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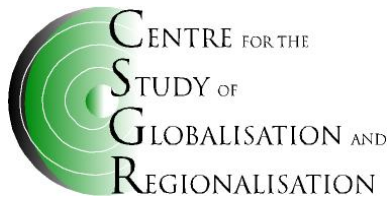
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# Political Analysis of Shareholder Activism in Emergent Democracies: a case study of Nigeria

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## ABSTRACT

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Shareholder activism has become a force for good in the extant corporate governance literature. In this paper, we present a case study of Nigeria, characterised by a very turbulent polity, to show how shareholder activism, as a corporate governance mechanism, can constitute a space for unhealthy politics and politicking. As a result, we point out some *translational* challenges, and suggest more caution, in the *diffusion* of corporate governance practices across different institutional environments. We primarily contribute to the literature on corporate governance in Africa, whilst creating an understanding of the political embeddedness of shareholder activism in different institutional contexts – i.e. a step closer to a political theorising of shareholder activism.

**Keywords:** Corporate Governance; Shareholder Activism; Institutional theory; Nigeria; Politics

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## INTRODUCTION

To what extent is local shareholder activism a reflection of a country's brand of politics? Shareholder activism has continued to grow with the globalization of markets, as a force for good (Becht, Franks, Mayer and Rossi 2006). It mainly operates on the premise that shareholders, as activist owners, can check managerial opportunistic tendencies and, thus, promote effective corporate governance (Gillan and Starks 1998; 2000; Black 1992). The last two decades has been particularly remarkable in this regard, with activist shareholders pressurising the management of poorly performing firms in their portfolios for improved performance and enhanced shareholder value (Gillan and Starks 2000). Despite the positive perception of shareholder activism, it is still controversial in many ways. Becht, et al (2006), for instance, argued that while it can resolve the monitoring and incentive problems associated with widely-held firms, in order to improve their performance (Black 1992), it can also constitute a disruptive, opportunistic, and ineffective mechanism employed by fund managers and other investors for personal benefits; thereby suggesting that shareholder activism is capable of constituting a space for struggles and contestations of interests – i.e. a space for politics and politicking – which is characteristic of most political projects.

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Unsurprisingly, the Anglo-Saxon construction of markets, on which most of the shareholder activism literature is based on, is fundamentally predicated on the neo-liberal conception of democratic politics and its antecedent institutional arrangements, wherein agents are free and have the rights to exercise and exert their property rights within legitimate institutional boundaries. Shareholder activism, as an important characteristic of these financial markets, is also underpinned by the same neo-liberal ideology, which means that it could be in a way bound up with the dominant characteristics of democracy of a specific institutional context. Indeed, the extant literature on shareholder activism appears to take this understanding of shareholder activism within legitimate neo-liberal institutional boundaries for granted; to the extent that very little is known about the possible influences of a country's political stage of democracy on the practice of corporate democracy, in general, and shareholder activism, in particular. However, some recent developments in the broad literatures on governance and institutions suggest that corporate governance is a function of specific institutional configurations (Aguilera and Jackson, 2003; Aguilera 2005), which calls for a good understanding of the politics of corporate control (Thompson and Davies 1997), as well as an encompassing understanding of the political environment in which markets and corporate governance mechanisms are enacted (Roe 1994, 2003; Fligstein 1990; Bainbridge 1995; Romano 2004; Gourevitch and Shinn 2005; Wärnery 2005; Coglianesi 2007; Belloc and Pagano 2009; Adegbite 2009), to make sense of shareholder activism in different institutional contexts.

In this paper, we explore the possible link between shareholder activism in Nigeria and the political culture of the country. The choice of Nigeria is not arbitrary. On one hand, the recent and current developments in the country have added an energetic momentum to the corporate governance and shareholder activism debates. These include the 2003 Code of Corporate Governance in Nigeria (hereinafter referred to the SEC Code); the 2006 mandatory Code of Corporate Governance for Nigerian Banks post consolidation; and more importantly the 2007 Code of Conduct for Shareholder Associations in Nigeria (hereinafter referred to the SEC Code for shareholders). Specifically, Nigeria has witnessed a significant increase in the numbers and activities of shareholder associations in the past 5 years, and as a result, shareholders are becoming increasingly aware of their rights and responsibilities. On the other hand, the peculiarities of Nigeria's turbulent political history and political uncertainties, provide a rich outlook to show how an evolving corporate governance mechanism (in this case shareholder activism) thrives amidst the broader political environment of a country. Whilst this enables us to understand the relationship between shareholder activism and the state of democracy/political culture of a nation state, it also allows us to explore how the practice of shareholder activism in the country reflects (or do not reflect) the characteristics of the Nigerian political culture.

It is anticipated that our findings will contribute to (as well as encourage other works aiming at) the political theorisation of shareholder activism and corporate democracy in the literature. This is particularly important to the understanding of corporate governance practices in developing economies, given their often weak political structures and corrupt-ridden political cultures. In this vein, while the rising unlimited potential for expanding the shareholder activism literature in developing

countries (Sarkar and Sarkar 2000; Amao and Amaeshi 2008) can be positively perceived, it has become necessary to examine the surrounding institutionalised political environment of these countries. We therefore examine these fundamental concerns and focus on the politics of shareholder activism as a mechanism for corporate governance and accountability in Nigeria. We expressly take into account the relevant institutional arrangements – mainly the political culture – and explore how these constrain the necessity, legitimacy and construction of shareholder activism in Nigeria.

We first present a review of the relevant literature and thereafter examine the Nigerian political climate. These provided a good background for our subsequent exploration of the state of corporate governance in Nigeria. We then outline our research agenda and methodology, discuss our findings and present our conclusions.

## **SHAREHOLDER ACTIVISM: A LITERATURE REVIEW, THEORETICAL DEVELOPMENT AND RESEARCH AGENDA**

Shareholders are generally accepted and legally recognised as the owners of the company. On one hand, this position accord them significant rights in the company especially in relation to decision making. On the other hand, company law allows shareholders to delegate overall responsibility and firm's decision making and control to the board of directors and company administration to the managers. One important characteristic of the modern corporation is that most decisions about the company's business are taken by the board of directors, and consequentially this trend has overtime diminished the capacity of shareholders to act as true owners. Apart from specific situations where the law requires shareholders' consent, "the traditional model of directorial accountability to the shareholders depends heavily upon the ability of the shareholders to review the performance of the board" and "to take decisions if they think that the performance has not been adequate." (Gower and Davies 2008: 411-412). The balance of power between the board and shareholders has thus emerged as one of the centrepieces of the discourse on corporate governance and accountability.

Discussions on corporate governance are often closely linked to the problem created by the separation of a firm's ownership from its control. Jensen and Meckling, (1976) whilst, building upon the earlier works of Coase (1937), Knight (1957), and Alchian and Demsetz (1972) posit that the incentives of managers to maximize shareholder value are proportional to the fraction of the firm's shares they personally hold (Bradley et al. 2000). Corporate governance can therefore be defined as the "legal and practical system for the exercise of power and control in the conduct of the business of a corporation, including in particular the relationships among the shareholders, the board of directors and its committees, the executive officers and other constituencies (such as employees, local communities and major customers and suppliers)" Grienberger (1995; 875). Simply put, corporate governance describes an apparent attempt by the corporate sector to ensure that its house is in order (Jackson and Carter 1995). In other words, corporate governance discussions embody the tussles between managers of public companies and their owners, over the productive level of shareholder involvement in corporate policy

and administration (Schacht 1995). Some of these tussles are sometimes expressed through shareholder activism.

Shareholder activism thus becomes a corporate governance and managerial/board accountability mechanism. It can simply be described as the activities undertaken by shareholders in connection with the contestations between managers of public companies and their owners (Schacht 1995). It entails the act of monitoring and attempting to effect changes in the organizational control structure of firms by shareholders (Smith 1996). Shareholder activism, therefore, refers to a range of actions taken by the shareholder(s) to influence management and the board; these could include threats of selling shares (exit), letter writing, meetings with management and the board, asking questions at shareholder meetings and the use of voting rights (Becht et al. 2006). Gillan and Starks (1998) argued that shareholder activism can be viewed as representing a continuum of responses to corporate performance. According to them, individuals who simply buy and sell shares, thereby participating and expressing their opinions of the corporation's performance, could be considered as 'active' shareholders. However, those shareholders who buy into the firm through takeovers are more able to force fundamental changes in the structure of the corporation, thus acting as a market for corporate control (Gillan and Starks 1998). Most commonly, a shareholder activist can be described as an investor who tries to change the status quo through 'voice', without resulting into a change in firm's control (Gillan and Starks 1998).

Shareholder activism is not a homogenous practice, but comes in various guises; it is driven by different actors and interests, and has different impacts on target firms. Smith (1996), for example, examined shareholder activism by institutional investors. Although the results of his study were inconclusive, they show a significant stock price appreciation for successfully targeted events and vice versa. Furthermore, Frantz and Instefjord (2007) looked into a relatively less researched area. They evaluated the private (value to shareholders) and social (value to stakeholders) gains of shareholder activism. They identified a startling divergence between the private and social profitability of shareholder activism such that when the latter is privately profitable, it is not necessarily socially profitable. They further argued that this may dominate the efficiency of shareholder activism to make it negative overall.

There are yet to be convincing conceptual constructions as well as empirical findings to link shareholder activism with effective corporate governance, improved corporate performance, or improved firm value. Becht et al. (2006: 3) attributed this to three elements: "inadequate monitoring due to free riding, legal and institutional obstacles to activism, and incentive problems amongst institutional investors". The literature on comparative shareholder activism research shows that there are wide ranging rationales underlying shareholder activism in different countries. It is therefore important to study shareholder activism in the light of the peculiarities of each country. For instance, in the case of India, Sarkar and Sarkar (2000) present shareholder activism as a valued mechanism for corporate governance. They provide evidence on the role and importance of large shareholders in monitoring firm value. However their results also contained mixed evidence. They found results to suggest that while significant block-holdings by directors increase firm value, the impacts of institutional investors as activists are unclear.

The findings of Sakar and Sakar (2000) can be compared to the work of Hendry, Sanderson, Barker and Roberts (2007). Hendry et al (2007) used interview data to explore the shareholder activism of UK institutional investors. Contrary to a large number of studies on shareholder activism which mainly assume that it is always born out of the desire to maximise shareholders' wealth, they found evidence of alternative motivations relating to ideas of responsible ownership. Therefore, understanding the motivations behind shareholder activism is imperative to our clear understanding of its impacts. These would necessitate a thorough account of the institutional rationalisations which underlie the ideology, necessity structure, practice and eventual impacts of shareholder activism.

It is also very important to note that most studies on corporate governance and shareholder activism have been based on the agency theory, which is often too narrow to conceptualise the complex dynamics and relationships underpinning these subjects (Frankforter, Davis, Vollrath and Hill 2007). While the agency theory (Fama and Jensen 1983; Jensen and Meckling 1976) is important, it is highly controversial, in some ways limited (Eisenhardt 1989), and could be complemented by the institutional accounts of corporate governance (Aguilera and Jackson, 2003; Aguilera 2005). These institutional accounts focus on the deeper and more resilient aspects of social structure, considering the processes by which structures (schemes, rules, norms, and routines) become established as authoritative guidelines for social behaviour (Scott 2004). It is thus important that corporate governance discussions reflect a broader perspective of institutional domains (Aoki 2001), and the literature is responding to this insight (e.g. Aguilera and Jackson 2003, Aguilera 2005; Lubatkin et al 2007).

There is no doubt that the rise of shareholder activism as an important corporate governance mechanism is becoming pervasively documented across many nations. For example, whilst the literature remains dominated by notable works in developed countries, such as in the United States (Thompson and Davis 1997; O'Rourke 2003; Gillan and Starks 2007; Lipton 2008), the United Kingdom (Solomon and Solomon 1999; Becht et al 2006), the Netherlands (Choi and Cho 2003; Kröner 2007), Japan (Seki 2005) and Australia (Anderson, Ramsay, Marshall, and Mitchell 2007), some seminal discourses of the subject have also been generated in emerging economies such as in India (Sarkar and Sarkar 2000). Despite increasing noteworthy works (e.g. Ahunwan, 2002; Rossouw 2005, 2008; Okike, 2007; West 2009), the deep lacuna in literature on corporate governance and shareholder activism in sub Saharan Africa is very apparent. This dearth of literature is further felt in relation to the link between corporate governance practices and the political culture of sub Saharan African countries. And this has prompted us to hook our research on the question: to what extent does shareholder activism in Nigeria mirror the country's brand of politics?

## **INSTITUTIONAL CONTEXT AND EMPIRICAL BACKGROUND**

This section is mainly to contextualise our study. We first discuss the dominant political culture of Nigeria, the legal framework of shareholder activism in Nigeria, and then present our research methodology against this background.

### **a) Nigeria, Politics, Political Structure and Culture**

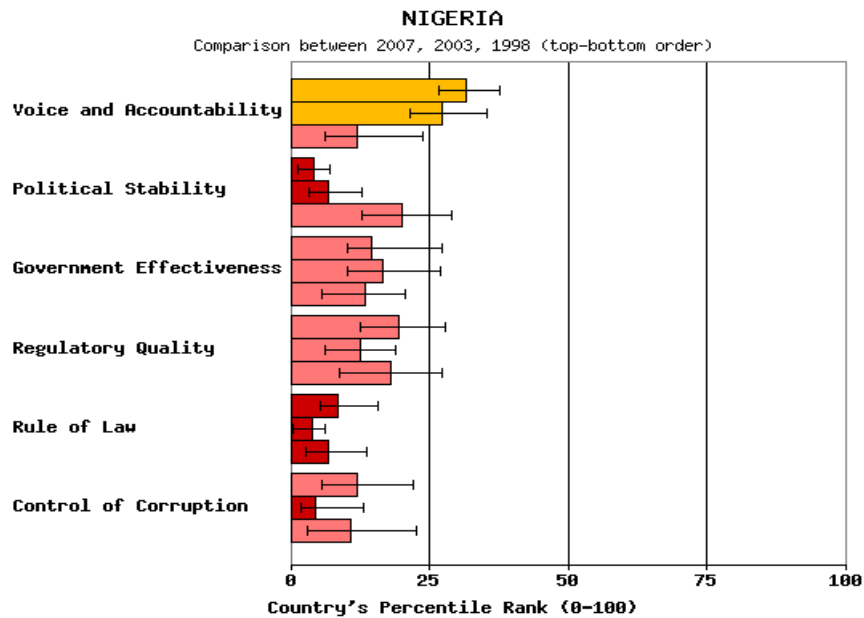


Nigeria obtained its independence from Britain in 1960. Post independence, there was a brief period of civilian rule which operated under a British-defined democratic federal constitution which reflected three major geographical/ tribal character of the country (Northern Hausa, Western Yoruba and Eastern Igbo). However, this period of nascent indigenously administered democracy was short-lived. On January 15 1966, there was a military coup, which injected dictatorship into the Nigerian polity and governance. As such independent politics in Nigeria began with the promise of democracy and economic progress, which became entrenched in the language of politics and of public life generally, even though the hard reality did little to suggest that Nigeria would ever become a democratically governed state (Nolutshungu, 1990). What followed were series of political turmoil including assassinations, slow economic development, and increase in unemployment, poverty and crime. Indeed the Nigerian political environment witnessed several symbolic events which undermined the possibility of successful democratic governance. These include several military coups and intrusion into the democratic process, a 3-year civil war, continuing ethnic rivalries, religious tensions and human rights violations. Nigerian was under military dictatorship for about 30 years, cumulatively, until May 1999 when the country returned to democratic rule. In May 2007, President Yar'Adua became the first civilian leader to take over from another, following a very controversial election.

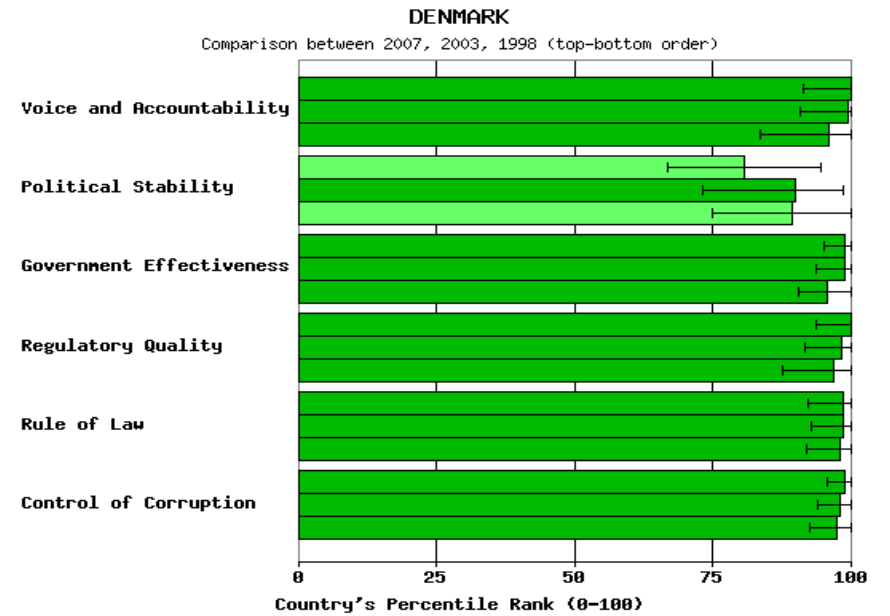
Apart from the massive irregularities which plague political elections in Nigeria, the post independent political structure and culture reflects the country's legendary corruption. During decades of military rule, corruption thrived and became the Nigerian 'way of life'. Since Nigeria has traditionally lacked the institutional capacity to address corruption, the venom has become endemic. Political corruption has been inadvertently encouraged as there are limited pieces of evidence of successful prosecution of corrupt political office holders. The pervasiveness of corruption in Nigeria is corroborated by independent corruption-indexes. For example, Transparency International, an anti-corruption NGO, currently ranks Nigeria 121<sup>st</sup> out of 180 countries (2008) in its corruption perception index. The 180<sup>th</sup> on the list, being the most perceived corrupt country. Both Denmark and Sweden were top on the list. The United Kingdom and the United States of America were ranked 16<sup>th</sup> and 18<sup>th</sup>, respectively.

The country ranking of the Transparency International Index is further appreciated through the World Bank anti-corruption and governance index. The World Bank index is based on 6 broad measures of good governance: (1) Voice and Accountability, (2) Political Stability, (3) Government Effectiveness, (4) Regulatory Quality, (5) Rule of Law, and (6) Control of Corruption (Kaufmann, Kraay and Mastruzzi, 2008). The graphs below (Figure 1) represent a comparative view of Nigeria, Denmark and the United Kingdom on the World Bank index. In addition, whilst recent Nigerian government regulatory measures to address corruption have attracted considerable admiration, it has also attracted significant skepticism and criticism with regards to their sincerity. Specifically governmental campaigns aimed at addressing corruption have been perceived to be witch-hunt exercises to settle personal grudges. It is based on this background that we explore the implications of the corrupt and greed driven Nigeria polity for business conduct, corporate governance and shareholder activism.

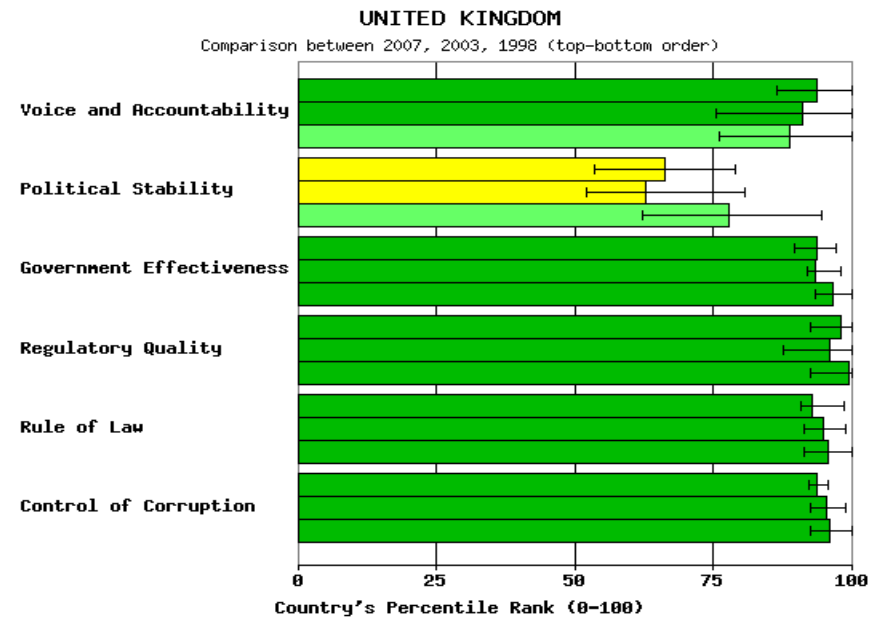
**Figure I: A comparative view of Nigeria, Denmark and the United Kingdom on the World Bank index.**



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2008: Governance Matters VII: Governance Indicators for 1996-2007



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2008: Governance Matters VII: Governance Indicators for 1996-2007



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2008: Governance Matters VII: Governance Indicators for 1996-2007

## **b) Corporate Governance, Shareholder Activism and the Nigerian Law**

The history of corporate governance in Nigeria stretches to the colonial days. In the colonial era, the Nigerian private sector was dominated by the British companies after the British interests. Following political independence from the British government in 1960, one of the key economic liberation/ development strategies immediately pursued by the then Nigerian government was to foster domestic ownership and control of the Nigerian private sector. Traditionally, this had significant implications for corporate governance and shareholder activism. The primary statute empowering shareholders in Nigeria to intervene in a company's affairs is the Company and Allied Matters (CAMA) 1990 (as amended). A more recent development is the introduction by the Securities and Exchange Commission of the Code of Best Practices for Public Companies in Nigeria (2003).

Certain powers are expressly conferred on shareholder under CAMA. If exercised, these powers are significant in the management of the company. In a general meeting, shareholders are empowered to appoint or remove directors by passing a resolution to that effect. They determine the remuneration of Directors. They also appoint and approve the remuneration of auditors. Shareholders are empowered to bring court action to prevent the directors from entering into illegal or ultra vires actions. They can also restrain the directors from perpetuating a fraud. Members of the company holding 5% or more shares can bring a resolution to be voted on at the general meeting to inform the course of action the directors should take. The directors are required to prepare and place before the shareholders at the annual general meeting the financial statement prepared in accordance with CAMA. The shareholders must have the statements delivered to them at least 21 days before the annual general meeting. Furthermore, certain decisions are reserved to the shareholders. These include the alteration of the company's share capital, the alteration of the memorandum and article of association of the company, the decision to convert the company from a private company to a public company and vice versa or to convert from a limited company at an unlimited company and vice versa.

Other powers vested in shareholders include the power to act in any matter if the members of the board of directors are unable to act or disqualify from acting in that respect; instituting legal proceeding in the name of or on behalf of the company, where the board of directors refuse or neglect to do so. Only shareholders are entitled to vote on resolutions at general meetings. Where voting is done by a show of hands every member or proxy has one vote. Where voting is done by a poll, a member's voting power will depend on his or her shareholding. A member is entitled to appoint another person including a person who is not a member to attend, vote and speak on his behalf. The law makes some provisions for access to the court for redress for minority shareholders. This covers actions brought by an aggrieved shareholder for wrongs done to him personally or to take a derivative action in the name of the company. Furthermore, the CAMA allows a shareholder to bring an action on the ground of unfairly prejudicial and oppressive conduct with the court having a wide range of relief to choose from.

To further enhance the powers of shareholders in the corporate decision making process, the Nigerian Securities and Exchange Commission introduced the Code of Best Practices for Public Companies in Nigeria. One of the core focuses of the code is shareholders right and responsibilities. The code expressly provides that the company or the board should not discourage shareholder activism whether by institutional shareholders or by organized shareholders' groups. According to the code "Shareholders with larger holdings

(institutional and non-institutional) should act and influence the standard of corporate governance positively and thereby optimize stakeholder value.” To facilitate the attendance of shareholders at general meetings of the company, the code states that venue for general meetings should be places that are possible and affordable, cost and distance wise for a majority of shareholders to attend and vote at annual general meetings. The code further requires that notice of meeting be given at least 21 days before the meeting and all details related to the agenda of a meeting should accompany the notice to enable shareholders properly exercise their vote. The code envisages that the general meeting should be a forum for shareholder participation in the governance of the company. Regarding the composition of board of Directors, the code provides that shareholders with less than 20% or more shareholding should have a seat on the board. It further provides that a Director representing the interest of minority shareholders should be given a seat on the board. The code further provides for more regular briefings of shareholders, going beyond the half year and yearly reports.

This is part of the efforts by the Corporate Affairs Commission and the Securities and Exchange Commission (SEC) to promote shareholder activism and the rights of minority shareholders in the Nigerian corporate governance system. As a result, the trend in developed economies, which enabled the rise of block voting through shareholder associations as a response to domination by majority shareholders, is gradually evolving in the Nigerian context facilitated by private initiatives and government’s encouragement (Amao and Amaeshi 2008). The Independent Shareholders’ Association of Nigeria (ISAN), the Nigerian Shareholders’ Solidarity Association (NSSA), Association for the Advancement of the Rights of Shareholders of Nigeria are among other shareholders’ associations made up of individuals that share common interests and are presumably united to give minority shareholders, in particular, a voice.

### **c) Research Design, Survey Methodology and Analysis**

This paper adopts a mix of qualitative research methods in order to provide an informative and comprehensive account. The data collection methods employed were in-depth interviews, focus groups, and direct observations. These were used to conduct a survey of corporate governance professionals in academia, in practice and in the Nigerian polity. Part of this included a two month field work in Nigeria. From the outset, the key contributors to the corporate governance debate, ranging from the academia, through practice to the regulators in Nigeria were identified. Exhaustive attempts were then made to contact them via emails and subsequent follow-ups with telephone calls, outlining the research agenda. The interview questions were pre-tested to ensure their appropriateness and to ascertain the potential respondents’ understanding and proper interpretation. Furthermore, where appropriate, control questions were asked to ensure further validity and reliability of responses. An ethical commitment was also made to treat responses with required confidentiality. Closed and open questions were asked in order to gain a variety of responses drawn from real life business and personal experiences free from fear or bias. The average duration of interviews was 60 minutes. Respondents were mainly high profile individuals, including present and former CEOs, Chairmen, board directors, renowned academics, corporate governance consultants, as well as senior officials of the relevant regulatory agencies. Notably these are key stakeholders in the Nigerian corporate governance system. By virtue of their positions, they made rich and in-depth comments on the institutionalized corporate governance phenomenon in the country (see also Filatotchev

et al. 2006; Hendry et. al. 2006) . It should also be noted that the authors are members of the Society for Corporate Governance in Nigeria and maintain close working relationships with relevant stakeholders in The Nigerian corporate governance system. These helped to alleviate some of the challenges relating to access to data and respondents. Snow-balling technique also proved very helpful to gain access to these high-calibre respondent(s) (see also, Amaeshi, Adi, Ogbechie and Amao 2006) until data saturation was reached. In all, there were 26 structured interviews, all face-to-face and tape-recorded. The interviews were subsequently transcribed and analyzed.

Since the majority of the interviews were structured, the further utilisation of focus groups enabled further discussions on shareholder activism in Nigeria in a more unstructured way which gave additional insights into the overall picture (See Filatotchev et al. 2006) and the inherent challenges in the country. In order to increase the efficiency of the focus groups and to allow members to expressly discuss the topics of interest without actual or perceived intimidation, the size of the groups were kept deliberately small at all times (See Ewings et al. 2008). Certain degrees of overall representation were achieved with participants drawn from different backgrounds and functions, so as to harness a mix of different perspectives. Two separate focus group discussions were held; one had 9 members and the other had 11, totalling 20 respondents. Discussions were also tape recorded and each of them took an average of 90 minutes.

Furthermore, direct observations of the situation at hand were made in order to complement and validate some of the information collected through interviews and focus group discussions. The annual general meetings (AGMs) of two listed corporations were attended and observed. The authors were not granted permissions to tape-record proceedings. Significant note taking of proceedings and interactions, however, constituted helpful alternatives. Attending these AGMs allowed for more access into the complex political relationships, which inform shareholder activism in Nigeria. These survey techniques all-together allowed for a rich pictorial representation of the complex politicised shareholder activism system in Nigeria. We further ensured adequate methodological self-consciousness throughout the data collection process to avoid potential bias in data collection and interpretation. We specifically ensured that our functions as researchers and the administrators of the data collection process did not interfere nor affect the data collected, thus minimising negative obtrusiveness, and as a result, enhancing both the data-gathering and eventual credibility (Harrington 2002).

There was a very high degree of agreement amongst respondents' comments. The total number of respondents for the interviews and focus group discussions is 42. In terms of the professional/disciplinary backgrounds of the experts, a reasonable spread was reached. The break down is as follows:

<b>Background/research field</b>	<b>Number of experts</b>
<i>Economics</i>	4
<i>Business, management</i>	4
<i>Finance and accounting</i>	15
<i>Law</i>	11
<i>Sociology</i>	3
<i>Others (Manufacturing, HRM, Sciences etc)</i>	5

In terms of respondents' institutional expertise, the breakdown is as follows:

<b>Institutional expertise</b>	<b>Regulatory</b>	<b>Academia</b>	<b>Practice</b>
<i>Regulatory</i>	17		
<i>Academia</i>		4	5
<i>Practice</i>			16

This study lends itself to an analytic induction research method and the data generated through these mix of qualitative methods were analyzed with the Nvivo software. This helped build explanations, which explored links between literatures, events, findings, and actions in one case and the iterative extension of these to emerging issues (Katz 2001). The research logic allowed for an in-depth scrutiny of shareholder activism in Nigeria. The mixed-methods strategy also compensated for the weaknesses inherent in individual methods. The overall methodology and data collection techniques allowed for a judicious access to numerous corporate governance specialists and experts in Nigeria, with sufficient “capacity mix”, which enriched the research data.

**FINDINGS**

Our data analysis generated, amongst others, two main interrelated themes outlined below. We first present our findings on the political analysis of corporate governance, before narrowing down to the practice and politics of shareholder activism in Nigeria.

**a) The State of Corporate Governance in Nigeria: An Institutionalised Political Analysis**

Most survey respondents reported that there is widespread corruption in Nigeria following several political turbulences, coupled with massive institutional shortcomings. Specifically, post-independent Nigerians have lived predominantly within a political environment characterized by military/tyrannical dictatorship, incessant political turbulence and violence, political assassinations and elections marked by massive vote rigging. Post colonial regime, the government traditionally held significant shareholdings in major areas of the economy. This allowed politicians/office holders to use government owned companies to fuel political agendas directly or indirectly via fronts. The interview respondents unanimously agree that the private sector is gradually becoming the epitome of corruption in Nigeria, given the close relation between the business elites and the political class. This close proximity is often expressed through majority shareholding, which allows the politicians to nominate board members and management, and thus influence the organisations to suit their political interests; and in other situations use their political powers to the benefits of the organisations. Buttressing the prevalence of this connivance between the business and political elites, a former Chief Executive Officer (CEO) and Chairman of a large Nigerian corporation commented:

*“Following victory at the polls, politicians upon assuming offices, see themselves as dispensers of favours to individuals, groups or companies who have supported their parties. These supporters get*

*more “favours”, ranging from government contracts, fast-tracking of trade licences, whilst denying other qualified individuals or companies, especially if they are perceived as oppositions”.*

In the same line of thinking, another Chairman of a large listed Nigerian corporation said;

*“Here, people regard political appointments as “licences to become rich”: corporations, especially multinationals, bidding for government’s contracts are left with no choice but to “play by the rules of politicians”.*

Given the Nigerian nature of partisan politics, politicians continuously seek financial support from corporations, which further facilitates public-private corrupt deals. This is heightened by the political culture of corruption and bribery, ethnic tensions and rivalries, poor functioning markets and lack of adequate infrastructure (Ahunwan, 2002). It could be reasonably argued that the Nigerian polity strives amidst corruption and very weak legal institutions. It is within this climate, that business conduct and corporate governance practices are developing. Particularly, political affiliations matter greatly with regards to how companies secure their businesses and remain competitive (Sun News 2008). To further illustrate this link between politics and the pursuit of corporate interests, the Managing Director of one of the leading Nigerian breweries was not too long ago allegedly relieved of his duties, when he was caught up in the political lobbying that wanted to change the country’s constitution to allow the former President, Mr. Olusegun Obasanjo, for a third term in office.

The Nigerian polity feeds on the premise of deep and complex corruption. In Nigeria, businesses triumph and remain highly competitive with significant political will and support. It has thus become common for corrupt politicians and ex-office holders to become elected as board members. Effective corporate governance is thus impeded as they often bring their entrenched public political practices into the private sector. As such, the political embeddeness of the corporate governance system in Nigeria has resulted into a public-private corrupt collaboration. The challenges of corporate governance in Nigeria are, therefore, manifestations of a larger problem of the Nigerian society, which is characterised by political instability, bad leadership, ethnic and religious tensions, firmly embedded in massive corruption. Directors’ misconducts and corrupt practices are often at the centre of corporate governance problems in Nigeria, especially in the banking industry. Part of directors’ excesses include lack of disclosure of interests in loans, offices or properties rented/leased or sold to the bank and services provided by own companies to the bank (Umoh 2007). In Nigeria, corporate governance practices and partisan political considerations intermingle resulting into board and senior-managerial appointments based on political affinities, ethnic loyalties, and/or religious faith as opposed to considerations of efficiencies and capabilities (Akanki, 1994; Yerokun, 1992).

In this regard, ethical standards are often compromised. A good example is the recent conviction of Siemens for bribing a number of senior government officials in Nigeria in order to win telecommunication contracts. However, politically motivated corporate corruption takes different shapes and forms. Unlike Siemens, which seemingly bribed government officials directly, MNCs often pay bribes via “consultants” who negotiates the deal and secures the business/contract. Consultants therefore act as a medium through which the bribe gets to the corrupt government official(s). While commenting on the issue, an interview respondent stated that:

*“...the case of Siemens is an exception; they were not just smart enough, they wanted to do the bribery themselves, so they got caught”.*

One can deduce from the preceding analysis of our survey’s data that corporate governance in Nigeria mirrors the broader polity which is characterised by endemic corruption. Particularly, as we proceed to show, the findings of this study further suggest that this unhealthy relationship between politics and corporate governance equally finds an expression in shareholder activism in Nigeria.

## **b) Shareholder Activism in Nigeria: Practice and Politics**

While shareholder activism in Nigeria is still in its early developmental stage, the findings of this study suggest an already rapidly evolving institutional misconception and misuse of the term. For example, it has been noted that shareholder associations sometimes ‘flex their muscles’ to frustrate legitimate operations and the smooth running of the company (Okara 2003). Our survey results indeed suggest that activist shareholders are gradually being conceived as irritations or terror to normality in corporate organisation and management. The rationale behind this is bilateral. On one hand, the manners through which shareholders’ associations carry out their activisms reflect similar degree of bullying and corruption inherent in the Nigerian political culture. For example, there have been several cases of massive and unwarranted disruptions to AGMs proceedings, perpetrated by executive members of these associations. Commenting on this, an interview respondent, who is an executive member of a notable shareholder association in Nigeria, said;

*“Some of our members conduct their activities in ways which dent our image and impede our achievements. They go around threatening corporate management with massive AGM disruptions, which normally attracts negative publicity”*

As another respondent, an active shareholder activist, puts it: *“Aggressive bullying is our weapon”*

There is no doubt that the setting up of shareholder associations was encouraged due to the need to coordinate several small, passive and dispersed shareholders; however the intended activism have been hijacked by individuals whose aims are to reap personal benefits, which is truly characteristic of the broader political culture of the country. In the quest of achieving this, several senior executives of shareholders associations bully corporate management through threats of AGM disruptions and negative media propaganda and have thus constituted themselves “terrorist gangs” who are now feared by corporate executives. At the other end, bullying would not have triumphed, if managers and board members were committed to effective corporate governance. Given that shareholders’ associations have become constitutionally empowered to challenge managerial and board excesses, they constitute a great threat to the status quo of traditionally unchecked corporate corruption and governance malfunction, if their powers are applied positively. However, this was not found to be the case. The shareholder associations were rather perceived to be ineffective. According to a non-executive director of a major Nigerian financial institution, *“Shareholders associations are not very effective because all their executives want is money. Once you give them some money, they shut up and things continue as usual”*



From our survey, we found that a corrupt collaboration of engagement between activist/bully shareholders and board/managers has subsequently evolved dynamically to silence genuine activism. This constitutes an abuse of what should have been a powerful institutional check on managerial and board behaviour. As such, while Okike (2007) as well as Amao and Amaeshi (2008) have documented a huge increase in shareholder activism in Nigeria, more recent evidence suggests that shareholder activism has taken a negative turn in the country. For example, executive members of shareholders' associations now maintain close and personal relationships with the executives of the firms they are meant to check. This impedes their activism and further enables them to participate in several executive corrupt behaviours, at the detriment of the shareholders they ought to represent. Indeed, several shareholders' associations have sprung out in recent times and have become powerful lobbying groups that needed to be appeased by management of companies. This appeasement can occur in several forms – including through shares and allotments in public offerings as well as several personal favours, such as funding their organisations and sponsoring their events. As such, Annual General Meetings (AGMs) are largely stage-managed. In this regard, a senior official of the Nigerian SEC said,

*“We have been attending AGMs where directors are elected or re-elected, such proceedings are just formalities. Even the so called shareholder associations that attend such meetings are easily compromised by the board and management of these companies”*

It must be noted that regulatory agencies have legal provisions to attend AGMs as observers only, with no right(s) to interfere on deliberations. As another respondent puts it, “...some AGMs are so predetermined that you notice from the onset that this is a doctored proceeding...” In the same vein, a former CEO and Chairman of a listed corporation said;

*“I acknowledge that management and boards do hijack the independence and activism of shareholder associations, by giving them financial incentives/bribes. It got to a point that a president of one of the shareholder associations became a director on a company which was really bad”.*

In sum, it is possible to conclude that shareholder activism in Nigeria is bogus. Currently, shareholder associations seem to go over their activities by becoming post-event/ex-post commentators, displaying false activism when the damage has already been done, such as when companies' poor performance results are made public.

## **DISCUSSIONS**

Our findings, in the main, suggest that shareholder activism in Nigeria mirrors the dominant political culture of the country. A recent study on corporate governance in Nigeria also confirms that shareholders' associations have become considerably militant in assessing the performance of companies and in challenging managerial actions that were not taken in their interests (Okike, 2007). This finding further brings to the fore the institutional influences on corporate governance in general (Aguilera and Jackson, 2005).

No doubt, agency theory embodies a different world-view and continues to remain a starting point for building any governance framework (Lubatkin et al 2007). Whilst its assumptions may be considered restrictive in cross-national application, they nevertheless remain absolutely valid and worthy precursors for conventional orientations towards corporate governance. Clearly, our findings do not disregard the applicability of the highly novel agency

theoretical construction of the corporate governance phenomenon. However, they show that while economists like Shleifer and Vishny (1997) have considered the model to be a supra-national lens for evaluating all corporate governance issues, this Principal/Agent model is based on a number of assumptions which may undermine the complexity (Lubatkin et al 2007) and multi-facet character of the corporate governance phenomenon and consequentially the subject of shareholder activism. Notably, it engenders an under-socialized and under-politicized view of principals and agents, particularly in developing countries and specifically as we have seen in our Nigerian case. In this regard, the institutional account of corporate governance offers a helpful complementary lens to the agency theory of corporate governance.

The political system, as a vibrant institutional force, has been pivotal to the study of institutional effects on corporate governance (Roe 1994, 2003; Fligstein 1990; Bainbridge 1995; Romano 2004; Gourevitch and Shinn 2005; Wärnery 2005; Coglianesi 2007; Belloc and Pagano 2009; Adegbite 2009). In an attempt to move the debate on the institutional determinants of corporate governance forward, we have focused on the particular influence of a key institution – political system and culture- on a key corporate governance mechanism- shareholder activism. Our survey findings show that national political culture impacts on shareholder activism in corporations. More specifically, our findings have shown the extent to which shareholder activism does mirror the broader political climate of a nation state. Our study specifically adds, insights from a case of a developing country, to the increasing scholarly attentions (Roe 1994, 2003; Fligstein 1990; Bainbridge 1995; Romano 2004; Gourevitch and Shinn 2005; Wärnery 2005; Coglianesi 2007; Belloc and Pagano 2009; Adegbite 2009) being paid to the political determinants of corporate governance. Again, while our study forges a necessary discourse of the particular influence of a country's political culture on shareholder activism, it encourages further scholarly works in the line of building a political theory of shareholder activism. Therefore in enriching scholarly discourse in the area of governance and opportunism in the modern corporation, we bring insights from a Nigerian case to add to the increasing scholarly recognition (Boehmer 1999; Aoki 2001; Aguilera and Jackson 2003; Aguilera 2005; Leaptrott 2005; Liu 2005; Lubatkin et al 2005, 2007; Judge, Douglas and Kutan 2008) with regards to the institutional 'embeddedness' of countries' corporate governance systems and key players. This institutionalist approach is particularly needed in explaining corporate governance in developing countries, which are characterised lesser economic development, weak legal infrastructures, as well as public and private corruption.

Following on, the dominant peculiarities of the African business enterprise, particularly the political environment, which is characterised by endemic corruption, creates an avenue to look at corporate governance reforms and regulatory mechanism, less from "a one size fits all" approach. As a result, we advocate more caution in transferring and enacting uniform corporate governance practices across different institutional environments. Foreign systems of corporate governance reflect their history, assumptions and value systems (Charkham 1994) which should not be transplanted, but rather, countries should identify the various ways in which the universal principles of good corporate governance can be applied in such a way that it pinpoints and corrects the weaknesses in each country's particular system and practices (Okike 2007). This brings to fore the need for each country to fashion out her corporate governance regulatory strategy in order to deal with its own specific challenges, albeit within an umbrella of accepted principles of responsible corporate behaviour.

There is no doubt that true shareholder activism in the broadest sense, involving both large and small individual and institutional shareholders will promote effective corporate governance in Nigeria. Amao and Amaeshi (2008) have recently called for effective shareholder activism as a prerequisite for more effective corporate governance and accountability in Nigeria. However, while the evolving shareholder activists are a positive development, the corrupt collaboration of shareholders' associations and corporate executives must also be addressed by regulatory agencies and reputable corporate leaders. This is much needed particularly with the increasing cases of corporate scandals in multinational companies and joint ventures operating in Nigeria. Some ongoing corporate scandals such as the Cadbury Nigeria accounting scandal of 2007, the Halliburton scandal in Nigeria of 2008, and the Siemens bribery scandal of 2009 do little to suggest that foreign majority ownership leads to better corporate governance and accountability. Nevertheless, unlike the traditional principal-agent problem highlighted in the Anglo-Saxon literature, the major agency conflict in developing countries has predominantly been between majority and minority shareholders (Ahunwan, 2002).

Following concerns of the SEC over some of the above-mentioned corrupt practices of shareholder associations, the code of conduct for shareholders' associations in Nigeria was developed and was launched in December 2007. The SEC Code for shareholders was initiated as an attempt to address observed negative practices of shareholder associations in the Nigerian capital market. Giving background to the new development at the launching of the Code, the Director-General of the commission, Musa al Faki said the Code:

*“Reaffirms SEC’s commitment towards strengthening good corporate governance through the instrumentality of shareholders associations.....It will be recalled that the commission embarked on the journey to fashion out the code on April 27,2006 when an inter-agency committee was set up in response to the observed inadequacies on shareholder associations’ activities. Some of the identified key problems areas that constrained the effectiveness of shareholder associations include: Proliferation of shareholder associations, concerns over behaviour of some members at Annual General Meetings (AGM), intense competition towards getting on companies’ audit committees, governance problems and unclear succession arrangements and the inadequate members enlightenment on shareholders rights, privileges and responsibilities. The rest were lack of regulatory oversight and funding constraints.” (Sun News 2007)*

An important recommendation of the Code is that the statutory audit committee of companies must elect members (that is non executive directors) which are not executive members of shareholder’s associations to further reduce the answerability of the latter to the executive management. Adegbite (2009) has however noted a key institutional impediment to the Nigerian legal infrastructure for corporate governance, particularly with regards to the SEC 2003 Code, CBN 2006 Code and the SEC 2006 Code for shareholder associations. He noted absence of a large pool of potentially qualified candidates with sufficient and desirable human capital to act as truly independent directors and subsequently members of audit committees. As a result, while the SEC Code for shareholders is indeed a very timely initiative, our survey shows limited evidence to suggest that it has produced significant positive results. We, however, recognise that our survey was conducted primarily between May and July 2008; there is now enough time for future studies to be able to look at the impact of the code.

We suggest that genuine shareholder activism will drive good corporate governance in developing countries such as Nigeria. As earlier noted, shareholder activism can be

promoted through a better informative interaction between shareholders' associations and corporations. This will have to go beyond yearly AGMs. Increased participation by enlightened shareholders and reputable corporate leaders is capable of enhancing this informative interaction. This will facilitate efficient shareholder activism, given that enlightenment is crucial. Furthermore, upon being aware of their rights and responsibilities, Nigerian shareholders will also have to make a decision to be 'active' and act on their rights and responsibilities. This would mean taking a step beyond the attendance of AGMs but asking specific questions to ensure sufficient clarity of corporate goals and strategies, as well as scrutinising managements' and director's activities. Furthermore, the Nigerian media can promote shareholder activism by providing unbiased and fact-based information to the investing public. Nigeria has a very vibrant media and if the media is made aware of its potential in this development, it is envisaged that they will become more proactive in promoting responsible shareholder activism. This will mean 'taking the bull by the horn' and reporting all forms of corporate abuses and misdemeanours promptly without political interferences. Corporate watch-dogs in Nigeria such as the Corporate Affairs Commission, the Economic and Financial Crime Commission and the Securities and Exchange Commission should also rise up to assist the development of a positive shareholder activism culture in Nigeria.

Finally, the findings of this study further bring to the fore the benefits of studying the corporate governance systems of less reported economies in the literature, whilst using multi-theoretical lenses, given their conceptual and practical implications for a global theory and discourse on corporate governance. We hope that this paper will encourage further research into corporate governance developments in other African jurisdictions where the subject is even at a more infancy state. More importantly, this is a Nigerian case study. As such, whilst our research has important implications for developing countries in general, again, adequate caution must be exercised in making generalisations (Yin, 2003). Although, there may appear to be striking resemblances with regards to the general state of African countries, there abound remarkable differences in their history, economic base, political systems and situations, laws and ethics, which dictate the conduct of business, the shaping of corporate governance, and the administration of shareholder activism.

## **CONCLUSION**

We have provided some evidence to support the view that a country's political culture influences its predominant style of shareholder activism. We have also shown how shareholder activism can constitute an institutionalised political misuse at the firm level, within a broader national polity ridden with endemic corruption. We further showed the emergence of different institutionalised expressions of shareholder activism, which are contingent on the broader configuration and character of nation state politics. In summary, we note that while the concept of 'corporation' is alien to the indigenous business practices of pre-colonial Nigeria (Ahunwan 2002), the political environments of developing countries offer a more in-depth perspective with regards to the embeddeness of corporate governance in a country's polity. Traditionally, managers and directors of large listed organisations in Africa, constantly strive to reap maximum benefits from political relationships. The result is an unethical and discouraging investment climate, which further allows politicians and their associates to significantly extend their public powers to the governance of corporations. In today's environment of global competition for foreign direct investments (FDI) and the globalisation of the Anglo-Saxon model of capitalism, effective and

competitive corporate governance structures and mechanisms have become imperative for the African economies to be integrated into the global market system.

In sub-Saharan Africa, South Africa can probably be regarded as having the most advanced corporate governance system with a shareholder activism structure and practice, characterised by active investor interests (Vaughn and Ryan 2006). South African shareholders, within an environment of a more developed corporate governance regulatory structure, have questioned and challenged boards severally. This indicates that they are generally aware of their rights and responsibilities. Their efforts have resulted into some instances of significant board and managerial re-think and decision reversal, especially in matters of board appointments. Obviously South Africa has a much more advanced democracy than most African countries and might therefore provide some insights for corporate governance improvements in sub-Saharan Africa, and in Nigeria in particular.

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