

CORPORATIVE GOVERNMENT: AN APPROACH TO THE DEBATE STATE

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SUMMARY

The intention of this paper is to present an approach to the state of debate on which, in literature and, enterprise practice is known as corporative government. Four questions are approached: a) which are the antecedents of corporative government as a phenomenon? b) which are the applied models of corporative government in diverse countries?, c) which are the internal and external mechanisms by means of which the corporations are managed and controlled? and d) which are the principal axes, of the present debate on corporative government? In relation to these matters, in the first place a revision is made of the antecedents of the problem of the separation between property and administration, from Adam Smith to the formulation of which today is known as corporative government. Secondly, the models of corporative government applied by the United States, Great Britain, Germany and Japan are analyzed. Thirdly, the corporative mechanisms, the corporative market mechanisms of market and regulatory are used for the direction and control of the corporations and, finally, some important matters are examined that integrate the present debate on the corporative government.

KEY WORDS: Corporative Government, Governance, Corporative Control

INTRODUCTION

With the denomination corporative government one has been debating, for two decades, a problem that is not new in enterprise economy and that already had been noticed by Adam Smith more than two centuries ago. It is the conflict of interests originated in the separation between property and administration. This conflict deepened as from mid 40s, with the acceleration of globalization, impulsed by world-wide economy growth, technological development, bank mundialization, the expansion of the great transnational corporations and the development of international financial markets. In the 70s, from a contractual vision of the enterprise, the problem such as information asymmetry between the markets and the enterprises considers, that is to say, among the banks, investors and bond and share holders, on one hand and the administrators, on the other. This asymmetry can occur before the contract, as after it. In the first case, problems of adverse selection are originated, whose resolution is proposed from the models of pointing out debts and shares and of monitoring or detection. In the second case, agency problems, whose resolution sets out from the models of agency costs, stakeholders and corporative strategy. In the second half of the 80s, with the expression corporative government, begins the study of the problem in a more global way, including the whole enterprise and not only the finances. The internal and external mechanisms are analyzed by means of which the corporations are managed and controlled. Many countries sanction codes for the good government or the good corporative practices.

The intention of this work is to present an approach to the state of debate about which, in literature and in enterprise practice is called, corporative government. Four matters are approached: a) which are the antecedents of the corporative government as a phenomenon?, b) which are the models of corporative government applied in diverse countries?, c) which are the internal and external mechanisms by means of which the corporations are managed and controlled? and d) which are the principal axes, of the present debate on corporative government? In relation to these matters, in the first place a revision of the antecedents of the problem of the separation between property and administration is

carried out, from Adam Smith to the formulation of what today is called corporative government. Secondly, the models of corporative government applied by the United States, Great Britain, Germany and Japan are analyzed. Thirdly, the market and regulatory corporative mechanisms are examined, and used for the management and control of the corporations and, finally, some important matters are examined that integrate the present debate about corporative government.

1. Antecedents

Which are the antecedents of corporative government as a phenomenon? In this section we approached this matter. The enterprises are developed with capitalism. With the division of the work and the delegation of work, for decision making, towards administrators different from the proprietors, the problem of separation between property and administration is originated, which is noticed early by Adam Smith when, referring to enterprises by shares, says that, " Of the directors of such enterprises, however, being the administrators of the money of others and not of his own, one cannot hope that they watch over it with the same anxious diligence with which the partners in a private enterprise frequently watch over their own" (Smith, 1999, book 5, chap.1). In a more general form, it is a about a representation problem the use of power, that also occurs between the State and its institutions and the civil enterprise, as an expression about a group of citizens of a country. These hand over power to their representatives (administrators) so that they govern in favor of those (proprietors), but this does not always happens. The French word *gouvernance* appeared in XV century and its Anglo-Saxon equivalent *governance* at the end of the XVII century; circulate habitually as a reference to this power exercise and the activities of government.

The problem of governance resurges with force in the 70s, within a context of crisis and uncertainty on world-wide scale, generated - among other facts - by globalization, the declination of welfare state and its replacement by neoliberalism, the petroleum crises, the change of the production system, world-wide economy deregulation, the formation of global financial markets, the free circulation of international financial capitals, the indebtedness of the non-developed countries, the weakness of democracy in these countries, the advance of

the social protest movements and vindication of civil, political and social law, and the increase of world-wide poverty, after a long period of world-wide economy growth, that increases the breach between poor and rich countries, Agüero (2008). The studies of democratic governability begin with the Report of the 1975 Trilateral Commission. In the field of the private enterprises, the problem of the separation between property and management, earlier raised by Smith in 1776, are retaken in 1932 by Berle and Means (1932), after the 1929 New York Stock Exchange crisis. In this context, these authors share Smith's position and consider nonviable the enterprises where that separation occurs. Later, Coase (1937), talks about this problem defining the enterprise, as a set of contracts. This contractual theory of the enterprise is the frame for the debate that appears in the 70s, around the problem of information and control of enterprises, within a context of crisis and uncertainty.

In a pioneering work, Fama (1970) demonstrates how the price of the assets in the financial markets reflects all the information available and this constitutes a measure of the efficiency of the markets. Do all those that operate in the markets have the same information? Akerlof (1970) studies the asymmetric position with respect to the information available that occurs in a market of used automobiles, where vehicles of good and bad quality are sold at the same price, because the buyers do not have the information to analyze the quality of the vehicles that they are buying. In this way, a situation of adverse selection takes place, because the products that are bought or contracted are those of less quality, due to the problem of asymmetric information. The administrators of the enterprises have better information than the shareholders, creditors, investors, clients and suppliers and, therefore, these also have before the contract, a problem of inverse selection. How is it solved? Two solutions have been proposed. Spence (1973) proposes signalization mechanism to contract the best workers. Ross (1977) developed to a signalization model issuing debts, whereas Myers and Maluf (1984) did it issuing shares. On the other hand, Stiglitz and Weiss (1981) propose detection as mechanism in a study of the banking market.

The information asymmetry can arise after the contract. In this case an agency problem exists: A part acts as the principal, whereas the other one does it as an agent. It is the

relation that occurs, for example, between proprietors and administrators, producers and distributors, enterprises and employees, banks and moneylenders. Here there can be hidden actions, also known as moral risk, or of hidden information. Jensen and Meckling (1976) study this problem in the North American corporations and elaborate a model of agency costs according to which the principal must assume certain costs to be able to be benefitted with the decisions of the agents. These costs refer to the expenses of monitoring carried out by the principal, to the incentives paid to the agents, to the residual loss caused by these, by virtue of decisions and diverging actions with the interests of principal and to the expenses related to the bankruptcy or the reorganization of the enterprise. Later studies demonstrate that the interest of the proprietors also depends on other interests related to the employees of the enterprise, the clients, suppliers, investors, creditors, associations, chambers, local governments and organizations of the civil society. This extends the focus of the problem that had been reduced only to the relationship principal-agent. Freeman (1984) uses for the first time the term stakeholders, to refer to those who can affect or be affected by the activities of an enterprise. These constitute interest groups or groups interested in the activities of an enterprise. Therefore, they are interested parties, and can influence in the decisions of the enterprise or be affected by them. Titman (1984) applies the theory of the agency costs to the relation between the enterprise and its clients and the enterprise and its workers, demonstrating how the increase of debt increases the risk of bankruptcy and therefore it can affect the demand of products that require future technical services available, whereas the workers can demand higher wages due to the risk of enterprise bankruptcy. The theory of the co-investment of stakeholders, sustains that some enterprises prefer to become indebted less than others, to diminish this risk and of attracting the valuable participation of stakeholders in the investments. This position is not shared by Jensen (1986), who extends the costs of agency to the free cash flow, recommending the indebtedness to diminish said costs. This indebtedness effect causes that the administrators and proprietors tend towards more aggressive strategies of production and investment. Brander and Lewis (1986) and other authors study this use of indebtedness with strategic aims, basing what is known as the

corporate strategy theory. This theory explains the role of the corporate strategies in relation to the markets of goods and production factors and the decisions of financing and production. The competitive position of an enterprise in the market explains the type of strategy adopted by it, as well it also explains the type of financing and production structure of the enterprise.

The problems connected to the information and the control of the corporations, became acute in the 80s, by the expansion and integration of international financial markets, the consolidation of the globalization process and the constitution of the new world order. At the end of the 80s and beginning of the 90s, the problem of information and control of the corporations begins to be faced as a problem of corporate government. The subject attracts the attention of the businessmen, of the researchers and it spreads out with an increasing interest in the popular and specialized press. The markets and the corporations constituted the axis of the new economy and political order in the world. This implies the deepening of the problems of information asymmetry, adverse selection, hidden information, moral risk, agency costs, stakeholders and corporate strategy. The axis of the discussion is centered in the identification of what should be considered as good corporate practices. The Cadbury Report, published in Great Britain in 1992, is the first antecedent in this sense. In other countries similar reports are produced: In Canada the Dey Report (1993), in France the Viénot Report (1995), in Holland the Peters Report (1997), in Spain the Olivencia Report (1998) and in Belgium the Cardon Report (1998). In 1999, the Organization for Cooperation and Economy Development approves the Principles, destined " to assist the governments of member and non member countries in their efforts to evaluate and to improve the legal, institutional and normative framework on the corporate government in their countries, as well as to provide directives and suggestions for the stock markets, the investors, the societies and other parties implied in the development processes of good practices of corporate government " the OECD (1999).

2. Models of corporate government

Which are the applied models of corporate government in diverse countries? In

general, there are two great approaches: one oriented to the market and to obtain value for the shareholders and another oriented to the relationships and to obtain value for an ampler group of interested ones or stakeholders. It is, in synthesis, of two basic approaches of corporative government: the market model and the relationships model. The first one is applied in the United States, Great Britain, Canada, Australia, New Zealand and in some developing countries that have adopted it. The second one, in countries like Germany and Japan. Both models are based on different theoretical and ideological assumptions. The market model stresses on the capital markets and the creation of wealth for the stockholders. It is based mainly on the on the agency theory, and on the signaling and detection or monitoring mechanisms by the market. This supposes a type of corporative government based on market mechanisms and control of the corporations, oriented to principally protect the rights, property and the shareholders' interests. On the other hand, the relationship model stresses in the relationships between the different interested groups in the corporations and between these and the local governments, the markets and the civil enterprise. It is mainly based on the stakeholders' theory and supposes a kind of corporative government based on internal control mechanisms and regulation of the corporations, oriented to protect not only the rights and the interest of the shareholders, but also of the local consumers, employees, suppliers, governments and civil enterprise. Nevertheless, there are some differences towards the interior of each one of these models that are based on internal dynamics and idiosyncrasy of each country. A brief development of English, North American, German and Japanese experience, will allow us to observe these differences.

2.1. The English model

In England the corporative form of enterprises is developed. What are called corporations are the English joint-stock enterprises of the XVII and XVIII centuries. An example is The East India Company, legally recognized in 1600. It had a group of proprietors and one of directors, which is equivalent at present to the assembly of shareholders and the board of directors. In 1760 the London Stock-Market is created and in 1844 it establishes that every business with more than 25 participants had to be organized as a corporation. In 1855

the limited responsibility enterprises are authorized, whose number increases from 65,000 to 1,100,000 between 1914 and 2002, Cadbury (2002). A characteristic of this country is the development of a market of corporative control, based on stock-exchange transactions and control taking or takeovers, Mayer (2000). The control takings can be hostile, when resisted by the executives or the personnel. For example, in 1985 and 1986, of 325 control taking, 80 were hostile, Franks and Mayer (1996). For Jensen (1993), this is due to the fault of the internal control mechanisms, which are inefficient to avoid the administrators' excesses. Another characteristic is the high dispersion of the property of the British enterprises. The majority block of shareholders does not surpass 10%, whereas in the continental European countries it is between 40% and 50% Mayer (2000). The majority shareholders are pension funds and insurance enterprises. The banks do not control the corporations, but in the issue of bonds and shares the investment banks demand changes in the administrators' practice.

2.2. The North American model

In 1792 the New York stock-market is created, that soon is transformed into the most important stock market of the world. Nevertheless, just after the secession war (1861-1865), a period of strong economic expansion begins. The ferocious competition feeds the formation of cartels, trusts and holdings. The cartels are prohibited in 1890 and later on, the trusts; however the holdings generate the first wave of mergers between 1895 and 1905, which involves 35% of industrial enterprises. This generates monopolies. Enterprises like Standard Oil, DuPont and American Tobacco, are soon forced to divide themselves. Vertical integration generates the second wave of mergers in the 20s. After the 1929 crisis, the Securities and Exchange Commission, is created in 1934, with functions of regulation and discipline; the business banks separate themselves from the investment banks, and the banks are forbidden the possession of enterprise shares. In 1950 vertical and horizontal integration of enterprises is forbidden, and this generates the third wave of mergers, in search of diversification and formation of conglomerates. The fourth merger wave takes place in the 80s, by means of hostile takeovers accompanied by leverage. This produces an increase of productivity of the 3.3% annual average and generates an industries re-accommodation,

Jensen (1993). Towards the end of the 80s, the excess of payments with options on shares to managers and directors, the increase of bankruptcies, the disappearance of the junk bond market and the legal restriction of takeovers, cause the closing of the corporative control market. In the 90s the takeovers disappear and stress is placed on the compensation and performance measurement systems.

2.3. The German model

The creation of the Deutsche Bank in 1870, is the bases for the accelerated German industrial growth and the system of principal bank. The entrepreneurs give the banks the total or partial control of the enterprises, in exchange of financing. The shareholder property is crossed and the directories are interconnected. Nevertheless, towards 1920 the enterprises are freed of the bank control, Hellwig (2000), but these continue exerting influence. At the beginning of the 90s, the banks were proprietors of almost 10% of the shares of enterprises that are quoted in the stock market, whereas the insurance companies had nearly 11%, Kester (1997). The enterprises that quote in the stock market are governed by an administration board, integrated exclusively by employees, and a supervision board, integrated 50% by workers' representatives and 50% by outsiders, shareholders representatives, and executives of other corporations or financial institutions that have an interest in the enterprise.

2.4. The Japanese model

Towards end of the XIX century, Japan had become an economic and military power. The zaibatsu were great monopolistic corporations that controlled the distribution of their products and had strong contacts with the banks. They counted on subsidies of the State and tax exemptions. The power was concentrated in family groups. They used interconnected boards: the same person could be member of several boards. Employment was lifelong and generated strong loyalty in the workers. This system has been described as feudal, Kester (1997). After the end of World War II, zaibatsu is replaced by keiretsu that works around a principal bank; with shareholder property crossed and interconnected boards. The very close relationships between the big banks and enterprises, the efficient use of saving coming from

economy surplus, the high quality of the clients and the low risk of credit, constitute the base of the accelerated Japanese economy growth. The principal bank is the greatest enterprise moneylender and is as well the proprietor of almost 10% of the shares. It has access to the information, monitoring and control of the enterprises and these have among themselves the crossed property or shares reciprocal. In the 90s the role of the banks is reduced and the participation of the bond and shares markets increase.

3. Corporative government control mechanisms

Which are the internal and external mechanisms by means of which the corporations are managed and controlled? The studies made on corporative government allow identifying several of these mechanisms. Jensen (1993) classifies them in four kinds: a) the corporative control markets, b) the legal, political and regulatory system, c) the factors and products markets and d) the systems of internal control. Nevertheless, this author disqualifies the legal, political and regulatory system, saying that they cannot control the inefficiency of the managers. He also underestimates the internal control systems and tends towards the market control mechanisms. However, La Porta and others (1997) demonstrate how different legal, political and regulatory systems, produce different types of corporative governments. Other authors, Denis, (2001); Allen and Gale (2001) incorporate to the internal control systems, the executive compensation systems, the property structure and the indebtedness levels. From here on the corporative control mechanisms are examined, grouping them in internal and external.

3.1. Internal mechanisms

Among the corporative government internal mechanisms, the researches carried out focus their attention on the boards of directors or, the systems of compensation or remuneration of executives, the property structure and indebtedness. Each one of these mechanisms is briefly exposed.

3.1.1. Board of Directors or directorships

This mechanism is the most spread out and known. For Fama and Jensen (1983) it is an effective solution to the agency problem. Nevertheless, it is a mechanism sub-valued by

the agency theory that stresses on the executives or managers. By delegation of the shareholders, the boards or directories monitor and control the performance of the managers, approve and monitor the long term plans and contract, dismiss and fix the managers and the personnel's remuneration. A part or the whole boards or directories can be independent. Some directors can have executive functions. The boards or directories in fact can be manipulated by the managers, due to lack of preparation of their members, lack of information, lack of independence or some other reason. Jensen (1993) prefers outsiders or independent external directors. However, recent studies on the relationship between the composition of the boards or directories and the performance of the enterprise show contradictory results and are not conclusive Hermalin and Weisbach (2001); Bhagat, Sanjai and Black (2002). In the United States the boards are dominated by the managers. In Japan theoretically the shareholders have more power than in the United States, but really the managers' discretion is high. However, the affiliation to a principal bank and the property concentration favor a better managers' control. In Germany the system of double board, one of administration and another one of supervision, preserves the shareholders' rights better. Anyway, the studies carried out, in relation to the managers' control, the performance of the enterprises neither show conclusive results, Kaplan (1997).

3.1.2. Compensation or remuneration systems

The agency theory, sustains the principal-agent model, according to which the managers' compensation is a performance function and value of the enterprise in the market. It recommends assigning property rights to the managers, by means of options on shares and bonds on the price of the shares. The studies carried out show how the managers manipulate the results and the price of the shares, to obtain greater compensations. They also carry out risky projects, with the purpose of increasing the profits of the enterprise or hide the losses generated by such Examples of these maneuvers are the cases of WorldCom and Enron in the United States. Murphy (1999) shows the high compensations of the North American executives in relation to the Japanese and European enterprises, without necessarily showing that the North American enterprises have a higher performance.

Jensen, the principal impeller of the payment of incentives to the North American executives, responds to the critics, suggesting not to make effective the payments of incentives until the real value of the profits has been proven Jensen (2001).

3.1.3. The property structure

If the proprietors administer, there are no agency costs and if the property is concentrated, the control increases and the agency problems are reduced. The development and complexity of the organizations demonstrate that this not always possible. The benefits of specialization are undeniable, when the organizations increase their size and, and on the other hand, not always the additional injections of capital can be assumed by the proprietors. In addition, property concentration puts aside the profits diversification and risk distribution. In the United States, the majority block of shareholders with decision power represent only 5% of the total of the shares in circulation, England 10% and continental Europe from 40% to 50%. In a study of the 20 larger corporations of 27 developed countries, La Porta and others (1999) discover that more than 60% of the enterprises have concentrated property and that, in 50% of the cases, they are controlled by family groups or the State. In these families there is little separation between property and management.

3.1.4. Indebtedness

Jensen formulated the thesis that greater the debt, less margin to use the enterprise cash flow in an inefficient way, Jensen (1986). The indebtedness mechanism was used in the United States in the 80s, for the leveraged buyout and enterprise capitalization. As a corporative control mechanism, indebtedness is effective in the measure that there is rights protection for the creditors. This nevertheless creates an agency conflict between shareholders and creditors, since the commercial laws privilege the payment of interests before the payment of dividends. Anyway, indebtedness is a transitory mechanism of corporative government which is applied in enterprises that require a drastic and fast change of their executive practices.

3.2. External mechanisms

Among the external mechanisms of corporative government, the researches carried out

focus the attention on the legal, political and regulation systems, the corporative control markets, and the factors and products markets. Each one of these mechanisms is briefly exposed.

3.2.1. The legal, political and regulation systems

Within the framework of the contractual theory of the enterprise and the agency problematic, Meckling and Jensen (1976) already suggested in the mid 70s, the protection of the rights of the bond investors and shares, whereas Grossman and Hart (1986), at the beginning of 80s, reinforce this idea when analyzing the costs and profits of the residual property rights. La Porta et al (1999), carried out a study of 49 countries with different legal traditions, show how the countries protect the investors in diverse ways and in different degrees. In general, in the countries with legal systems of civil origin, the protection of the investors is weaker, whereas it is stronger in countries with legal systems of common origin. Among the first, are the continental European countries; among the second we have the Anglo-Saxon countries. The little protection to the investors is compensated with a greater concentration of enterprise properties, whereas the countries with greater protection to the investors are characterized by a great dispersion of the property. In the countries with greater protection to the investors, the bond and shares markets have more enterprises registered by inhabitant and make more primary issues of titles, whereas the enterprises distribute more dividends and the quotation of the papers is higher. This demonstrates the importance of the legal, political and regulation systems in the matter of corporative government.

3.2.2. Corporative control markets

If the internal mechanisms of corporative government and the external laws and regulations fail in orienting the decisions and actions of the administrators towards the objective to create value, the market operators can have opportunities of profit with this situation. This can derive in replacement of managers and enterprise reorganizations. The markets can play in this way an important role in the disciplining of the administrators and the creation of value for the shareholders. The mechanisms can be the alliances and agreements between shareholders, the friendly mergers and acquisitions or hostile

takeovers. Although hostile takeovers can have dissuasive effects for the administrators, they can also cause their entrenchment. The administrators have several alternatives to resist, for example, to issue shares at lower prices, to the phased choice of directory or board of directors, or to concentrate the control by means of capitalizing shares. Hostile takeovers are characteristic only of the United States and England. Nevertheless, towards the end of the 90s, they also occur in continental Europe.

3.2.3. Factors and product markets

The competition in the markets of factors and product forces the administrators to raise the productivity and efficiency levels of the corporations. If they do not do so, says Jensen (1993), in the long term they can affect the value of the shares. However, several studies, Hart (1983); Scharfstein, (1988 et al), demonstrate that the competition can have negative effects on the managers in terms of incentives, because it forces the reduction of costs, including the own payment of the managers. Anyway, these same studies also demonstrate that only the efficient managers are successful, assuring in the long term the survival of the enterprise.

4. The present debate on corporative government

In order to develop the last part of this paper, we focused our attention on some key interrogatives: which are the main axes of the present debate on corporative government?, where does the debate pass through?, which are the matters that interest?, to whom they do these matters interest? and why do these matters interest and not others? The authors who we were mentioning in this test put the accent in several subjects that, doubtlessly, have a great importance in the present debate on corporative government. Other authors in more recent publications, center their interest on other subjects, which are important due to the facts that they are of public knowledge and which have had a strong repercussion in the political and business world, in addition to ample diffusion by means of social mass media. We can analytically group these subjects in five great axes: the interests' conflict, the information problem, the measurement problem, the control problem and the values matter. We shall briefly refer to each one of them.

4.1. The interests' conflict

In an organization and outside it also, all its members persecute diverse interests that, in most of the cases, collide with others. The conflict is a constituent element of the organizations, as it is it also of all social formation. The corporations or enterprises have this same mark. Being a constituent element, the conflict is always present or latent in the corporations. In this paper, we set off from an initial conflict, warned by Smith in 1776 and we went on with others which went on accumulating, in a process of an increasing degree of complexity of the corporations. We can try to express the present state of the corporations' interest conflict, with a simple question but difficult to answer: to whom do the corporations benefit or harm with their operations? The route of the debate on this subject has gone through at least four forms of manifestation of the interests' conflict: property-administration, shareholders-stakeholders, dividend-employment and economy-enterprise.

The first form is the one foreseen by Smith and it refers to the separation and interests' conflict between those who are proprietors and those who only administer a business. This conflict subsists at present, in spite of the efforts to solve it with the agency theory. Its maximum exponent, Michael Jensen, has published successive papers trying to answer his critics or making new contributions to explain the contradictions that were shown by several empirical studies. Brecht, M. et al (2002) criticize the agency theory the little realistic assumption that the profits and the shares prices cannot be manipulated. B. S. Frey, mentioned by Hilb (2007), questions the fact that it was constructed exclusively on the extrinsic motivation and that, in addition, it only considers the interests of the executives and shareholders, and not the employees, clients or the environment's necessities. Aguilera and Jackson (2003), on the other hand, sustain that it does not consider the key differences that exist between countries.

The second form makes reference to two antagonistic conceptions with respect to whom the corporations must benefit. The traditional position that predominates in the businessmen and academics is to limit this right to the shareholders. Another position that is taking over more and more space, is the one to extend this right to stakeholders, the

workers, the community, the consumers, the management, the shareholders and the creditors. In favor of the shareholders it is argued that a) the others stakeholders can better protect their rights by means of contracts and that b) the shareholders hand over their assets to the enterprise and are at a disadvantage with respect to the suppliers of raw materials, work, services, among others, that conserve the control of their productive assets and have more negotiation power. Jensen (2001) says that to benefit the shareholders implies, in the long term to increase the value of the enterprise. In this sense, he criticizes the stakeholders' approach because it worsens the agency problem, since the managers do not know when to benefit one or the others or to what extent, affecting the rendering of accounts and increasing the discretion of the managers. A similar criticism is made by Sternberg (1999), sustaining that the decisions in the approach of the stakeholders are based on the strictly ethical position assumed by the managers. Does Sternberg suppose that to exclusively benefit the shareholders is not in itself an ethical position? On the other hand, in favor of stakeholders, Zingales (1997) sustains that the shareholders delegate the control on the boards or directories so that they guard the value of the enterprise and the interests of all the stakeholders, not only of the shareholders.

The third form makes reference to the payment of dividends to the shareholders even at the cost of dismissals or personnel loss of employment. That is to say, to prioritize the interest of the shareholders or the stability in the employment of personnel. A study by Yoshimori (1995) shows the contrast between continental European enterprises and the Japanese, that prioritize the employment, on the one hand, and on the other, the North American and English enterprises, that prioritize the payment of dividends to the shareholders, even at the cost of personnel dismissals. The fourth form is very updated and it refers about to the basic tension between protecting the exclusively economy interest of the corporations or also protecting the interests of the enterprise. In this case, as in the case of the protection of the employment, it is about particular forms of the general conflict between shareholders and stakeholders. Yoshimori's study also researched on this subject, arriving at conclusions similar to the previous case. The managers of Japanese, German and French

corporations also tend towards the stakeholders model that includes not only the protection of the interest of the shareholders, but also of the interests of the enterprise, whereas the managers of North American and English corporations tend to protect the exclusively economy interest of the investors. This conflict of interests between the economy and the enterprise is the base of the debate due to the climatic change, the destruction of the ozone layer and the environmental contamination.

4.2. The information problem

This subject is the one that shows the importance of the corporative government, as a result of the enterprise scandals, that became public in the United States and that involved first class enterprises such as Enron, WorldCom, Global Crossing and Arthur Andersen. Taylor (2003) speaks of crisis of public confidence in the economy in general, and the executives of enterprises in particular. It attributes this crisis to four reasons: a) the mirage created by the financial speculation and technological advances, b) the scandals in the corporative governments of North American enterprises, c) the increasing separation between the economy and the society, and the orientation to the speculative financial yield at short term and d) the lack of integrity and legitimized corruption of the directors, executives and auditors of enterprises. After the scandals and as a result of the loss of public confidence in the information, the North American government finished with the self-regulation of the accounting profession, regulated the operation of the audit enterprises, established much more rigorous countable and audit procedures and fixed specific criminal responsibilities for the managers who manipulate or fake the financial information.

4,3, The measurement problem

Another crucial problem is how to measure the effectiveness and the efficiency of the corporative governments. For the approach oriented towards the shareholders, the performance of a corporative government is effective and efficient when it creates long term value for the shareholders. The best instrument to measure this value is the market price of the enterprises. Nevertheless, the information problems and the fraud and falsification scandals have deeply affected the credibility of this instrument and the price of the shares is

no longer reliable as a measure of corporate performance. For the approach oriented towards stakeholders, the performance of a corporate government is measured qualitatively and on the basis of several indicators. This makes troublesome the measurement and makes difficult the comparison between different periods registered in specific contexts.

4.4. The control problem

If the interests conflicts are difficult to administer in the corporations, and difficult to solve the problems of information and performance measurement, even much more difficult it is to solve the control problems. Who controls to whom? When we say who the literature indicates three possibilities: the corporation itself, the market or the public institutions. Can a corporation control itself? Jensen's answer and other authors with orientation towards the shareholders would be an emphatic no. The answer of authors with orientation towards the stakeholders would be a forceful yes. For each one of these positions there are arguments and also criticisms. The scandals that affected the public confidence in the United States seem to incline the balance in favor of the stakeholders' model. Which is the role of the markets and the public institutions? Here the North American and English model and the Japanese and continental European model separate even more, because they respond to different histories and traditions. The markets with high dispersion have problems to control the corporations. This is the case of the Anglo-Saxon countries and for that reason a country that has the most developed economy in the world cannot avoid the scandalous cases of fraud and faking the information given to the markets. For that same reason this country appeals to the institutional control of the State and to the control that can be done by the accounting profession. Obviously, one of the three alternatives can be applied or combine them in several ways.

4.5. The values question

As much the problems of asymmetry information, adverse selection, agency costs and moral risk, like loss of public confidence, legitimized corruption, markets speculative mirage and the increasing breach between the economy and the enterprise, altogether contributed to install in the public agenda and political environments, businesses and academics, the

question of the values in the corporative governments, specially tied to enterprise ethics, enterprise social responsibility and enterprise citizenship. Several authors approach this matter, e.g. Murphy (1988); Miles (1993); Francés, (2004), among others. One tries to, once again reconcile the enterprises with the society, the economy with policy and philosophy, the businesses world with the world of life.

CONCLUSION

Corporative government is a field of study of great interest, importance and for today. Its effects on the enterprise and the economy are evident. The protection of the investors is as important as the protection of the enterprise and the citizens. From the 70s, important contributions have been made on this subject. However, the road has just begun and with strong turbulences that have hit on the social imaginary one. The social systems are constructed on the base of the mutual confidence between their members. They require a high degree of transparency and sincerity. It is difficult to construct on deceit and swindle. A system cannot either be based on monetary incentives as if it were the dream of the agency theoreticians. The crises teach us great lessons. After the scandals that shook the developed countries, it is difficult to sustain that the markets solve the corporative government problems and is also difficult to sustain that the corporations themselves are capable to self-regulate themselves. The State controlling action becomes necessary.

BIBLIOGRAPHY

Please refer to articles Spanish bibliography.