

THE FALLACY OF THE RATIONAL APATHY THEORY: MINORITY SHAREHOLDER ELECTRONIC PARTICIPATION IN NIGERIAN CORPORATE GOVERNANCE

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ABSTRACT

Purpose: The appeal of the Rational Apathy Theory lies in the fact that it is not only a descriptive theory of shareholder behaviour in the modern public firm but also a powerful normative tool which recommends itself to corporate legislators and policymakers. True to their normative logic, proponents of apathy contend that since shareholders of modern public firms will never find it cost-efficient or incentivized to perform their monitoring responsibilities over corporate management, insisting on a shareholder-oriented corporate governance model is undesirable. This article rejects the determinism and immutability of the above thesis and argues that firm investors will embrace activism where the cost of corporate monitoring is reduced, and the benefits of doing so are increased. Given the ability of the internet to reduce monitoring costs for shareholders (predominantly minority shareholders) in public companies, the article campaigns for minority shareholder electronic participation in corporate governance and proposes a careful reform of corporate law and governance in post-covid Nigeria, drawing inspiration from similar reforms on electronic governance in Canada, UK, and the State of Delaware in the US. In a society where digitalization has been identified as a major catalyst for the economic revival of commercial and corporate life, this article recommends itself to policy and lawmakers, corporate boards, corporate law experts, legislators, regulators, and other relevant stakeholders.

Methodology: The article adopts doctrinal and comparative methods of legal analysis.

Results/Findings: The article finds that while the Rational Apathy Theory may have served the analogue world, it is unsuitable for a digital generation, where issues of cost, communication and participation could be liberalized, through the use of the internet, to serve the interest of shareholder democracy in public companies.

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INTRODUCTION

The concept of 'rational apathy' was initially developed in US political circles to describe the attitude of voters who abscond from exercising their constitutional right to vote (Flocos, 1990). With time, this concept became an essential analytical tool in corporate governance and has been employed as a descriptive and normative tool for analyzing shareholder behaviour (Bolodeoku, 2007).

Historically, the theory describes the behaviour of retail investors in modern public companies who, due to their insignificant ownership stakes and the consequent disbelief that participation in corporate governance will make any difference, decide to remain inactive even when management runs the company down (Black, 1990). The theory predicts that "shareholders, of large public companies, will hardly collectively act to monitor or discipline corporate managers because they are dispersed, just as their shareholdings are diffused" (Olson, 1991, pp. 821-822). Due to the prohibitive cost of participation in corporate governance, it was argued that minority shareholder apathy is the only rational choice (Fairfax, 2019).

This article rejects the above normative claim. Convinced that shareholder shirking is not immutable, the article emphasizes the relativity of rational apathy as a cost-contingent theory. It contends that any reversal or reduction of the costs associated with shareholder activism and increase in the ability of minority shareholders to influence firm decisions will reduce the theory's potency and induce activism. The article debunks the view that apathy is the paradigmatic behaviour of shareholders, especially retail investors.

Interestingly, previous scholars (Bebchuk, 2005) who have challenged the rational apathy theory have done so in the context of institutional shareholding in the US and Europe. Regrettably, their analyses failed to address the "minority shareholder apathy problem" in public firms. No doubt, given the advantages already enjoyed by institutional investors in public companies relative to minority shareholders (Stapledon, 1996), the internet as a platform for e-engagement, information gathering, and verification will foster minority shareholder participation in corporate governance more. As a result, the article proposes reforming the Nigerian law to accommodate the electronic liberalization of communication and participation in Nigerian corporate governance. It focuses on issues like virtual meetings and voting, electronic notification, corporate websites, electronic transmission of proxy materials and provision of an Information Depository and Retrieval System. In doing this, the

work draws inspiration from corporate reforms in developed countries like the US, Canada, and the UK.

The article is divided into five parts. After the introduction, the second part examines the claims of the rational apathy theory, its theoretical assumptions, and its impacts on corporate governance. The third part analyses the possibilities offered by the internet in corporate governance in response to apathy theorists. Finally, the article proposes reforms to the corporate governance regime in Nigeria.

1.1 RATIONAL APATHY THEORY: AN ANALYSIS

Descriptively, minority shareholder apathy refers to the attitude of dispersed retail investors who, because they hold insignificant shares, decide that it makes no sense to incur extra costs attending and voting at corporate meetings or otherwise monitor corporate management when they know that they will not impact corporate governance in the long run (Bolodeoku, 2006). Primarily, shareholder apathy is preferable to shareholder activism, which is viewed as unnecessary, inappropriate, irrational, and undesirable (Clark, 1986).

1.1.1 The Descriptive Case for Shareholder Apathy

Minority Shareholder apathy has been demonstrated in different ways. Firstly, proponents point to the fact that retail investors in many public companies fail to vote at corporate meetings in both contested and uncontested matters (Fairfax, 2019). For example, even though retail investors held more than 30 per cent of shareholdings in US public companies, only 29 per cent of that fraction voted in 2014 (Black, 1990). In the UK, less than 6 per cent of registered voters voted in 2018 (Broadridge Financial Solutions, 2019). The voting pattern of minority shareholders also betrays shareholder apathy. When they voted, minority shareholders rarely voted against directors (Baker, 2018). This lack of enthusiasm and critical engagement has been interpreted as an indication of shareholder apathy (Fairfax, 2013).

1.1.2 Apathy as a Corporate Governance Norm

The view that shareholder apathy is normatively appropriate stems from the belief that company directors are better suited for making business decisions than shareholders (Brownstein & Kirman, 2004). It was contended that since shareholders do not have much information about the company, they are not in the position to make better decisions for the company as the directors who owe a fiduciary duty to the company (Fairfax, 2019). Hence, the claim of the normative inappropriateness of shareholder activism is based on the verdict of

its irrationality. Three reasons have been offered for the irrationality of minority shareholder activism (Clark, 1986). These are:

- (a) Cost-Benefit Disproportion
- (b) Collective Action Problems
- (c) Free Rider Problem

(a) Cost-Benefit Disproportion

The cost-benefit analysis explains why it is irrational to expect minority shareholders to attend and vote at corporate meetings. Since voting power is proportionate to share ownership, it has been argued that minority shareholders will have no real ability or incentive to impact company decisions (Clark, 1986). Moreover, the cost they bear in making informed votes is prohibitive and far outweighs any benefit they might gain from participation.

‘To become informed, a shareholder must invest resources in collecting information and data about the company and about the specific issue up for consideration at the meeting. After gathering the necessary information...the shareholder must review, process and understand the data, and arrive at an informed opinion on how to vote. In addition, the shareholder bears the expense of taking time off from work to attend and to participate in the shareholder meeting’ (Solomon, 2016, p. 748).

In the face of these costs, apathy proponents argue that each investor, acting rationally to maximize his/her benefits, will conduct a cost-benefit analysis and embrace apathy rather than participate. They only need to diversify their portfolios to ensure the risk of their absence/apathy.

(b) The Collective Action Problem

Another reason cited for the purported rationality of shareholder apathy in corporate governance is the collective action problem (Fairfax, 2019). Since it is believed that individual participation by minority shareholders will have no impact on the governance of public companies, the only way they could influence firm decisions is by acting collectively as a group. Unfortunately, apathy theorists maintain that minority shareholders will not do this due to the dispersed nature of their shareholding and the prohibitive cost of their coordination (Solomon, 2016).

(c) The Free Rider Problem

The free rider problem also explains why a minority shareholder will not venture into activism. According to Clark (1986), this concept refers to 'the temptation faced by each individual member of a large group, like the shareholder of a public corporation, to fail to make effort needed to contribute to a group action, because he hopes that the others will do the work and he will benefit anyway' (Clark, 1986, p. 94).

1.2 THEORETICAL ASSUMPTION BEHIND RATIONAL APATHY THEORY

The Rational Apathy theory was built on Olson's (1991) analysis of public goods and the theory of groups. According to him, the ability of members of a group to cooperate to achieve a collective good depends on the external incentive they receive and the size of the group (Olson, 1991). He identified three relevant groups - privileged, intermediate, and large/latent groups. Public companies fit into Olson's taxonomy of large/latent groups (Olson, 1991).

According to Olson, members of large groups have no incentive to act to obtain a collective good because however valuable the collective good might be, it does not offer the individual any incentive to bear the costs of the necessary collective action (Olson, 1991). Olson's point is that the larger a group becomes, the higher the cost of coordinating the group to produce collective action and the smaller the fraction of the expected benefit for the individual members of the group. Since the cost of organizing collective action outweighs expected private benefits, large groups engender free riding (Olson, 1991).

According to Olson, members of large groups acting rationally will not individually contribute to collective goods' organizational and production costs without separate selective incentives because it is irrational to do so (Olson, 1991). Moreover, they are not thereby denied the enjoyment of the goods that are ultimately produced. Hence,

'[M]onitoring by individual shareholders with small holdings is perceived as irrational, since the cost of doing so far outweighs the expected benefits...And, since monitoring benefits are non-excludable goods, most shareholders will see free-riding as the best strategic behaviour' (Olson, 1991, p. 42).

1.2.1 Critique of Olson's Logic

Despite the popularity of Olson's thesis, his conclusions have been criticized by scholars. Kahan (2002) was uncomfortable with Olson's conclusion that individual group members will not contribute to the collective good unless they receive external incentives. He rejected

Olson's selfish, egotistic, and homogenous depiction of members of large groups and decried that his theory predicts a single collective behavioural equilibrium – universal non-cooperation (Kahan, 2002). He argued that individuals in a group are also moved by honour, altruism and like dispositions to contribute to public goods even without the inducement of material incentives (Kahan, 2002). According to Kahan, 'whereas the conventional logic of collective action counsels the creation of appropriate external incentives, the new logic of reciprocity suggests the importance of promoting trust.' (Kahan, 2002, p. 1514).

How would large group members promote reciprocal trust among putative contributors to the collective good? This could happen through communication, a concept Olson overlooked (Bolodeoku, 2007). Ostrom (1998) emphasized the positive role played by communication and reciprocity in dealing with collective social problems. He argued that with repeated communication, a group participant could assess whether it trusts others sufficiently to agree with them to jointly work to surmount a common problem (Ostrom, 1998).

Here, the internet becomes relevant. Olson's calculation of coordination and production costs was done with technologies of his time. Hence, Olson and other experts who gave foundational analyses on the cost of collective action could not have imagined or did not reflect on the power of digital technologies to facilitate cost-reduced communication among dispersed large group members. The internet offers minority shareholders the opportunity to communicate with each other at a relatively low coordination cost. Through repeated e-communication, they could build reciprocity to overcome the barriers occasioned by share dispersion. Digital technologies can also provide cheap information about the company so that retail investors may not suffer from information asymmetry relative to corporate insiders.

1.3 CONSEQUENCES OF MINORITY SHAREHOLDER APATHY

1.3.1 Distortion of Vote Outcomes

When Minority shareholders stay away from shareholder meetings, there is a distortion of vote outcomes in favour of management and majority shareholders in controlled companies (Kastiel & Nili, 2016). In addition, there is a distortion in favour of management if apathetic minority shareholders would have voted against management (Kastiel & Nili, 2016).

The distortion could also be in favour of a dominant activist shareholder. This happens typically in controlled companies where the controlling shareholder holds less than 50 per

cent of the company's shares, as in many Nigerian public companies (Ahuwan, 2002). It is even worse in controlled companies where the voting rights of controlling shareholders are not proportionate to their equity ownership. 'In such cases, retail investors' apathy further facilitates the controller's effective control, and corporate decisions that benefit the controllers, but harm other shareholders, are less likely to be blocked' (Kastiel & Nili, 2016, p. 73).

1.3.2 Less Corporate Governance Changes

Shareholders introduce corporate governance changes through resolutions or proposals. In Nigeria, shareholders can requisition a meeting requesting that resolutions pushing governance changes to be voted in that meeting (*Companies and Allied Matters Act 1990 (CAMA)*, s. 215 (2) (7)). Since the abstention of retail investors may reduce the number of votes in favour of such changes, retail investors' apathy impairs the ability of shareholders to introduce crucial corporate governance changes (Kastiel & Nili, 2016).

1.3.3 Redemption of Deadlock situations

Sometimes, firms cannot make changes despite the agreement of management and shareholders because the law requires a supermajority vote (*CAMA 1990*, s. 48). In such deadlock situations, the outcome is desirable for all parties. However, they cannot introduce changes due to retail investors' apathy. Mobilization of retail investors could redeem such deadlock situations.

1.4 PROSPECTS OF E-CORPORATE GOVERNANCE

1.4.1 The Communication Value of The Internet

The internet affords minority shareholders the platform to repeatedly communicate with each other and management. Repeated communication and sensitization on corporate governance issues amongst dispersed minority shareholders leads to consensus building and the formation of reciprocity, which facilitates collective action (Bolodeoku, 2007). In addition, the internet lowers the cost of such communication, which positively affects shareholder activism.

1.4.1.1 Electronic Notices and Corporate Websites

Electronic transmission of corporate documents and notices to and from individual investors enhances repeated interactions between the company and individual shareholders and lowers the cost of such an exchange. Where such electronic communication is allowed, retail shareholders are not encumbered by cost or distance from communicating with management.

In the US, section 232 (a) of the Delaware General Corporation Law (DGCL) allows notices to be delivered electronically to stockholders. Also, section 252.3 (2) of the Canada Business Corporations Act (CBCA) allows electronic transmission of documents under similar conditions. There are also similar provisions in the UK (*Companies Act 2006 (CA)*, Sch 5, part 3, paras 5-7). Compared with manual delivery, these statutes install communication and notice delivery system that is more effective, cheap, and instantaneous.

Also, corporate websites in firms have evolved as a mechanism for promoting good investor relations (Marston, 1996). Corporate websites not only facilitate cheap communication between management and shareholders; they are used to build consensus and reciprocity among dispersed shareholders. In the UK, the CA empowers companies to supply information to shareholders via their websites if shareholders consent (2006, Pt 4, paras 8-9). These shareholders are deemed to have consented if electronic delivery is agreed to by members or provided for in the company articles (*CA 2006*, Sch 5, para 10). Individual shareholders can also send information to the company via the website if agreed to by the company (*CA 2006*, Sch 4, paras 6-7).

1.4.1.2 Communication Among Shareholders

Shareholders make corporate governance changes in public companies through proposals or resolutions. However, it is often tricky for dispersed retail investors to mobilize support for these proposals from other shareholders, especially when these changes run contrary to management policy. The reason is that the cost of soliciting votes through the corporate proxy machinery and engaging in proxy battles with management is prohibitive for minority shareholders (Friedman, 1951). Conversely, the cost is borne by management in vote solicitation, and proxy battles are paid by the company. Hence, in a pre-internet regime, it is easy for retail investors to remain apathetic when they analyze the cost of proposing governance changes. However, with the internet, dissident shareholders have a chance.

Where dissident shareholders intend policy changes, they could create a website or other secure online interactive platforms, present their claims, and solicit the support of non-proponent shareholders without violating any solicitation rules. Studies have shown that hosting a website may not discourage dissident groups as the cost of waging a proxy battle (Grzybkowski & Wojcik, 2006). Additionally, through the internet, dissident shareholders could gauge the success of their online campaign by requesting supportive non-proponent shareholders to signal their interest, which could subsequently be published on their corporate websites (Bolodeoku, 2007). Such publication could convey to inactive minority shareholders the readiness of other shareholders to participate, which could inspire reciprocity in the remaining shareholders.

1.4.2 The Participation Value of the Internet

An internet revolution also reduces the cost of participation, especially for minority shareholders, and liberalizes the concept of shareholder participation in corporate governance. This overcomes the apathy associated with the system tied to physical presence at corporate meetings. The need for such liberalization has been heightened by the increased internationalization of portfolio investments in public companies and emergencies like the coronavirus pandemic, making physical Annual General Meetings (AGMs) unfeasible.

1.4.2.1 Information Depository and Retrieval Systems (IDRS)

One point against minority shareholders is that they lack adequate information about the company to make informed inputs (Gordon, 1991). This could be cured by incorporating IDRS in corporate legislation, as has been done in the US through the Electronic Data Gathering Analysis and Retrieval System (EDGAR) and in Canada, through the System for Electronic Document Analysis and Retrieval (SEDAR). These systems facilitate the electronic filing of securities information, allow for the public dissemination of securities information, and provide electronic communication between electronic filers, agents and securities regulatory agencies (SEDAR, 2021).

With IDRS, dissident shareholders may access relevant information about a particular company and compare such information with those of other companies in competing industries (Bolodeoku, 2007). So, apart from removing management's information edge over putative activist shareholders, IDRS helps dissident shareholders persuade non-proponent shareholders based on credible evidence. IDRS will also reduce the cost of corporate

information gathering for putative shareholder-monitors. This is because these systems disentangle information retrieval from public registry physical searches, which are plagued by costs, complexities, and encumbrances (Bolodeoku, 2007).

1.4.3 The Internet and Enhanced Shareholder Participation

1.4.3.1 Proponent Shareholders

In a pre-internet world, opposing shareholders bear the cost burden of waging proxy contests against management. These costs include transmitting proxy materials to numerous shareholders of public companies, litigating the right of access to the list of shareholders entitled to vote at meetings, and soliciting non-proponent shareholders (Friedman, 1951). In the US and Canada, where proxy solicitation is regulated, the potential financial burden of soliciting other shareholders may have a chilling effect on opposing shareholders, who may decide to tread cautiously (Bayne & Emerson, 1957).

Hence, in the US, dissidents are only allowed to use the corporate proxy machinery to circulate proposals if their proposals satisfy the strict requirements of the SEC Rules 14a-8. Furthermore, even when they do, the corporate board has the discretion to decide, in most cases, which proposals to circulate and which not to (Kastiel & Nili, 2016). In Canada, where the CBCA does not contain such limitations, the law still empowers management to decline to circulate shareholder proposals under certain circumstances (1985, s. 137(5)). Similarly, in the UK, management can decline to circulate shareholder proposals unless the requesting shareholder pays for them (*CA 2006*, s. 316 (1)).

The internet can reduce all these costs for the dissident shareholder. In addition, where electronic transmission is incorporated into the law, either the company or the proponent shareholder may be able to transmit relevant documents to non-proponent shareholders at reduced costs.

1.4.3.2 Publication of List of Shareholders

Without the list and addresses of shareholders eligible to vote at companies' meetings, it is difficult for dissident shareholders to canvass the votes of non-proponent shareholders on intended policy changes. In Nigeria, dissident shareholders of public companies need to go to their companies' physical office to inspect the register of shareholders and pay if they need a copy of the same (*CAMA 2020*, s. 112 (1)(2)). Consequently, a corporate board against whose

policy a dissident shareholder is bringing a resolution may place unnecessary bottlenecks to timely physical access to this list.

Where the internet is incorporated into the law, corporate boards could be mandated to publish the list and addresses of eligible shareholders on accessible electronic networks early to allow dissident shareholders access to non-proponent shareholders. For example, the DGCL mandates the officer in charge to publish the complete list of shareholders eligible to vote at the meeting, at least ten days before the meeting of stockholders, on the reasonably accessible electronic network (2022, s. 219 (a)). However, this provision is limited in aid since it does not mandate the publication of shareholders' addresses. A reform that mandates timely electronic publication of shareholders' lists and addresses will benefit intending activist minority shareholders.

1.4.3.3 Non-proponent Shareholders

Apathy proponents often allege that minority shareholders of public companies do not attend corporate AGMs. This allegation does not take cognizance of the cost of physical presence at companies' meetings and the internationalization of equity portfolios in public companies. If non-proponent minority shareholders participate in corporate governance, the cost of doing so must be reduced.

Traditionally, shareholders participated in meetings physically or by proxy (Emerson & Latham, 1955). However, due to the transaction costs of physical attendance, absentee shareholders mainly participated by proxy (Kastiel & Nili, 2016). Frequently though, shareholders are pressured to choose proxies suggested by the board. This harms the supposed monitoring responsibility of shareholders in public companies and perpetuates managerialism. As Kobler (1998) puts it, the absent shareholder is effectively disenfranchised (1998).

Therefore, an internet-related reform could liberalize the concept of participation and reduce its cost. The internet can do this by 'rendering physical presence at meetings irrelevant and providing the basis for policymakers to re-examine the primacy of the proxy process as a medium for shareholder participation' (Bolodeoku, 2007, p.137). This can happen through the incorporation of electronic voting and virtual meetings. In this regard, US and Canada have led the way.

Under s. 211 (1)(2) of the DGCL, stockholders may, by means of remote communication and subject to the guidelines and procedures adopted by the board, (i) participate in the meeting of stockholders; and (ii) be deemed present in person and vote at a meeting of stockholders. Section 132 (5) of the CBCA is similar to the Delaware statute. However, s. 132 (5) of the CBCA leaves the power to decide when to call such virtual meetings to either the board or shareholders. According to s.132 (4), the CBCA,

‘unless the bye-laws otherwise provide, any person entitled to attend a meeting of shareholders may participate in the meeting, in accordance with the regulations, if any, by means of telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the corporation makes available such communication facility.’

This provision is better than s. 211 (2)(b)(ii) of the DGCL, which only assures those present participants can read and hear the proceedings of meetings because shareholder participation is broader than just hearing or reading the proceedings. It includes voting at meetings, challenging the board and receiving feedback (Bolodeoku, 2007). However, the use of the phrase 'if the corporation makes available such communication facility in the CBCA' unfortunately gives the impression that a company intending to hold a meeting by remote communication may choose not to provide the appropriate facility. A more balanced reform should make the company's obligation in this regard mandatory. When conducting a virtual meeting, if the company cannot organize it to ensure high-quality transmission of data, audio and video, it should outsource the technological complexities to experts. However, when it comes to participation or voting by shareholders in the meeting, they can choose to participate either by telephone, online voting, e-mail or instant messaging, depending on the guidelines or other procedures recommended by the board or company (Bolodeoku, 2007).

1.5 MINORITY SHAREHOLDER ELECTRONIC PARTICIPATION IN NIGERIA

1.5.1 Relevant Laws on Corporate Governance

Shareholder communication and participation in corporate governance in Nigeria are regulated by CAMA 2020 and the Securities and Exchange Commission Rules made according to the Investments and Securities Act (ISA) 2007. While CAMA generally provides for the conduct of meetings and other related issues, SEC Rules regulate the proxy process.

Having replaced CAMA 1990, the new Act incorporates some electronic reforms contemplated in this article but omits others.

Nigerian public companies have both concentrated and dispersed share ownership structures because the Nigerian Stock Exchange (NSE) Free Float Rules make it mandatory for companies listed on different boards of the NSE to issue some of their shares to the public (NSE, 2021). The implication is that even though the privatization of State-owned Enterprises (National Council on Privatization, 2001) and the capitalization programme carried out by the Central Bank of Nigeria (CBN) (2004) produced public companies with concentrated share ownership structures, the free-float rules assure that share ownership in these companies is still dispersed.

Unfortunately, despite the aggravated agency problems in this Nigerian typology of public companies (Solomon, 2016), Nigerian Corporate laws still retain pre-internet frameworks, perpetuating the apathy of Nigerian minority shareholders. Until recently, apart from the introduction of online registration by the Nigerian Corporate Affairs Commission (CAC) (2021), no other serious integrative electronic reform has effectively been carried out. Even during the Covid-19 restrictions, the CAC insisted on the participation of shareholders in the AGMs by proxy (2021). Shareholders were still expected to physically deposit, at the registered offices of their companies, instruments appointing their proxies (*CAMA 2020*, s. 254 (7)) at a time when the movement of persons was highly restricted. Although the NSE subsequently issued guidelines for virtual board and management meetings (2020), that was not new as a broad interpretation of the old CAMA does not exclude virtual board or management meetings in principle (1990, s. 263).

Unlike Nigeria, in the UK, where the law did not ordinarily mandate virtual meetings, to preserve fundamental shareholder rights during the pandemic, the UK Corporate Insolvency and Governance Act 2020 (CIGA) was enacted. This Act allowed shareholders of public companies to hold AGMs without having to meet physically and permitted votes to be cast by electronic means (*CIGA 2020*, Sch 14). Monitoring and governance will be strengthened in Nigeria by rediscovering the minority shareholder voice. In that case, there is a need to electronically liberalize the concept of participation in Nigerian companies. The areas in which reform is suggested are discussed below.

1.5.2 Notice Transmission and Resolutions

A reform that expressly incorporates electronic transmission of information to shareholders as it is done in Canada and Delaware will improve the communication between the company and shareholders and may promote shareholder activism. However, such a reform provision should not be limited to transmission by electronic mail. For example, the 2020 CAMA provides that 'notice may also be given by electronic mail to any member who has provided the company an electronic mail address (2020, s. 244 (3)). This provision is not only limited to transmission by e-mail but also silent on publication via websites. A reform of Nigerian corporate laws should also mandate public companies to publish information on accessible corporate websites.

Also, an internet-related reform should enable shareholders to send documents and information to the company electronically, where the company consents. CAMA 2020 was silent on this. In fact, it still preserves section 230 (7) of CAMA 1990, requiring physical delivery of instruments appointing proxies to the company's registered office. This provision does not take cognizance of the internationalization of share portfolios in Nigerian public companies and further enhances minority shareholder passivity. In emergencies (like the Covid-19 restrictions), expecting minority shareholders to deposit instruments appointing proxies physically is tantamount to strategic disenfranchisement. If Nigerian companies are mandated to create websites for the transmission of information from and to the company, these websites could be used to embolden shareholders' voices.

On resolutions, section 260(3) of the CAMA 2020 empowers the company to circulate the notice of resolutions deposited by proponent shareholders in the same manner as the notice of meetings. However, it is curious that even with its electronic regime, CAMA 2020 replicates section 235 (4) (b) of CAMA 1990, requiring the proponent shareholder to pay the company for the expenses to be incurred in circulating such resolutions (s. 260 4 (b)). One would think that adopting e-transmission would have vacated the need for such payments. Therefore, a minority shareholder-oriented electronic reform in Nigeria must ensure that electronic transmission of resolutions will reduce the cost of participation for proponent shareholders.

1.5.3 IDRS and Electronic Publication of Shareholders' List.

IDRS systems do not exist in Nigeria as in the US and Canada. Since the presence of IDRS increases shareholder activism, there is a need to embrace systems like SEDAR and EDGAR

in Nigeria. This could be done by reforming the administration of Nigerian companies and securities laws to accommodate the use of electronic registries for public companies (Bolodeoku, 2006). Given the paucity of data banks and accurate statistics in Nigeria, realizing electronic registries may take time; however, it is not impossible. Secondly, Nigerian law should be reformed to provide for early electronic publication of the names and addresses of non-proponent shareholders, as it is done in Delaware, to allow activist shareholders to solicit non-proponent shareholder votes.

1.5.4 Virtual Meetings and Shareholder Participation

“Virtual meeting” refers to a meeting in which shareholders attend meetings online via the internet, are certified electronically as shareholders, ask questions of the board of directors and management, and, if desired, cast their votes online in a secure manner while the meeting is in progress. (Harvard Law School Forum on Corporate Governance, 2018). Such meetings could either be virtual-only or in a hybrid format. This is different from webcasting over the internet, a meeting entirely held physically.

Generally, such virtual meetings were not contemplated under CAMA 1990. Hence, in providing for the content of notices and venue of meetings, CAMA 1990 implied a physical venue in Nigeria for companies' meetings. According to the Act, 'all statutory and annual general meetings shall be held in Nigeria' and notices for such meetings shall specify, among other things, 'the place, date and time of the meeting' (CAMA 1990, s. 216 & 218). Also, shareholders' attendance at meetings and participation in them was conceived around physical attendance as a quorum was defined in terms of members ' presence in person or by proxy (CAMA 1990, s. 232 (2)). Although the language of s. 233 of CAMA 1990 was broad enough to accommodate court-ordered virtual meetings. It is doubtful if the legislature intended such meetings in 1990.

This explains why, unlike in the US, Broadridge alone hosted 326 virtual meetings in 2019 (Broadridge Financial Solutions, 2019). On the other hand, there is no record of any successful shareholder virtual meeting in Nigeria before 2020. Apart from obvious legal impediments involved, other reasons often adduced for this include: poor internet penetration rates and usage in Nigeria, high cost of hosting virtual meetings or outsourcing same, absence of affordable backbone infrastructures for fast, high-quality, and affordable internet access,

and shareholder opposition to virtual meetings (Bolodeoku, 2007). Little wonder Bolodeoku stated in 2007 that ‘it will be unrealistic to expect a meaningful conduct of virtual meetings in Nigeria at the moment (2007, p. 109).

While these challenges still exist, it is contended that the situation is no longer as hopeless as it was 15 years ago. Section 240 (2) of CAMA 2020 has allowed private companies to conduct electronic AGMs for the first time in Nigerian legislative history. However, public companies remain restricted to physical meetings. This is understandable given that private companies in Nigeria have a maximum shareholder number of fifty (*CAMA 2020*, s. 22 (3)).

However, the same argument could also be made for small public companies whose population could be handled by available technologies in Nigeria at a relatively reduced cost. For example, little research shows that Zoom Video Technology could take up to 1000 interactive meeting participants at the monthly cost of £72 (approximately N34,455. 36 at the official rate) (*Zoom Video Technology Plans and Pricing, 2022*). In such an environment, it makes no sense to maintain the general legislative hard line on virtual meetings in Nigerian public companies.

Apart from the above, the current percentage of internet subscribers and broadband penetration in Nigeria is far beyond what it was in 2007. According to the Nigerian Communications Commission (NCC), the total number of internet subscribers in Nigeria in 2020 was 204,601,313, an improvement from 41,975,275 in 2007 (2021). Between 2000 and 2020, the number of internet users in Nigeria grew from about 200,000 to 154,301,195 (*Internet World Stats, 2020*), and broadband penetration rose to 45.02 % from 15.3 % in 2006 (NCC, 2020).

Based on the above, it is contended that a reform that allows different forms of virtual meetings of shareholders in Nigerian companies will do a lot for the participation of minority shareholders, especially in cross-border and emergency situations. The aim of incorporating virtual meetings at this level is not to supplant physical meetings but to complement them. Virtual meetings could be an option a company might choose if stakeholders agree and if the company can conduct such. Such reform should not mandate any virtual meetings across the board but only make it available to companies (whether public or private) who wish to adopt it and who satisfy the necessary conditions for its adoption.

Also, the power to convoke such meetings should not solely lie with the board. There is a need to track the pre-reform rights of shareholders and the court to convoke meetings in Nigeria. Therefore, a Nigerian reform should adopt the Canadian drafting style as it is broad enough to accommodate the rights of the board, shareholders, and the court to convoke virtual corporate meetings. In deciding on virtual meetings, Nigerian companies must aim at broad investor participation, the equitable treatment of investor participants, meaningful engagement between investors and directors, proper communication to shareholders of the benefits of virtual meetings, and provision of meaningful open dialogue between shareholders and companies. To realize this, a reform of Nigerian law should embrace international best practices for virtual corporate meetings.

1.6 EVALUATION AND CONCLUSION

1.6.1 Evaluation

Some of the proposals put forward in this article have been hotly debated. For example, scholars have questioned the possibility of effectively managing debates during virtual meetings involving large numbers of shareholders (Prusinkiewicz, 2020). The sense of anonymity created by virtual platforms could affect how shareholders act and react, with the risk of diminishing the quality of dialogue and fostering non-productive exchanges. Also, even with virtual meetings, management could sometimes control who asks what questions. Since questions may be submitted online, management can cherry-pick less challenging questions, thereby silencing shareholders' voices.

These worries notwithstanding, this article concedes that embracing a new culture could be complicated. The digital revolution has brought some uncertainties, and, understandably, people are uncertain about embracing the 'new normal. However, managing large meetings on virtual platforms in the next ten years would be less problematic and costly as more technologies emerge. Moreover, with time and training, investors would find it easier to challenge management, even on virtual platforms. The fears being entertained about virtual meetings ornamenting shareholder voice would soon be overcome when investors learn how

to express themselves on these platforms. In the meantime, available standards provided by international best practices principles have been developed to guide legislation and policy in this area (Harvard School Forum on Corporate Governance, 2018).

With the Covid-19 experience, virtual life has come to stay, and the corporate world needs to adapt to this. Virtual meetings could be a way to salvage the already dying and ineffective physical AGMs in the Nigerian corporate space and the world. In the UK, there are debates on whether the temporary measures for virtual AGMs during the pandemic should be permanent (Flood & Mooney, 2020). As the debate rages on, this article's appeal lies in the fact that it recommends that the law be used to give capable companies in Nigeria the opportunity to embrace e-corporate governance.

1.6.2 Conclusion

This article has tried to challenge the normative claim of the rational apathy theory by revealing the fallacy of its conclusions. It has been argued that rational apathy is a relative theory which does not present a paradigmatic account of shareholder behaviour in public companies as it claims. It was found that minority shareholder apathy would cease if dispersed retail investors were mobilized to act collectively to monitor management in a cost-beneficial manner. As a result, the article explored the internet's capacity to facilitate cheap communication between investors and management and promote less costly but informed participation of minority shareholders in corporate governance. In the end, while acknowledging the challenges, it proposed incorporating the electronic framework into Nigerian corporate governance, drawing from reforms in more advanced jurisdictions.

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