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Agency and Governance Relations in Non-Profit Higher Education Institutions

ABSTRACT

Objective: This theoretical essay aims to identify how agency relationships occur, involving stakeholders in non-profit higher education institutions, as well as the role of Corporate Governance in this context.

Theoretical approach: Agency Theory, Stakeholder Theory, and Corporate Governance are discussed from their foundations, history, and evolution to the present day and the specificities of non-profit educational institutions. The theories are concatenated in a perspective of multiple principals and agents involving stakeholders and governance as a modulator of conflicts in relation to the purpose of the organization.

Results: A theoretical model is presented as a result, showing the agency relationships, from which risks of conflicts can emerge when the institutional objectives of the organization and the role of governance in mitigating these risks are disregarded. For future research, further in-depth practical investigation is suggested, with an empirical investigation into non-profit organizations.

Originality/Relevance: The work is original in that it proposes an integrated approach to theories, also proving to be relevant to the field of third sector studies.

Theoretical contributions: This study brings theoretical contributions as it outlines a new perspective of approaching theories and the purpose of organizations.

Social Contributions: It also presents social contributions by discussing the topic in the context of non-profit higher education institutions, helping this type of organization to better understand the configuration and risks involving agency relationships.

Keywords: Corporate Governance. Agency Theory. Stakeholders. Higher Education Institutions.

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1 INTRODUCTION

In Brazil, education is considered one of the citizen's basic social rights, with free exploitation by private business and non-profit organizations, as long as regulatory norms relating to operating authorization and quality of education are met (Brasil, 1988). According to Law 9.394/1996, Law of Guidelines and Bases of Education (LDB), educational institutions can assume any legal form provided for by law (Brasil, 1996). In the case of Non-Profit Higher Education Institutions (NPHEI), they may also enjoy the right to immunity from taxes, provided that the legal requirements are met (Reis & Lima, 2016). The NPHEIs, due to their educational purpose, their form of legal constitution, and due to their tax nature, are subject to several legal requirements, assessments, and controls by government agencies. NPHEIs have in common the fact that they are required to fulfill their institutional objectives (Paes, 2020). Conflicts of interest can arise in the various agency relationships that are configured in this type of organization, based on their contracts and operations, involving internal and external stakeholders (Hedlund et al., 2021).

Agency Theory as it is applied in a for-profit entity, involving the owner (principal) and executives (agents) is not the most suitable for NPHEIs, because in these organizations, agency relationships do not result from a bond of ownership. They have a specific design and arise from statutory, administrative, operational and contractual relationships. They also differ in the way in which agency conflicts arise: while in business entities the basis of the conflict surrounds the maximization of profits for owners in the face of other interests, in NPHEIs conflicts can arise in relation to institutional objectives and the fulfillment of other objectives that are particular or extraneous to the purpose of the institution. In this sense, the Stakeholders' approach also acquires relevance, as meeting the interests of Stakeholders must be aligned with institutional objectives (Caers et al., 2006; Campos & Costa, 2018; Hedlund, et al., 2021; Wellens & Jegers, 2014).

Governance, in this context, is a mechanism for monitoring and controlling actions and it aims to safeguard the organization's objectives. The legal configuration of the firm, the dynamics of the relationship with stakeholders and agency relationships, triggered in operational and administrative processes through formal instruments such as statutes, powers of attorney, contracts or even tacitly by assigning functions, positions and commercial relationships, must be guided by transparency, responsibility, integrity, equity, and compliance; they must meet the institutional objectives of the organization. From this perspective, governance stands out as a management strategy, as it contains mechanisms that aim to safeguard the organization so that its objectives, and consequently, the legitimate interests of Stakeholders, are achieved (Brazilian Institute of Corporate Governance [IBGC], 2016).

Given this scenario, this theoretical essay aims to study Agency Theory, Stakeholder Theory, and Corporate Governance in the context of NPHEIs, and identify how agency relationships involving Stakeholders and the role of Corporate Governance in this context are configured, as well as to present the historical evolution of the theories, and their development until the present day. Under the academic aspect, the Corporate Governance theme is important and current, with vast scientific production in the business scope, however there is still a lack of studies in the field of NPHEIs which explore the theme in an integrated perspective with Agency Theory and Theory of the Stakeholders.

Regarding the research field, Quatrin et al. (2016) already highlighted the growing notoriety of the third sector, with gaps in studies to be complemented. In a bibliometric research, they investigated publications on the third sector theme, in South American journals, published in the Scientific Electronic Library Online (SciELO) database. As a result, they

identified a low volume of publications related to the field. Thirty eight articles were identified, most related to management aspects. The authors emphasize the lack of and need for studies related to the planning, organization, and direction of the activities of this type of organization (Quatrin et al., 2016).

The bibliometric studies by Kreuzberg and Vicente (2019) and Simões and Souza (2020) point to a predominance of governance studies in the business field, with the association of the theme to agency conflict. However, Simões and Souza (2020) point out that the presence of studies involving Stakeholder Theory, Stewardship Theory, and Resource Dependency Theory was observed, indicating different approaches regarding the traditional approach to governance related to Agency Theory. For future research they suggest the integration of theories, as a way to enhance studies involving, mainly, deviations and financial fraud.

Kreuzberg and Vicente (2019) also highlighted the need to extrapolate the limits of Agency Theory involving conflicts between shareholders and managers. Thus, they suggest research aimed at an integrated understanding of Corporate Governance, Agency Theory, and Stakeholder Theory, also citing other theories such as Stewardship and Resource Dependence. They also suggest the integration of the internal and external environment for a better understanding of organizational factors.

Given this context, this essay is justified by its originality, as it presents how agency relationships involving stakeholders in NPHEIs and the role of governance are configured, also proving to be relevant to the field of third sector studies. It brings theoretical contributions by approaching governance from a perspective integrated to Agency Theory and Stakeholder Theory. It also presents social contributions by discussing the theme in the context of Civil Society Organizations, specifically the NPHEIs, thus contributing so this type of organization can better understand how it configures itself and what the risks involving agency relationships are.

2 THEORETICAL DEVELOPMENT

In this chapter, historical aspects, concepts, and the evolution of studies will be presented on Corporate Governance, Stakeholder Theory, and Agency Theory, seeking to theoretically support the configuration of approaches in the context of NPHEIs. Aiming to connect the *locus* to the theories, it is also necessary to understand the legal specificities and characteristics of NPHEIs.

2.1 Corporate Governance

Governance has its theoretical origin mainly in the work of Berle and Means (1984) on the modern corporation, which deals with the divorce between ownership and management, but also in Ronald Coase's Theory of the Firm (1937), on the structuring and delineation of factors in a business organization as a means to serve the market and the interests of the owners. In the essence of governance, there is also Agency Theory and Agency Costs developed by Jensen and Meckling (1976), which deals with the asymmetries between principal (owner) and agent (executive) and also the costs for conflict control, called agency costs. Governance was also connected to the stakeholder approach in serving other stakeholders in the organization, and had Freeman (1984) as a great precursor.

The context of governance is multidisciplinary and can be studied or seen from different perspectives. In addition, it is present in all types of organization, regardless of the activity or legal nature, as it stems from existing relationships in institutional processes. A

holistic and interdisciplinary vision is needed to achieve its goals (Turnbull, 1997). In this direction, several concepts and forms and approaches were developed. Williamson (1996) addresses governance from the perspective of business and the interest of the organization. It focuses on governance mechanisms as a tool for monitoring and controlling contracts and transactions in an economic context. Steinberg (2003) defines governance as a system of good practices with the purpose of achieving more value for the organization, access to capital and sustainability, through monitoring, alignment of interests and control of management decisions, involving partners, boards of management, boards of directors, audit and fiscal council. According to Cadbury (1998), governance means an action, it is related to the way of governing or the method of management. A good governance system begins with compliance with external rules, in the form of laws or codes of good practices, internalized and completed by internal rules and codes of conduct.

The main drivers of governance were: (i) the pioneering activism of entrepreneur Robert Monks, in the United States, who went into the field defending with conviction that a company that has an effective monitoring system generates value and more wealth than one that does not have such resource; (ii) the Cadbury Report, published in the early 1990s, in the United Kingdom, in response to omissions, combination of favors, and abuses committed by members of the board of directors of several companies; (iii) the principles of the Organization for Cooperation and Development (OECD), which understands governance as a link between the development objectives of markets, corporations and nations; and (iv) the Sarbanes-Oxley Act, whose purpose was to create regulatory measures applied to the management of corporations, with emphasis on values such as legal compliance, responsible accountability, more transparency and a sense of justice (Rossetti & Andrade, 2022).

From the historical milestones, there was a worldwide diffusion of governance concepts with the operationalization of codes and principles especially after 1995, with the creation of an institution with a global reach, which brings together corporations, investors, financial intermediaries and other interested parties, with the objective of disseminating and applying the principles of good governance: the International Corporate Governance Network (ICGN) (Rossetti & Andrade, 2022). In this line of evolution, the OECD published in 1999 a document of global scope, which establishes guiding principles so that the politicians of the countries can improve the legal system linked to the governance of societies. The document, which is in its third edition, was prepared with the purpose of supporting economic efficiency, sustainable growth and financial stability. Overall, the principles underscore the importance of a high level of transparency, accountability, respect for shareholder rights and the importance of key stakeholders. The document highlights that good Corporate Governance protects the rights of owners and other stakeholders (OECD, 2016).

Following the world trend, in Brazil, the Brazilian Institute of Corporate Governance (IBGC) was founded in 1995, a nationwide non-profit association dedicated to the promotion of Corporate Governance. The IBGC aims to be a reference in Corporate Governance, promoting training, development, and dissemination of best practices, helping institutions to act with more transparency, justice and responsibility. Seeking to disseminate best practices, the IBGC published, in 1999, the first edition of the Code of Best Practices in Corporate Governance, which is currently in its fifth edition, published in 2014. The code makes recommendations regarding the decision-making process in organizations, which must adopt as pillars: ethics, responsibility, transparency, assessment of exposure to risks, impacts on stakeholders, and the organization's sustainability (IBGC, 2014).

Subsequently, the IBGC published in 2016 the Best Practices Guide for Third Sector Organizations: Associations and Foundations. The guide highlights the importance of the mission of non-profit institutions due to their public nature. It also highlights the obligation to

respect laws and regulations in general, transparency, public accountability, and meeting stakeholder demands (IBGC, 2016). The Guide broadly emphasizes the principles of Corporate Governance as a tool for monitoring, transparency, accountability and corporate responsibility, safeguarding the institution, so that its agents make decisions based on ethics and aligned with the institution's purpose (Mello & Silva, 2018).

In the educational field, the work of Vilela and Veloso (2014) investigated the adoption of governance practices in a NPHEI and found that the practices adopted by the institution had a positive impact on management mechanisms, even improving the quality of education at the institution. In another study, Siedschlag and Lana (2020) investigated the dynamics of Corporate Governance mechanisms for non-profit universities, the results showed that the adoption of governance practices by non-profit universities can mitigate agency conflicts, mainly due to the particularities involving this type of institution and the conflicts that may also involve administrators and stakeholders.

Governance, with its bases, principles, and control mechanisms, aims to ensure that the educational objectives of NPHEIs are achieved, mitigating risks, safeguarding at the same time interests of stakeholders that do not conflict with these objectives, and protecting the organization from the conflicts of interest. Good governance practices are also an instrument for NPHEIs to have more control over compliance with laws and regulations, especially those related to tax immunity, thus enabling the reduction of risks of assessments for non-compliance with rules (IBGC, 2016).

2.2 Stakeholder Theory

Stakeholders can be defined as individuals and/or groups with whom the organization has a relationship, at levels of interest and expectation, and that somehow affect or are affected by the organization's objectives. Strictly speaking, they would also be any group or individual with whom the organization has a relationship with some degree of dependency (Freeman, 1984).

The term stakeholder was used for the first time in the 1960s, in a memorandum from the Stanford Research Institute, which referred to the importance of relationships with shareholders, employees, customers, suppliers and financial institutions in the organization. The document stressed that long-term success required effective relationship management. In the decades that followed, the concept was addressed in various theories. In 1984, Edward Freeman published the work entitled *Strategic Management: A Stakeholders Approach*, which consolidated the form of approach as a strategy, with the primacy of responsibility in business, the sense of justice, social responsibility, and ethics (Freeman & Mcvea, 2001).

The approach formulated by Freeman (1984) predicts that the strategies and business processes of an organization must be formulated in order to manage and integrate the relationship and interests between groups of interested parties, emphasizing a business environment with interaction, collaboration, creation of value, and sustainable growth. The stability of these relationships and the way they are managed can be a success factor for everyone involved. Freeman (1984) proposes that the Stakeholder Theory be used as a single strategy, which due to its dynamics would be constantly integrated into the environment by means of the interested parties.

Donaldson and Preston (1995) identified in Stakeholder Theory three different approaches that, in a sense, support each other: (i) Descriptive - addresses the organization's point of view, as a constellation of interests and how the organization relates and reconciles these interests; (ii) Instrumental - emphasizes the approach of stakeholders as a cause and effect strategy, the way management acts in relation to interested parties that may affect the

entity's performance; and (iii) Normative - takes into account the social contracts, the rights and obligations and a utilitarian vision of the stakeholders with legitimate interests in the organization. Frooman (1999) addressed the theory by analyzing the organization's power and dependence on stakeholders, merging stakeholders with dependence on resources, seeking to identify how the relationship with stakeholders and dependence on resources determine or influence the choice of strategies. The guiding question of the work focuses on how external entities can influence the organization's behavior.

In the field of non-profit institutions, there is no owner figure and the distribution of results, however there are other interested parties in the organization, such as: consumers of the services provided, who want adequate service; donors who want their funds to be used appropriately; and society in general, which contributes indirectly with public resources transferred through subsidies, exemptions, and tax immunities. In general, everyone is interested in the efficiency and proper management of organizational resources. However, each group of interested parties has its own interests, and when they conflict with the institutional purposes of the organizations, it will be necessary to create mechanisms to resolve these divergences. Focusing on a particular stakeholder can distance an organization from its perspective of reciprocity and fairness (Krashinsky, 2003).

Mainardes et al. (2010) identified the stakeholders of a Portuguese public HEI through interviews with top management and intermediate levels and verified a graduation of importance of the stakeholders in the different management levels. While top management focuses on the student and the teaching service, middle managers emphasize meeting the requirements of internal administration and regulatory bodies. The main stakeholders were identified: students, professors, class entities, professional organizations, competing universities, government, and companies.

Heinzen et al. (2013) identified and categorized the stakeholders of a third sector organization, considering legitimacy, urgency, and power over the organization. As a result, the work presented a group of fifteen potential stakeholders of the organization, namely: city council, board of directors and supervisor of the organization, local companies, partner entities, high school and elementary students, media, ministry of the environment, the Public Ministry, residents living around the preservation area, NGOs from the same sector, environmental inspection and control bodies, environmental police, local city halls, society, volunteers, and interns.

Anese et al. (2021) developed a study in non-profit organizations with the aim of identifying stakeholders and measuring the degree of dependence of organizations on them. As a result, the most important stakeholders were identified, on whom the organization has a high degree of dependence and with whom it maintains a more intense relationship, also contributing to the sustainability of its services. They are: users, funders, partner entities, employees, volunteers and founders. Stakeholders with low dependency were also identified, comprising the community, municipal secretariat, and financial institution.

In general, the stakeholder approach as a strategy aims at creating value and sustainable growth for the organization, in a relationship of trust, and social and ethical responsibility with the interest groups that affect or are affected by it, in a power relationship and with legitimate interests in that organization (Freeman, 1984; Frooman, 1999). However, within non-profit organizations, the institutional objectives of the organization must always prevail. Specifically, in NPHEIs, due to the inherent legal and tax restrictions, one must seek to achieve the institutional objective of the organization, in this case, the educational purpose, its purpose and reason for existence, strategically reconciling other legitimate interests in the organization, not conflicting with its institutional objective (IBGC, 2016).

2.3 Agency Theory

In their work *The Modern Corporation and Private Property* of 1932, Berle and Means addressed the gap between ownership and management of corporations, with the insertion of professional executives and the emergence of divergences of interests involving, mainly, the objectives of the owners of maximization of profit (Berle and Means, 1984). Berle and Means (1984) laid the foundations of the Agency Theory. According to them, in corporations there is a real government and a paper government. On paper are the shareholders and the statutory administration bodies; now, in real power are the contracted executives who, due to the speed and dynamics of the organizations, broke away from the paper government. The shareholders, increasingly dispersed, at some point in this evolutionary process lost control over the executives' decisions, and their ownership became passive, disorganized and virtual (Berle and Means, 1984).

Jensen and Meckling (1976) defined the agency relationship as a contract by which the principal hires another person (agent) and delegates powers to perform a certain activity on their behalf. In this relationship, as both parties seek to maximize the utility of their actions, the agent's interests may not coincide with the principal's interests. As there are no complete contracts and perfect agents, agency conflicts arise. Such conflicts arise from deviations in relation to the interests of the owners, practiced by opportunistic managers, who seek their own interests or those of other parties linked to the organization.

Agency Theory highlights the existence of agency problems, whether in formal relationships through contracts or even informal ones through implicit agreements. Two problems can arise from these contracts, the first concerns the conflict between the objectives of the principal and the agent, and the second, related to the control of the agent by the principal, when this is difficult or its cost is high, making it impossible for the principal to be able to verify whether the agent is making appropriate decisions. Another important aspect in this process is risk sharing and the resulting asymmetries, when the principal and the agent have different attitudes or preferences in relation to risk. Agency theory is based on monitoring self-interest and its consequences for each party to the contract. In this way, the control and treatment of information in the organizational environment through formal and informal information systems gain importance, aiming at supervising managerial opportunism (Eisenhardt, 1989).

At the base of the relationship and agency conflicts is human behavior and, according to Jensen and Meckling (1994), understanding human behavior is fundamental to understanding how organizations work, regardless of what their nature is: non-profit, business, or public. According to the authors, individuals, whether politicians, managers, academics, professionals, philanthropists, or factory workers, are evaluative and resourceful maximizers, who respond creatively to opportunities, and seek to free themselves from restrictions that prevent them from realizing their desires and personal interests. The challenge for organizations is to create mechanisms or rules to modulate interests and channel the efforts of individuals to achieve strategic and institutional objectives, in order to minimize conflicts.

Williamson (1987) defines opportunism as the cunning pursuit of self-interest. Opportunistic behavior involves among others lying, stealing, cheating, and subtle forms of deceit. It involves incomplete, distorted disclosure of information in a manner that misleads, distorts, disguises, obfuscates or confuses others. If opportunism did not exist, all behavior would be governed by rules and there would be no problems in enforcing contracts. Opportunism is a problematic source of behavioral uncertainty, in this sense, transactions

must be safeguarded with prior rules, with credible commitments, aligned incentives, and superior governance structures.

Therefore, non-profit entities and companies have more similarities than differences, since all organizations operate through people. While the non-distribution restriction may prevent direct overpayments from being made, it is not sufficient to prevent opportunistic behavior and ensure that the institution, through its agents, spends its money inefficiently, with higher costs or resource utilization in activities alien to the purpose of the organization (Brody, 1995).

Organizations are legal fictions, they are legal instruments with rules of action between individuals. The firm is a set of relationships with multiple, complex and often conflicting interests, structured and formalized through express and tacit contracts between individuals internal and external to the organization (Jensen & Meckling, 1976). In this environment of multiple interests and contracts, Rossetti and Andrade (2022) emphasize that in business organizations, the formulation of strategies aims to maximize the financial return of the partners, who seek the appreciation of their investments in the form of dividends and capital gains, suffering, often with business risks.

In NPHEIs, however, there is no owner figure; the main objective is to achieve the fundamental and motivating purposes of its origin. According to Mendonça and Machado (2004) two aspects generate the separation between principal and agent in non-profit organizations; the first, internal, stems from the distancing of the founders or creators of the organizations, who leave the management to third parties; the second, external, is related to the increased demands regarding accountability to partners and donors and, therefore, the need for professionalization.

Caers et al. (2006) point out that in a non-profit organization, the objective is to obtain resources to achieve the purpose. Thus, agents must manage the organization according to its mission. The analysis of agency relationships within non-profit organizations is multifaceted and should be carried out by area, considering the risks of asymmetry between boards versus executive managers, and executive managers versus employees (Caers et al., 2006). According to Guimarães (2008), in non-profit organizations there is no clarity as to who is the principal, as there is no shareholder figure or even Board members appointed and remunerated based on a corporate bond. The expected return is not financial, but social, therefore conflicts can arise in relation to the fulfillment of the institution's mission. In this sense, Wellens and Jegers (2014) argue that the classic view of principal (owner) and agent (executive) does not fit a non-profit institution, a view with multiple principals and agents would allow a more adequate picture of reality.

In general, according to Hedlund et al. (2021), Agency Theory helps to understand the conflicts in relation to the objectives of an organization and the risks involved in the decisions of agents. In this context, governance is important to reduce conflicts and is positively related to serving stakeholders.

It should also be noted that Agency Theory is the main theoretical aspect of field studies on governance. However, there is a trend of multi-theoretical studies also involving Stakeholder Theory. In the integration between Agency Theory and Stakeholder Theory, in agency relations, other stakeholders are also considered as principal (Campos & Costa, 2018).

2.4 Non-Profit Higher Education Institutions

Education appears in the Federal Constitution of 1988, as one of the basic social rights of the citizen, aiming at the full development of the person, their preparation for the exercise of citizenship and their qualification for work. Education is the responsibility of the State and must be promoted and encouraged with the collaboration of society, through private educational institutions (Brasil, 1988). Higher education in Brazil is an extremely regulated segment and depends on legal acts by the Ministry of Education, such as accreditation and re-accreditation, recognition and evaluation of courses, and may in certain cases be subject to sanctions and administrative supervisory measures. As long as it complies with the legislation and has state authorization, the private sector can explore the higher education segment, through the formation of legal entities with economic or non-profit purposes (Silva & Covac, 2015).

Law No. 9,394/96 of Guidelines and Bases for National Education (LDB) classifies private educational institutions under the following categories: (i) business, when constituted as an undertaking in the form of a partnership; (ii) confessional, following a specific religious orientation or ideology; (iii) philanthropic, when certified as a social assistance charity; and (iv) community, and according to Law 12,881 of November 12, 2013, this is an institution created on the initiative of civil society that offers free services and has community representatives as members of its board (Brasil, 1996). The business institution, by its characteristic, seeks profit for the individual; confessional, philanthropic and community organizations are non-profit.

Article 7^o-A, of Law 9,870 of December 20, 1999, establishes that the sponsors of private educational institutions may assume any legal form permitted by civil law (Brasil, 1999). Therefore, the NPHEI will take the legal form of Association (union of people) or Foundation (allocation of assets). The Civil Code also provides for the registration of the legal entity to declare its name, purposes, headquarters, duration, and social fund, if any, the way in which it is managed and represented, whether the constitutive act can be amended in relation to administration and form, whether or not the members are liable for obligations, the conditions for extinction and the allocation of assets, and in the case of associations, the form of administrative management and approval of the respective accounts. However, whatever the legal form and category, the objective to be achieved is fundamental, that is, higher education (Paes, 2020).

Article 43, of the LDB, recommends that higher education be dedicated to training graduates in different areas of knowledge, with the aim of achieving the development of science and technology, and consequently, the development of Brazilian society. The action will take place through sequential courses organized by field of knowledge and classified as undergraduate, graduate, and extension courses (Brasil, 1996).

The NPHEIs, due to their characteristics, are also called Civil Society Organizations (CSO), whose legal framework is established in Law 13,019 of July 31, 2014. The Law regulates the legal regime of partnerships between public administration and CSOs and its principle is mutual cooperation, in the best interest of the public, through activities and projects formalized in terms of promotion or in cooperation agreements signed between state agencies and CSOs. It brings with it some of the principles of governance such as transparency. In its section III, it establishes the mandatory disclosure of partnerships, as well as accountability on the Internet. In addition, it also brings as requirements the need to maintain regular bookkeeping and the allocation of assets in the event of extinction of the partnering institution (Brasil, 2014).

An important issue, with relevant economic and financial effects for NPHEIs, is the concept of tax immunity, which limits the power of the State to tax institutions, provided that certain requirements are observed. Tax immunity stems from several principles, values and political options, which the Brazilian State, through the constituent power, deemed relevant to society, such as education, social assistance, and religion (Baleeiro, 2018). Subitem c of item VI of Article 150 of the Federal Constitution, provides that it is forbidden to institute a tax on the assets, revenue and services of non-profit educational institutions (Brasil, 1988). To be entitled to immunity from taxes, NPHEIs must meet the specific requirements established by law, stipulated in Art. 14 of the National Tax Code, namely: (i) not to distribute any portion of its equity or revenue, in any capacity; (ii) fully invest its resources in the country to maintain its institutional objectives; and (iii) keep records of its income and expenses in books covered with formalities capable of ensuring their accuracy (Reis & Lima, 2016). The need to comply with institutional objectives is emphasized here.

Another immunity that reaches the NPHEIs, specifically the philanthropic ones, is foreseen in §7, of Art. 195 of the Constitution, namely immunity from social contributions. To enjoy this right, philanthropic NPHEIs must qualify as Charitable Education Entities, through the Certificate of Beneficent Social Assistance Entity (*Certificado de Entidade Beneficente de Assistência Social - CEBAS*), regulated by Complementary Law 187/2021, which replaced Law 12,101/09. The Law establishes, among other requirements, the fulfillment of institutional purposes, the maintenance of regular accounting, the observance of principles of universality in the service, with activities directed at its associates or a professional category being prohibited (Brasil, 2021). In the absence of compliance with the requirements, whether taxes or contributions, the competent authority, in this case the Receita Federal (Brazil's counterpart to the US Internal Revenue Service), may suspend tax immunity, which would imply the possibility of collecting taxes, with fines and charges (Paes, 2020).

As can be seen, the NPHEIs, due to their legal constitution, educational purpose and tax nature, are subject to several legal requirements. However, the fulfillment of their institutional objectives remains the fundamental requirement NPHEIs must meet to ensure tax exemption. While for-profit HEIs seek the maximum return for their owners, in NPHEIs the priority is to achieve their educational objective.

3 CONFIGURATION OF AGENCY RELATIONS IN NPHEIs AND THE ROLE OF GOVERNANCE

NPHEIs are subject to compliance with various legal rules related to their operation and their tax nature, but the main point is that the institution's objectives are safeguarded, avoiding deviations from purposes and undue distribution of results (Paes, 2020). Therefore, agency relationships involving stakeholders in organizations need to be identified, monitored, and controlled in order to avoid conflicts of interest.

Wellens and Jegers (2014) argue that the classic view of the agency relationship between the owner (principal) and the executive (agent) would not be the most appropriate for a non-profit institution; a view with multiple principals and agents would favor a more adequate image of reality. Agency relationships in an NPHEI are multifaceted and involve the organization's stakeholders (Caers et al., 2006; Campos & Costa, 2018; Hedlund et al., 2021; Wellens and Jegers, 2014). Among them, the statutory bodies, managers, functional structure, funders, donors, government, students and the community, who are stakeholders who participate and contribute to the strategies aimed at achieving educational objectives.

Thus, Figure 1 proposes a theoretical model about the multiple agency relationships of NPHEIs, involving internal and external stakeholders. In the model, stakeholders are listed in an exemplary configuration, based on the work of Anese et al. (2021), Heinzen et al. (2013), and Mainardes et al. (2010). The statutory bodies, executive managers and functional structure are classified as internal stakeholders, their linkage is due to the statutory provisions and the functional structure of the NPHEI. Donors and funders are listed as external stakeholders, who relate to the NPHEI through a formal or tacit contractual link; the government in its various spheres is linked by law, while students and the community are linked as recipients of the service provided.

In line with the studies by Caers et al. (2006), Guimarães (2008), and Wellens and Jegers (2014), the statutory management bodies appear as principal and the executive managers and functional structure as agents. In this case, the agency relationship is formed by the competences defined in the statute for the management bodies and by the delegation of responsibilities to the executive managers and functional structure.

The external stakeholders are presented as the main ones in relation to the entire structure of the NPHEI, forming an agency relationship with the statutory bodies, executive managers, and functional structure, which have a duty to the main ones to ensure that the statutory objectives are achieved with sustainability and transparency, as well as for compliance with the rule of non-distribution of results. The relationship in this case is not one of delegation, but economic, contractual, legal and moral.

Through these linkages of formal and informal delegations, Agency Theory highlights the possibility of conflicts of interest (Eisenhardt, 1989). At the base of the relationship and agency conflicts is human behavior. Individuals, whether politicians, managers, academics, professionals, philanthropists or factory workers, are evaluative and resourceful maximizers who respond creatively to opportunities, and seek to free themselves from constraints that prevent them from realizing their personal desires and interests (Jensen and Meckling, 1994).

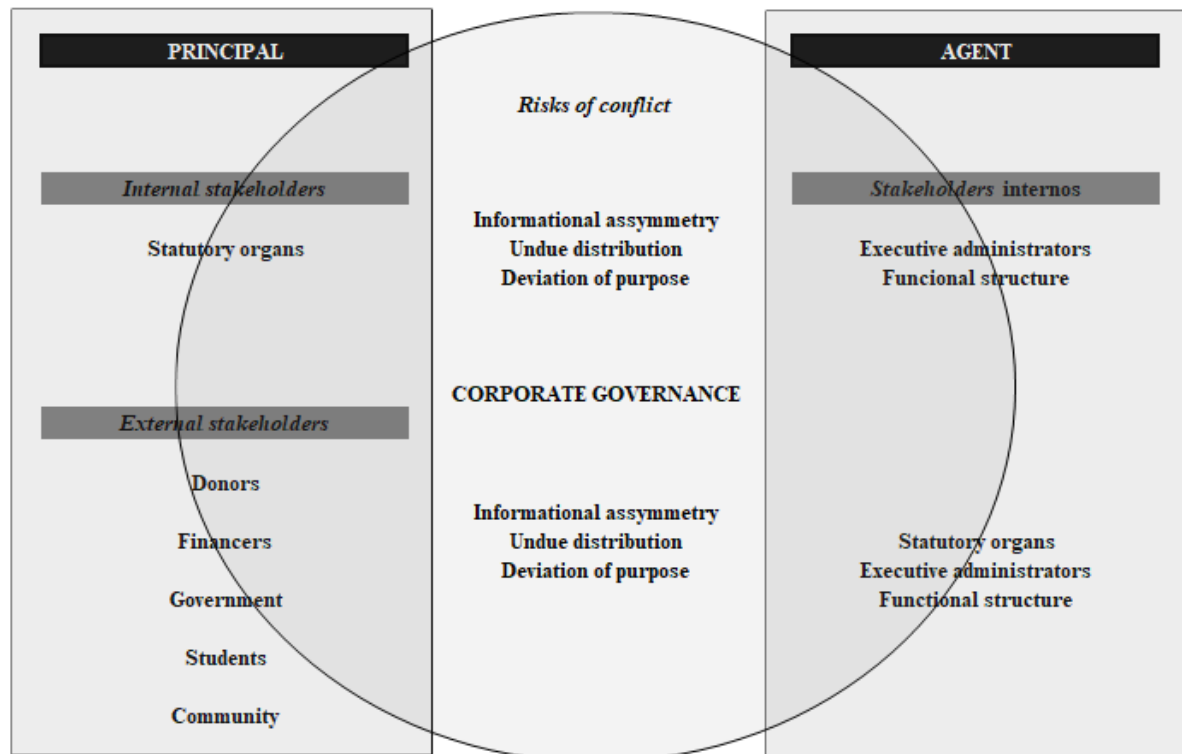
The essential characteristic of a non-profit organization of non-distribution and fulfillment of a purpose defined in its statutes, by itself does not protect the organization from the opportunistic behavior of agents (Brody, 1995). As shown in Figure 1, conflicts may arise from opportunistic behavior by members of the management bodies, managers and employees in favor of particular objectives, due to (i) informational asymmetry regarding the responsibility of management for transparency, zeal in the use of organization resources and proper and clear communication between agent and principal and compliance with laws; (ii) diversion of purpose in the misuse of resources and assets, which may occur directly or through the execution of activities or contracts outside the organization's purpose; and (iii) breach of the non-distribution requirement, generating undue benefits and/or undue or non-standard gains, direct or indirect for third parties or members of the organization (Brody, 1995; Guimarães, 2008).

In this context, governance is related to the way of governing and the method of management of NPHEIs. It works to monitor and mitigate the risks of these conflicts (Hedlund et al., 2021). A good governance system begins with compliance with external rules, in the form of laws or codes of good practice, internalized and completed by internal rules and codes of conduct (Cadbury, 1998). In this sense, good Corporate Governance practices, as shown in Figure 1, overlap between principal and agent, through internal controls, creating a circle of protection, such as mechanisms for regulating acts and controlling decisions.

Good governance practices align interests and aim at monitoring, transparency, accountability, and corporate responsibility in management. It works to mitigate the risks of opportunistic behavior that can generate information asymmetry, undue distribution, and

deviations from the institutional objectives of NPHEIs. Transparency, the institutional objective and the non-distribution rule must be pursued under the watchful eye of governance (IBGC, 2016; Mello & Silva, 2018; Siedschlag & Lana, 2020; Vilela & Veloso, 2014; Wellens & Jegers, 2014).

Figure 1
Theoretical Model of the Agency Relationship



4 FINAL CONSIDERATIONS

This essay addressed Agency Theory, Stakeholder Theory, and Corporate Governance in the context of NPHEIs, with the objective of identifying how the agency relationship involving Stakeholders and the role of Corporate Governance in this context occurs, also instigating reflections about the legal precepts applicable to this type of organization. It stands out, as a result, that the perception that Agency Theory, with its traditional view involving owner (principal) and executives (agents), is not the most suitable theory for a NPHEI. Instead, a view with multiple principals and multiple agents shows reality better, providing a vision of how agency relationships involving stakeholders occur.

From the plot of the various contracts that emerge in the daily life of the organization, conflicts can arise when the institutional objectives of the organization are disregarded by opportunistic behavior and when other objectives are met, which can lead to deviations from purpose. The Stakeholders' approach, concatenated to the Agency Theory, is important, as the interested parties can, in certain situations, assume the role of principals. In this sense, the interests of Stakeholders must be preserved, as long as they are aligned with institutional objectives. In this context, good governance practices align interests, overlapping between principal and agent as a tool for mitigating risks of conflicts and deviations in favor of institutional objectives and compliance with legal requirements applicable to NPHEIs.

Further research into the theme is essential, since it impacts the way NPHEIs approach and adopt strategies to reconcile the various interests in the organization and its institutional objectives. Informational asymmetry, misuse of purpose and misuse of resources can have disastrous consequences for this type of organization. In this sense, the article brought theoretical contributions, as it outlines a new perspective of approaching theories in a specific type of organization. It also presents social contributions by discussing the topic in the context of NPHEIs, contributing to this type of organization to better understand the configuration and the risks involving agency relationships.

As limitations there is the theoretical approach that is restricted to a specific type of organization. In view of this, further practical exploration becomes important, with an empirical investigation that involves the identification of stakeholders and their interests in the organization, agency relationships, covering multiple principals and agents, and also exploring how governance practices contribute to the alignment of interests and mitigation of conflict risks.

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Relações de Agência e Governança em Instituições de Ensino Superior Sem Fins Lucrativos

RESUMO

Objetivo: O presente ensaio teórico tem por objetivo identificar como ocorre as relações de agência, envolvendo os stakeholders em instituições de educação superior sem fins lucrativos, bem como o papel da governança corporativa nesse contexto.

Abordagem teórica: Discute-se a Teoria da Agência, a Teoria dos Stakeholders e a Governança Corporativa a partir de seus fundamentos, história e evolução até os dias atuais e as especificidades das instituições de educação sem fins lucrativos. As teorias são concatenadas em uma perspectiva de múltiplos principais e agentes envolvendo os stakeholders e a governança como moduladora de conflitos em relação ao propósito da organização.

Resultados: Apresenta-se como resultado um modelo teórico evidenciando as relações de agência, das quais podem emergir riscos de conflitos, quando os objetivos institucionais da organização são desconsiderados e o papel da governança na mitigação destes riscos. Para pesquisas futuras sugere-se o aprofundamento prático, com uma investigação empírica em organizações sem fins lucrativos.

Originalidade/Relevância: O trabalho tem originalidade por propor uma abordagem integrada das teorias, mostrando-se também relevante para o campo dos estudos do terceiro setor.

Contribuições teóricas: Traz contribuições teóricas na medida que traça uma nova perspectiva de abordagem das teorias e do propósito das organizações.

Contribuições sociais: Apresenta também contribuições sociais por discutir o tema no contexto das instituições de educação superior sem fins lucrativos, contribuindo para que este tipo de organização possa compreender melhor a configuração e os riscos envolvendo as relações de agência.

Palavras-Chave: Governança Corporativa. Teoria da Agência. Stakeholders. Instituições de Ensino Superior.

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