute to this trend. However, as will be discussed, the participation rates of teachers and researchers appear to be overestimated, given that a substantial portion of the institutions' teaching and research staff is not included in the electoral rolls.

Contrastingly, student data paints a different picture, revealing an average participation rate not exceeding 8% throughout this period. This signals that the organizational reform

mandated by the Legal Framework, which aimed to decrease the absolute and proportional representation of students in management bodies, failed to result in increased student participation and accountability. The legislator's anticipation that this reform would enhance participation and accountability faces the reality of widespread electoral abstention among students, coinciding with the diminishing influence and representation of students in management bodies as the law was implemented.

Figure 2: Evolution of Average Voter Participation and Abstention Rates in General Council Elections (2008-2021)



In addition to characterizing average participation rates, the collected data reveal a diachronic evolution. As illustrated in Figure 2, there has been a progressive increase in abstention rates and a gradual reduction in participation rates over time. Throughout most of the law's application period, abstention rates exceeded 50%, reaching values higher than 70% in some years. These trends indicate that law enforcement has not led to a positive evolution of average participation rates, despite variations in electoral performances among different bodies.

Figure 3: Evolution of participation and abstention rates of teachers and researchers in General Council elections (2008-2021)

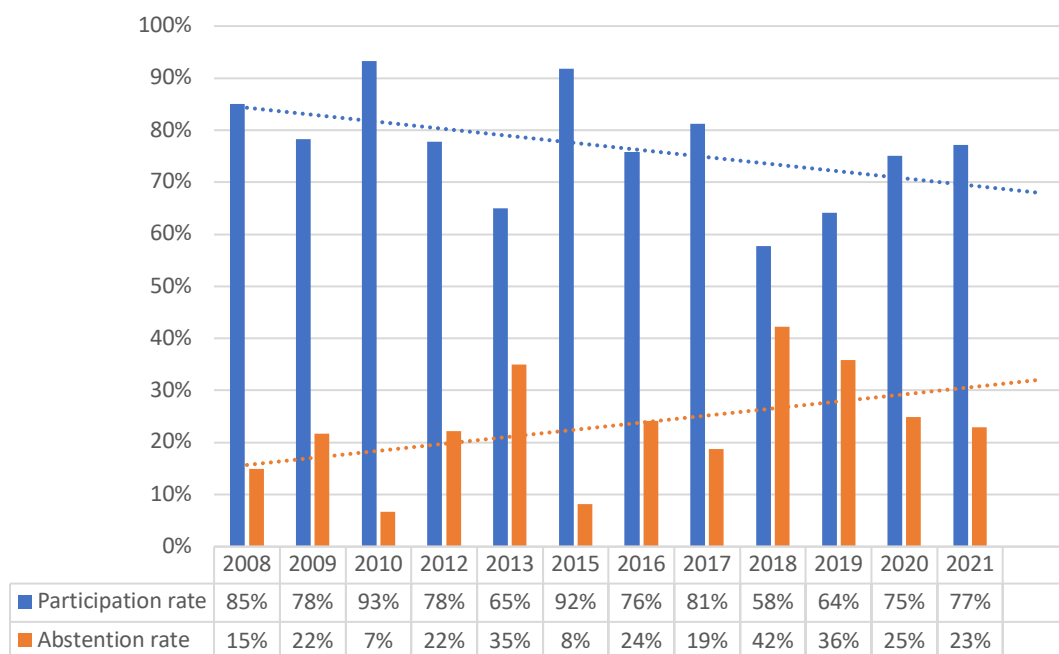
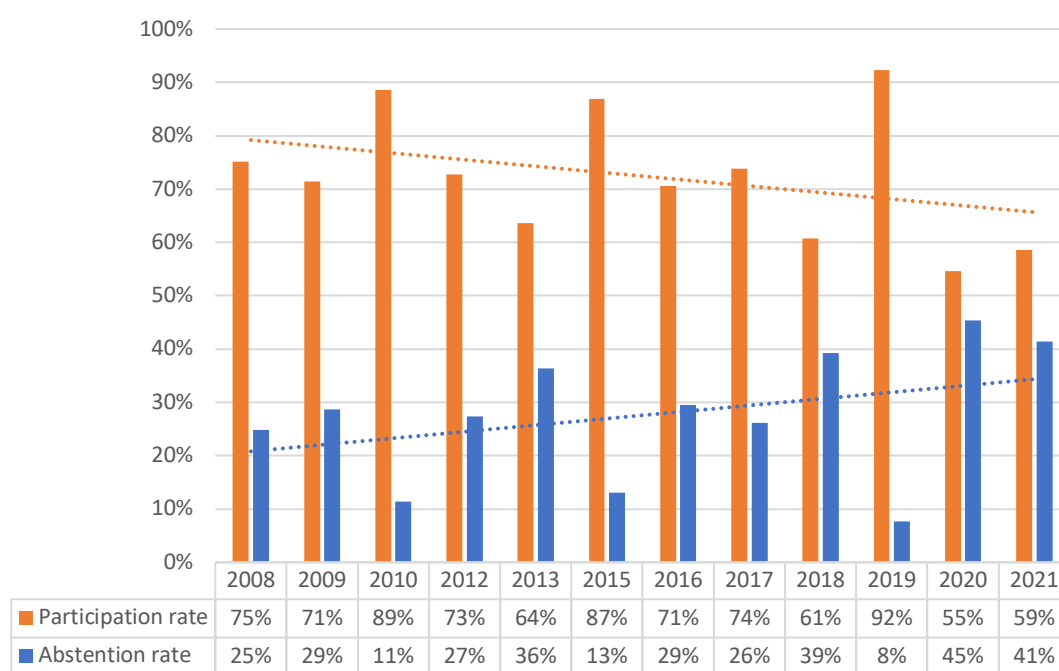


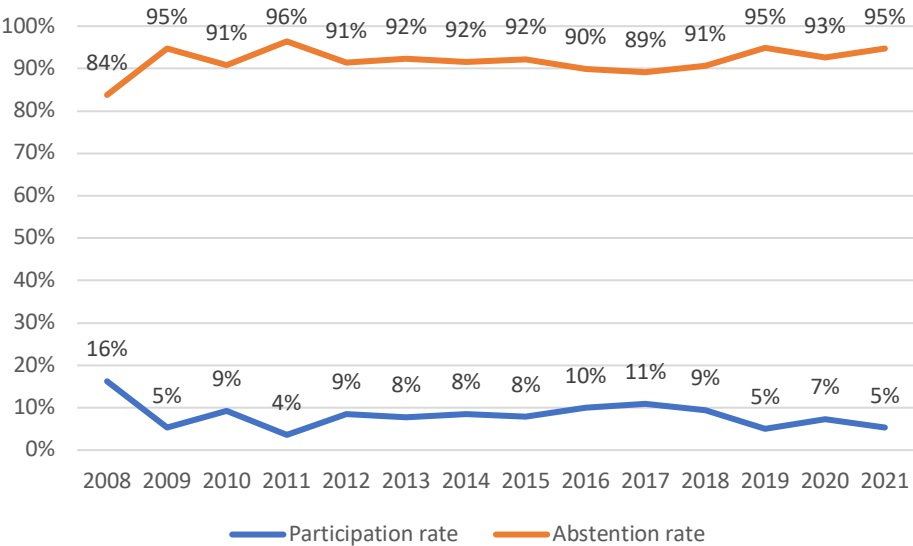
Figure 4: Evolution of participation and abstention rates of non-teaching staff in General Council elections (2008-2021)



While teachers and researchers boast the highest average participation rate, a diachronic analysis reveals its instability. Contrary to uniformity, Figure 3 illustrates irregular participation rates, occasionally accompanied by a slight increase in abstention rates, reaching values close to or above 25% of the electoral roll in certain years.¹

In contrast to the previous legal framework, the RJIES does not mandate the inclusion of non-teaching and non-research staff in management and governance bodies. Nevertheless, most institutions have the option to elect a representative to the General Council. Figure 4 illustrates a growing convergence of abstention and participation rates over time. Initially, participation rates were notably high, surpassing 70% in some cases. However, in recent years, these figures have moderated, ranging between 50% and 60%.

Figure 5: Evolution of student participation and abstention rates in General Councils (2008-2021)



Despite the variations and the downward trend, participation rates among teachers and staff remained above 50% throughout the period examined. However, the reality for students is substantially different. As shown in Figure 5,² electoral abstention rates consistently exceeded 90%. In the initial electoral year of 2008, only 16% of the student body participated in electing the representatives for the General Council. The

¹ Elections for teachers and non-teaching staff to the General Council occur every four years. Figures 3 and 4 do not include data for the years 2011 and 2014 as no election information was identified for those periods.

² General Council student elections are held biennially.

subsequent decline in electoral participation over the following years raises empirical evidence that calls into question the true intentions of the legislator. Indeed, students have witnessed a reduction in their presence within management bodies both in absolute and relative terms, and the elections of their representatives seem to be highly delegitimized by the majority of the student body. The data reveals that out of the 118 elections collected and analyzed in this time frame, 51 of them (43%) had abstention rates higher than 95%.

The Legal Framework aimed to enhance efficiency, flexibility, and competitiveness by restructuring the composition of higher education institutions' management bodies, all while underlining the importance of participation from teachers, researchers, and students. This raises a critical question: Can the managerial paradigm coexist harmoniously with a democratic culture in institutional management? The evidence, however, suggests that the reduction in the number of members in management bodies and the concentration of power among top managers have not resulted in increased participation and accountability. Instead, these changes have led to a growing political delegitimization of the management bodies. High abstention rates among students, irregular and declining trends in electoral participation among teachers and non-teaching staff, and, as we will explore, the exclusion of many professionals from electoral processes contribute to this delegitimization.

MANAGERIALISM AND PRECARIOUSNESS: ASSESSING DEMOCRATIC REPRESENTATION AMONG TEACHERS AND RESEARCHERS IN HIGHER EDUCATION INSTITUTIONS

Precarious work, as a phenomenon linked to the dynamics of flexibility and individualization (Castel, 2017), is not entirely new in contemporary societies nor merely a repetition of past forms of domination. As part of the ongoing processes of neoliberalization in the economy and society, the experience of precariousness, with its complexity and multidimensionality, extends beyond the labor domain, impacting various facets of individual and social life (Choonara et al., 2022). Thus, being strongly promoted by the Portuguese State itself and its institutions (Soeiro, 2015), precariousness is associated with wage poverty dynamics, although it also affects many

qualified and specialized jobs, including academic and scientific work (B. G. Cabrito, 2017; Campos, 2013; Ferreira, 2022; OECD, 2021; Sergeira, 2022).

Precariousness in research careers is pervasive across OECD countries, recognized as both a systemic and contextual phenomenon (OECD, 2021, p. 8). It's systemic in nature because, in most European countries, scientific research is conducted by a 'precarariat of research' (OECD, 2021, p. 13) — a group of highly qualified professionals with specialized profiles, navigating long post-doctoral trajectories marked by instability and a lack of contractual and social security. Simultaneously, it's a contextual issue, as the experience of precariousness seems to vary based on scientific systems, their management and governance models, diverse labor and national legislations, and the social groups to which individuals belong (OECD, 2021, p. 30).

While the impact of job stability on scientific autonomy is acknowledged, the contemporary higher education and science system has seen academic precariousness emerge as a common social and labor condition across multiple generations of researchers and teachers. This study seeks to explore whether this experience of academic precariousness also affects representation rights and democratic participation within their respective institutions.

To evaluate the extent to which the law has preserved the conditions of representation and electoral participation, we conducted a comparison between the overall number of teachers and researchers listed in the electoral roll of the last election of representatives to the General Councils and the number of teachers and researchers reported by the institutions in their Social Report and other institutional documents. This analysis aims to determine whether the law effectively ensures that individuals engaged in teaching and research within the institutions have the right to both vote and stand for election to their respective management and governing bodies.

According to the analyzed election reports, the last General Council elections in Portuguese higher education institutions recorded a total of 19,697 voters for representatives of teachers and researchers. Since General Council representatives are supposed to be 'elected by all teachers and researchers of the higher education institution,' the discrepancy between the number of voters and the total teachers and

researchers prompts a critical inquiry. This raises questions about whether the recorded number truly reflects the reality of human resources in these institutions and whether mere affiliation as a teacher and researcher is a sufficient condition for electoral participation.

In this study, we analyzed data from the most recent elections up to September 2022. For institutions where the last elections occurred in 2020, 2021, and 2022, we compared the electoral rolls with the 2020 Social Report data, the latest available. However, for two instances with elections in 2019 and 2018 – namely, Polytechnical Institute of Lisbon and Polytechnic Institute of Cávado e Ave - we used human resources data from 2019 and 2018, respectively. The analysis unveiled a substantial disparity between the human resources cited in the Social Reports and the number of voters on electoral rolls across most higher education institutions. This suggests that representatives of teachers and researchers in the General Councils might not be elected by all those involved in teaching and research in Higher Education Institutions, contrary to the intended purpose of the law.

Table 1: Comparison of Teachers and Researchers Included in Electoral Rolls of Last General Council Election and Declared in HEIs' Social Reports of Nearest Year.

Higher Education Institution	Year of the last election	Teachers and Researchers on the electoral roll	Teachers and Researches on the 2020 Social Reports (n)
Iscte - University Institute of Lisbon	2021	427	581
Universidade Aberta	2021	126	153
University of Madeira	2020	181	327
University of Aveiro	2021	1127	1444
University of Coimbra	2020	1311	2023
University of Lisbon	2021	4402	4417
University of Trás-os-Montes and Alto Douro	2020	446	543
University of Algarve	2021	658	903
University of Minho	2021	1271	1662
University of Porto	2021	3245	3135
University of the Azores	2021	207	266
NOVA University Lisbon	2022	1104	2438
Nursing School of Coimbra	2021	93	239
Nursing School of Lisbon	2021	92	186
Higher School of Nursing of Porto	2020	77	170
Estoril Higher Institute for Tourism and Hotel Studies	2021	57	129
Polytechnic Institute of Guarda	2020	147	241
Polytechnic Institute of Beja	2020	123	267
Polytechnic Institute of Bragança	2021	316	647
Polytechnic Institute of Castelo Branco	2021	225	410
Polytechnic of Leiria	2021	474	1057
Polytechnical Institute of Lisbon	2019	1259	1237*
Polytechnic Institute of Portalegre	2021	120	225
Polytechnic Institute of Santarém	2021	180	330
Polytechnic Institute of Setúbal	2021	268	660
Polytechnic Institute of Tomar	2022	141	163
Polytechnic Institute of Viana do Castelo	2021	222	377
Polytechnic Institute of Viseu	2021	264	492
Polytechnic Institute of Cávado e Ave	2018	78	320**
Polytechnic Institute of Porto	2021	1056	1670

* The reference year for the Polytechnical Institute of Lisbon is 2019.

** The reference year for the Polytechnic Institute of Cávado e Ave is 2018.

Among the public Higher Education Institutions analyzed, a noteworthy finding emerged: 26.3% of teachers and researchers identified in Social Reports (at least 7015 individuals) were absent from the electoral rolls for General Council elections. This percentage is likely underestimated for two reasons. First, data on electoral rolls is missing for four institutions, potentially increasing the number of excluded individuals. Second, the Social Reports exclude a significant number of researchers not on the research career track or with external contractual affiliations.

To provide a more accurate portrayal, we conducted a second-phase analysis comparing electoral rolls with human resources data from the Activity and Accounts Reports of Higher Education Institutions. These reports offer additional insights into employment situations not covered in Social Reports, enhancing our understanding of human resources in Portuguese Higher Education.

The analysis reveals a systemic disparity within the higher education system, indicating a notable discrepancy between the number of voters and the count of teaching and research staff. Particularly pronounced in 13 out of the 30 institutions under scrutiny, this disproportion exceeds 50%, highlighting a substantial underrepresentation of teaching and research human resources in the electoral rolls.

Given the data, we find the exclusion of at least 9,355 teachers and researchers from the electoral processes, which represents a percentage of 32.2%. This notable figure implies that approximately one in three teachers and researchers are absent from the elections determining their representatives in management and governance bodies. This exclusion, coupled with the previously discussed abstention rates, underscores a profound deficit in representation and political legitimacy within the governing bodies. Such delegitimization seems to be one of the practical consequences of a legal framework whose organizational model has been unable to stimulate the electoral participation of the academic community that the law considers fundamental to the regular functioning of Higher Education.

The exclusion of over a third of its professionals from the electoral process within the Higher Education system highlights a notable disparity between the abstract formulation of the law and its practical implementation. This discrepancy arises from the fact that,

while the Legal Framework dictates that representatives of teachers and researchers should be elected "by all teachers and researchers in higher education institutions, the specific electoral criteria are left to the discretion of each institution's statutes and regulations which have institutional and legal autonomy to define the electoral rolls. For example, examining cases such as the Polytechnic Institute of Cávado e Ave, the NOVA University Lisbon, and the Higher School of Nursing of Porto reveals exclusion rates of 76%, 61%, and 55%, respectively. What accounts for such significant discrepancies?

Upon reviewing their internal regulations, we observed that the formulation of the electoral rolls exclusively encompasses career teachers and researchers. These individuals must maintain a full-time or exclusive dedication, possess a contract of at least one year, and be in active service during the election period. Consequently, this framework results in the exclusion of more than half of the teaching and research staff, particularly precarious and non-tenure-track researchers, along with numerous precarious teachers not engaged in full-time or exclusive dedication roles. In this context of increasing precariousness in the Higher Education system, it is noteworthy that the latest nominal list of professors provided by the Directorate-General for Education and Science Statistics (DGEEC) for the 2018/19 academic year indicates that the different categories of "invited teacher" already accounted for 43% of all professors in service.

The Legal Framework provides institutions with the discretion to interpret electoral criteria, resulting in variations in the inclusivity of teaching and research staff. This flexibility in organizing electoral processes becomes apparent through data analysis. In numerous instances, this flexibility gives rise to electoral rules that deviate from the legislative aim of ensuring that representatives are elected by all teachers and researchers within the institution.

UNVEILING THE GAP: THE HIDDEN IMPACT OF PRIVATE NON-PROFIT ASSOCIATIONS ON PUBLIC HIGHER EDUCATION GOVERNANCE IN PORTUGAL

The cited data allows us to evaluate the inclusion of teachers and researchers in the electoral processes. However, it is crucial to acknowledge that the data is underestimated for two main reasons. Firstly, the dataset lacks information from four

out of the 34 public higher education institutions. Additionally, several public Higher Education Institutions have established multiple scientific Private Non-Profit Institutions (IPSFL), acting as legal and contractual frameworks for their researcher. These researchers are not documented in the Social Reports, internal reports, or electoral rolls. In essence, many of these researchers conduct scientific research within the framework of public Higher Education Institutions, significantly contributing to their assessment and significance. However, the private nature of their contractual ties implies their exclusion from the democratic processes of their parent institutions. To delve deeper into this matter, we will focus on two major Portuguese public universities: the University of Lisbon (ULisboa) and the University of Porto (U.Porto).

In the case of the University of Lisbon, the electoral criteria used in its internal elections may suggest a strong representation of teachers and researchers in the electoral processes. However, a closer examination of the labor reality in its different Schools reveals a more complex situation. Let's take Instituto Superior Técnico, one of its largest Schools, as an example. According to the 2020 Management and Activities Report, the School had a total of 3,125 integrated researchers in 2019, with only 479 of them being contracted researchers. Out of these contracted researchers, 303 were directly hired by the University of Lisbon, while the remaining 176 were external hires. A similar pattern can be observed in the Faculty of Sciences of the University of Lisbon, which had a total of 1,784 integrated researchers, with only 479 of them being contracted researchers. Among these contracted researchers, 310 had a contractual link with the University of Lisbon, while 169 were external contractors.

These examples highlight a noteworthy disparity between two groups of integrated researchers at the University of Lisbon. One group consists of researchers who are directly contracted and employed by the institution, while the other group comprises integrated researchers who have external employment arrangements. This difference is influenced, in part, by the establishment of Private Non-Profit Institutions (such as IST-ID and FCIências.ID) operating within the scope of the University of Lisbon. Although these associations are legally independent, their researchers work on the university's premises daily and contribute their research to the institution's evaluation. However, due to their external legal and employment relationship, many of these researchers are

not accounted for in ULisboa's Social Report and are consequently excluded from the electoral rolls.

In the context of the University of Porto, the electoral criteria used in elections may suggest alignment between the number of teachers and researchers reported in the Social Report and the electoral rolls for the General Council election. However, a deeper examination reveals a more intricate reality. According to the Management Report and Consolidated Accounts of the University of Porto for 2020, the total number of teachers and researchers that year amounted to 3932.3 Full-Time Equivalents (FTEs). This figure indicates a significantly higher count of professionals compared to the 3,135 teachers and researchers declared in the Social Report, even though the unit of measurement differs between the two sources.

The institution itself offers clarification in the report, highlighting the distinction between the "University of Porto" and the "U. Porto Group." While the former refers to the university itself, the latter constitutes an "ecosystem" that includes the university and several private entities operating independently. Despite their independence, these entities contribute to the university's functioning in areas such as education and training, scientific research, and third missions. The variance between the number of human resources reported in the Social Report and the data presented in the 2020 Management Report and Consolidated Accounts is attributed to numerous researchers who work daily for the University of Porto but have contractual agreements with these separate private and legally independent organizations.

Collecting data on researchers with contractual links to Private Non-Profit Institutions established within public Higher Education Institutions poses a significant challenge, despite their crucial role in the higher education sector. Typically, information about private non-profit research units managed within public higher education institutions is not publicly available or reported in institutional accounts. Nevertheless, the Portuguese Foundation for Science and Technology has provided data from the Multiannual Funding of R&D Units for the period 2020-2023, revealing the existence of at least 63 private non-profit research units within these public institutions. These units employ a total of 5,287 PhD researchers, some of whom were excluded from the democratic processes of their institutions. The data underscores the increasing impact of this reality on higher

education, leading to differentiation within the system concerning contractual agreements, employment rights for professionals, and their involvement in the democratic governance of higher education institutions.

CONCLUSION

The Legal Framework of Higher Education Institutions plays a critical role in regulating and organizing the Portuguese higher education sector. Its implementation has brought about significant organizational changes influenced by the New Public Management model and the Europeanization of higher education policies. While initially presented to modernize institutions and foster national development, the law's implications extend beyond mere managerial and legal aspects. It reflects a broader political-ideological perspective on the social role of higher education in the 21st century. The impact of this Legal Framework is evident through substantial modifications to the structure and composition of management bodies, granting greater authority to executive leadership within institution. Additionally, the framework promotes a governance model that intertwines public and private management practices in higher education institutions. These profound alterations have spurred extensive debates, underscoring the need for a thorough evaluation of the law's effects and outcomes.

Despite the legal mandates for an assessment to occur five years after its implementation, over 16 years have passed without any official assessment taking place. This situation not only raises concerns about governance and oversight but also denies Higher Education the opportunity to gauge the law's impact on various organizational, management, and operational aspects. In this article, we evaluate the effectiveness of the law in promoting democratic governance within institutions by analyzing data on representation and electoral participation in Portuguese higher education institutions. Our findings reveal that the Legal Framework has not enhanced the involvement and participation of academic communities in institutional governance.

The analysis of elections for the General Councils from 2007 to 2022 reveals significant changes in the governance model, producing mixed effects on democratic principles within Higher Education institutions. The concentration of powers in the leadership of

the institutions, coupled with a reduction in the number of members in the management bodies and the elimination of parity between teachers and students, as well as the breakdown of collegial decision-making principles, has raised concerns.

These changes have not ushered in the envisioned strengthening of scrutiny, participation, or transparency. On the contrary, the centralization and personalization of powers in the institutions have triggered a process of political delegitimization of management bodies. This is evident in abstention rates exceeding 90% among students, irregular and decreasing participation rates among teachers, researchers, and non-teaching staff, and the exclusion of thousands of teachers and researchers from the electoral process. Consequently, this process contributes to the de-democratization of Higher Education, progressively replacing a management model based on principles of democracy, collegiality, and participation with a new paradigm of market-oriented management. This paradigm is characterized by flexibility, competitiveness, and an economic-corporate rationalization approach.

General Councils play a pivotal role in the governance model of Portuguese Higher Education Institutions. However, the legitimacy of many of these councils is compromised by issues of insufficient electoral participation, democratic representation, and scrutiny capacity. Furthermore, an ideological narrative linking "good leadership" to "strong leadership" and associating "effective leadership" with a "one-person leadership" model has reinforced the centrality of executive leadership within institutions, even though these leaders are no longer elected by the academic community. This framework of competitive rationality has steered Higher Education Institutions toward relying on individual leadership traits, emphasizing the identity and characteristics of those in power, rather than fostering democratic participation by the academic community.

Beyond the challenge of low electoral participation, there's a significant issue of inadequate representation within the teaching and research community. Approximately a third of teachers and researchers with contractual ties to Higher Education Institutions are excluded from internal electoral processes. The growing precariousness of these professionals not only impacts their labor and social security but also carries substantial political consequences by excluding thousands of teachers and researchers from

decision-making processes. Moreover, in the pursuit of efficiency and flexibility, many researchers working in public Higher Education Institutions establish contractual links with private non-profit associations within and supervised by these institutions. This practice deprives them of the opportunity to participate in elections, have electoral representation, or integrate into the public teaching and research career.

The assessment of the Legal Framework reveals a concerning and expanding disparity in electoral representation and labor rights within the academic community of Portuguese Higher Education Institutions. While those engaged in full-time or exclusive dedication teaching and research benefit from active participation in the democratic governance of their institutions, a considerable number of teachers and researchers experience outright exclusion owing to job insecurity or the private legal nature of their contractual ties. This exclusion, in turn, marginalizes them from pivotal decision-making processes.

This discrepancy is, to some extent, a result of the managerialist principles dominant in Portuguese Higher Education. These principles prioritize efficiency and flexibility at the expense of adequately safeguarding the social, labor, and democratic rights of professionals engaged in teaching and research within Higher Education Institutions. The absence of suitable mechanisms within this approach further accentuates the observed gap. In essence, the data reveals a latent contradiction between managerialism and the democratic, participatory management of institutions.

Examining the complexities of democratic governance in institutions demands a profound reflection on their overarching mission within a dynamically evolving world, grappling with novel political, social, economic, technological, and environmental challenges. It evolves a critical inquiry into whether institutions truly embody democratic ideals, are oriented towards the common good, and are equipped to confront the multifaceted demands of contemporary societies. The imperative lies in fostering heightened participation, emphasizing collegiality, and fortifying citizenship and democratic management as pivotal challenges in shaping public policies for higher education and science. This challenge extends not only to policymakers but also to entire academic communities, challenging the role they can play in the democratic societies we need to value, defend, and deepen.

REFERENCES

- Alves, M. G., & Tomlinson, M. (2021). The changing value of higher education in England and Portugal: Massification, marketization and public good. *European Educational Research Journal*, 20(2), 176–192. <https://doi.org/10.1177/1474904120967574>
- Amaral, A., Meek, V. L., & Larsen, I. M. (Eds.). (2003a). *The Higher Education Managerial Revolution?* (Vol. 3). Springer Netherlands. <https://doi.org/10.1007/978-94-010-0072-7>
- Amaral, A., Meek, V. L., & Larsen, I. M. (Eds.). (2003b). *The Higher Education Managerial Revolution?* (Vol. 3). Springer Netherlands. <https://doi.org/10.1007/978-94-010-0072-7>
- Amaral, A., Tavares, O., & Santos, C. (2012). Higher education reform in Europe: An historical and comparative perspective of the new legal frameworks in Europe. In A. Curaj, P. Scott, L. Vlasceanu, & L. Wilson (Eds.), *European Higher Education at the Crossroads: Between the Bologna Process and National Reforms* (pp. 655–673). Springer.
- Amaral, A., Tavares, O., & Santos, C. (2013). Higher Education Reform in Portugal: A Historical and Comparative Perspective of the New Legal Framework for Public Universities. *Higher Education Policy*, 26(1), 5–24. <https://doi.org/10.1057/hep.2012.29>
- Barrias, P. (2013). *A Nova Gestão Pública e as Universidades Fundacionais*. Mediaxxi.
- Bertelsen, E. (1998). The real transformation: The Marketisation of higher education. *Social Dynamics*, 24(2), 130–158. <https://doi.org/10.1080/02533959808458655>
- Bok, D. (2003). *Universities in the Marketplace: The Commercialization of Higher Education*. Princeton University Press. <https://www.jstor.org/stable/j.ctt7svxh>
- Bruckmann, S., & Carvalho, T. (2014). The reform process of Portuguese higher education institutions: From collegial to managerial governance. *Tertiary Education and Management*, 20(3), 193–206. <https://doi.org/10.1080/13583883.2014.911950>
- Busch, L. (2017). *Knowledge for Sale: The Neoliberal Takeover of Higher Education*. The MIT Press. <https://doi.org/10.7551/mitpress/10742.001.0001>
- Cabrito, B., Cerdeira, L., & Mucharreira, P. R. (2023). O Ensino Superior Público em Portugal: Financiamento, privatização e precariedade. *FINEDUCA: Revista de Financiamento Da Educação*, 13(10). <https://doi.org/10.22491/2236-5907127480>

- Cabrito, B. G. (2017). Expansão da educação e intensificação e proletarização do trabalho docente em Portugal no Séc. XXI. *Revista Trabalho, Política e Sociedade*, 2, 277–298.
<https://doi.org/10.29404/rtps-v2i3.3552>
- Cabrito, B. G., & Jacob, V. (Eds.). (2011). *Políticas de acesso e financiamento da educação superior no Brasil e em Portugal: Tendências actuais*. EDUCA.
- Campos, A. (2013). Trabalho, qualificação, poder e precariedade: Uma abordagem dinâmica à estruturação dos modelos produtivos, a partir de um estudo de caso da profissão científica. *Sociologia: Revista Da Faculdade de Letras Da Universidade Do Porto*, 25, 11–32.
- Cardina, M. (2008). On student movements in the decay of the Estado Novo. *Portuguese Journal of Social Science*, 7(3), 151–164. https://doi.org/10.1386/pjss.7.3.151_1
- Carvalho, T., Diogo, S., & Vilhena, B. (2022). Invisible researchers in the knowledge society – the Uberisation of scientific work in Portugal. *European Journal of Higher Education*, 12(4), 393–414. <https://doi.org/10.1080/21568235.2022.2105371>
- Castel, R. (2017). *From manual workers to wage laborers: Transformation of the social question*. Routledge.
- Cordeira, L. (2011). As políticas de financiamento do Ensino Superior numa Perspectiva Europeia. In B. G. Cabrito & V. Jacob (Eds.), *Políticas de acesso e financiamento da educação superior no Brasil e em Portugal: Tendências actuais* (pp. 61–93). EDUCA.
- Chipindi, F. M., & Daka, H. (2022). Neoliberal Reforms in Higher Education: Trends, Manifestations and Implications. In J. Zajda & W. J. Jacob (Eds.), *Discourses of Globalisation and Higher Education Reforms: Emerging Paradigms* (pp. 127–132). Springer International Publishing.
https://doi.org/10.1007/978-3-030-83136-3_8
- Choonara, J., Murgia, A., & Carmo, R. M. (Eds.). (2022). *Faces of Precarity: Critical Perspectives on Work, Subjectivities and Struggles*. Bristol University Press. <https://doi.org/10.56687/9781529220094>
- Ferreira, A. (2022). Living on the Edge: Continuous Precarity Undermines Academic Freedom but Not Researchers' Identity in Neoliberal Academia. In A. Vatansever & A. Kölemen (Eds.), *Academic Freedom and Precarity in the Global North* (pp. 79–100). Routledge.
- Gibbs, P. (2001). Higher Education as a Market: A problem or solution? *Studies in Higher Education*, 26(1), 85–94. <https://doi.org/10.1080/03075070020030733>

- Gonçalves, M. E. (2012). Changing Legal Regimes and the Fate of Autonomy in Portuguese Universities. In G. Neave & A. Amaral (Eds.), *Higher Education in Portugal 1974-2009: A Nation, a Generation* (pp. 161–177). Springer Netherlands. https://doi.org/10.1007/978-94-007-2135-7_7
- Hemsley-Brown, J., & Oplatka, I. (2006). Universities in a competitive global marketplace: A systematic review of the literature on higher education marketing. *International Journal of Public Sector Management*, 19(4), 316–338. <https://doi.org/10.1108/09513550610669176>
- Hood, C. (1991). A Public Management for All Seasons? *Public Administration*, 69(1), 3–19. <https://doi.org/10.1111/j.1467-9299.1991.tb00779.x>
- Jongbloed, B. (2003). Marketisation in Higher Education, Clark's Triangle and the Essential Ingredients of Markets. *Higher Education Quarterly*, 57(2), 110–135. <https://doi.org/10.1111/1468-2273.00238>
- Lima, L. (2009). A democratização do governo das escolas públicas em Portugal. *Sociologia : Revista Da Faculdade de Letras Da Universidade Do Porto*, 19, 227–253.
- Lima, L. (2012). Patterns of Institutional Management: Democratisation, Autonomy and the Managerialist Canon. In G. Neave & A. Amaral (Eds.), *Higher Education in Portugal 1974-2009: A Nation, a Generation* (pp. 287–306). Springer Netherlands. https://doi.org/10.1007/978-94-007-2135-7_12
- Lira, M., Gonçalves, M., & Marques, M. da C. da C. (2015). Instituições de ensino superior públicas em Portugal: Sua administração sob as premissas da new public management e da crise econômica global. *Revista Brasileira de Educação*, 20(60), 99–119. <https://doi.org/10.1590/S1413-24782015206006>
- Lynch, K. (2006). Neo-Liberalism and Marketisation: The Implications for Higher Education. *European Educational Research Journal*, 5(1), 1–17. <https://doi.org/10.2304/eej.2006.5.1.1>
- Magalhães, A. M., & Amaral, A. (2007). Changing Values and Norms in Portuguese Higher Education. *Higher Education Policy*, 20(3), 315–338. <https://doi.org/10.1057/palgrave.hep.8300156>
- Magalhães, A. M., & Santiago, R. (2012). Governance, Public Management and Administration of Higher Education in Portugal. In G. Neave & A. Amaral (Eds.), *Higher Education in Portugal 1974-2009: A Nation, a Generation* (pp. 227–247). Springer Netherlands. https://doi.org/10.1007/978-94-007-2135-7_9

- Mano, M., & Marques, M. da C. da C. (2012). Novos modelos de governo na universidade pública em Portugal e competitividade. *Revista de Administração Pública*, 46(3), 721–736.
<https://doi.org/10.1590/S0034-76122012000300005>
- Mineiro, J. (2016). O campo universitário português: Transformações e disputas entre 1988 e 2015. *Sociologia, Problemas e Práticas*, 82, 103–123. <https://doi.org/10.7458/SPP2016827918>
- Molesworth, M., Nixon, E., & Scullion, R. (2009). Having, being and higher education: The marketisation of the university and the transformation of the student into consumer. *Teaching in Higher Education*, 14(3), 277–287. <https://doi.org/10.1080/13562510902898841>
- Naidoo, R., & Williams, J. (2015). The neoliberal regime in English higher education: Charters, consumers and the erosion of the public good. *Critical Studies in Education*, 56(2), 208–223.
<https://doi.org/10.1080/17508487.2014.939098>
- Nascimento, A., & Cabrito, B. (2017). A autonomia do Ensino Superior Português entre a lei e a prática – estudo de caso múltiplo. *Revista Educação em Questão*, 55(45), Article 45.
<https://doi.org/10.21680/1981-1802.2017v55n45ID12745>
- Neave, G., & Amaral, A. (Eds.). (2012). *Higher Education in Portugal 1974-2009: A Nation, a Generation*. Springer Netherlands. <https://doi.org/10.1007/978-94-007-2135-7>
- OECD. (2021). *Reducing the precarity of academic research careers* (OECD Science, Technology and Industry Policy Papers 113).
- Oliveira, A. C., Peixoto, P., & Silva, S. (2014). *O papel dos Conselhos Gerais no Governo das Universidades Públicas Portuguesas: A lei e a prática*. Imprensa da Universidade de Coimbra.
- Pedrosa, J., Santos, H. C., Mano, M., & Gaspar, T. (2012). *Novo Modelo de Governança e Gestão das Instituições de Ensino Superior em Portugal: Análise dos usos do Modelo em Instituições Públicas*. CNE.
- Rubião, A. (2013). *História da universidade. Genealogia para um 'Modelo Participativo'*. Almedina.
- Sergeira, V. de J. (2022). *As trajetórias profissionais dos investigadores: Do aumento de recursos humanos à promoção do emprego científico* [PhD, ISCTE - Instituto Universitário de Lisboa].
<https://repositorio.iscte-iul.pt/handle/10071/25169>
- Soeiro, J. (2015). *A Formação do Precariado: Transformações no trabalho e mobilizações de precários em Portugal* [PhD]. Universidade de Coimbra.

- Sunendar, D., & Adriany, V. (2023). 'It's all about the product': Doing research in neoliberal times in Indonesian higher education. *Globalisation, Societies and Education*, 0(0), 1–11.
<https://doi.org/10.1080/14767724.2023.2212438>
- Varman, R., Saha, B., & Skålen, P. (2011). Market subjectivity and neoliberal governmentality in higher education. *Journal of Marketing Management*, 27(11–12), 1163–1185.
<https://doi.org/10.1080/0267257X.2011.609134>
- Whitty, G., Power, S., & Halpin, D. (1998). *Devolution and choice in education: The school, the state, and the market*. Open Univ. Press.
- Young, S. J. (2002). The Use of Market Mechanisms in Higher Education Finance and State Control: Ontario Considered. *Canadian Journal of Higher Education*, 32(2), Article 2.
<https://doi.org/10.47678/cjhe.v32i2.183412>
- Zajda, J., & Jacob, W. J. (2022). Discourses of Globalisation and Higher Education Reforms: Emerging Paradigms. In J. Zajda & W. J. Jacob (Eds.), *Discourses of Globalisation and Higher Education Reforms: Emerging Paradigms* (pp. 1–17). Springer International Publishing.
https://doi.org/10.1007/978-3-030-83136-3_1

Conflict of interest statement

On behalf of all authors, the corresponding author states that there is no conflict of interest