

GOVERNANCE

NEWSLETTER

A Publication of The Institute of Economic Affairs

Vol.19 No.4 July/August 2013

RE-THINKING THE WINNER-TAKES-ALL SYSTEM

by

*Mr. Ernest Kofi Abotsi**

Summary

Political exclusion has been the most significant feature of the return to constitutional rule. In fact this variable has been a major characteristic of Ghana's political landscape and remained a thorny issue before the return of constitutional rule in 1993. While constitutional rule is predicated on political factionalism, the totality of the values advanced by the constitution seem to support inclusive and bipartisan governance in which most identified interests and groups will be catered for. In spite of this, the winner-takes-all phenomenon threatens to undermine Ghana's constitutional democracy, as elections and access to power have become a means to deprive certain groups from resources and privileges and punish disloyalty. This paper reviews the phenomenon of winner-takes-all and how it undermines core constitutional values and intentions. It concludes with recommendations for the way forward.

**IEA
Ghana**

Governance Newsletter is a bi-monthly publication of The Institute of Economics Affairs, Ghana, an independent public policy institute. This edition is sponsored by The Royal Danish Embassy through DANIDA. Subscriptions to the **Governance Newsletter** are made available to those who make contributions to The IEA. Address all correspondence to:

The Editor, The Institute of Economic Affairs, P. O. Box OS 1936, Accra.
Tel: +233-302 244716 /226333/226359/ 226388, 030 7010713/4. Fax: +233-302 222313.
Email: iea@ieagh.org, Website: www.ieagh.org

ISSN 0855-2452

INTRODUCTION

Since the inception of Ghana's Fourth Republic in 1993, the country's political environment has been characterized by political exclusion and negative polarization. This is particularly the case among the country's political parties and, to an extent, sections of the Ghanaian public at large. The effect has been that the end of every election, and the inception of a new government, has been marked by the “capture” of both the echelons of power and lower level positions of authority, resources and entitlement allocations on grounds of political loyalty and one's contribution towards political victory. This practice, which has been described as the “winner-takes-all” system, has had a grave and negative impact on the harmony and balance of Ghana's political framework. As Ghana strives to consolidate constitutional rule, the winner takes all system of government requires a careful review in order to avoid the pitfalls engendered by the practice. This paper examines the issue of winner-takes-all in Ghana and outlines policy proposals to address the phenomenon.

PHENOMENON OF “WINNER-TAKES-ALL”

The phenomenon generally known as “winner-takes-all” has been used to describe a zero-sum tendency in politics and, for that matter, the practice whereby the winner in electoral contests marginalize and exclude actors in opposing groups from access to resources, other entitlements and incentives. Commentators and analysts generally agree that the inception of the Fourth Republic has

been characterized by this phenomenon and that this has had a deleterious effect on the development of democratic rule in Ghana as a whole.

The practice has been said to be caused by three key factors - ideology, institutions and the positive feedback effect of the practice. I will argue however that while these factors may generally be characteristic of the practice in Ghana, the role of ideology as an element in shaping the phenomenon in Ghana is, at best, minimal. This is due to the convergence of the ideological identity of the key political parties in Ghana, which has in part been inspired by World Bank/International Monetary Fund (IMF) lending conditionalities coupled with baseline constitutional provisions on national development. Regrettably, however, the dearth of ideology in Ghanaian politics has led to the seeming triumph of dangerous variables like ethnicity and ethnocentrism, among others. On the other hand, the effect of institutional behaviour and/or effectiveness in promoting electoral confidence reinforces the prospects or otherwise of the phenomenon of “winner-takes-all”.

In Ghana, the demonization of the Electoral Commission (EC), reflected in the many challenges of electoral outcomes since the first election in 1992, amply testifies to a deep seated issue of trust and a fear of losing elections. The consequence has been that electoral loss has been equated to surrender in warfare with its concomitant result. The effect of these factors is further reinforced by the feedback generated on the adoption of “winner-takes-all” as a political strategy and how these are exploited by

political actors to secure electoral advantage. Knowing what the prospect of victory offers, candidates in elections make promises whose fulfilment can only be guaranteed by dislodging opponents from occupied positions and depriving them of entitlements secured under contracts and other engagements. Positive feedback in this regard is some sort of perverse incentive, inspiring political parties to promise the state itself and its resources to members in return for loyalty. When in power, politicians are at pains to respect promises made to ensure continued support.

Fully understood within the Ghanaian context, the phenomenon has a systemic and sub-structural effect. Thus, beyond the immediate political offices to be allocated at the discretion of the President, experience after changes in government between different political parties has shown that nearly all offices, including the lowest level decentralized structures, witness changes made to occupants of certain position; the changes are ostensibly due to perceived political affiliation. These positions are then filled with political loyalists and party faithful. This tendency is deeply reflective of revolutionary changes and undermines the prospects of contesting parties accepting electoral defeat in the future given the enhancement of the potential losses.

LEGAL FRAMEWORK OF POWER

Ghana's 1992 Constitution has established a system of power in which constitutional authority is notionally dispersed among the various organs of government. Yet many legal and

political analysts have consistently repeated the critique that, in relative and comparative terms, the executive is overly powerful. In defence of this critique, they often point to the concentration of appointing powers, resource allocating powers and other collateral influences constitutionally exerted over coordinate branches. Thus, critics have argued that the high position of power accorded the executive vis-à-vis the other branches of government invariably induces that organ's capacity and tendency towards abuse, and control, of other constitutional organs and agencies. It is significant that the Constitution Review Commission (CRC) endorsed this position and captured it in their recommendation.

The reality of executive prominence in Ghana's constitutional design can hardly be doubted. While this issue would be revisited again in this paper, the central question remains whether the Executive is indeed as powerful as projected. Any reflection on the constitutional evolution of Ghana, like in many African countries, would reveal a search for a strong centralized authority characterized by a government's control of the political system and disbursement of rights and allocations. The 1992 Constitution exhibits that dynamic, and this reflects a certain constitutional philosophy in which the framers anchored the stability and operational efficiency on a strong executive presidency.

The framers of the 1992 Constitution, however, purported to mop up the potential for excesses by installing institutional checks from coordinate branches such as through the mechanism of parliamentary oversight.

With the benefit of hindsight, one can assert that this attempt may have failed thus far. Parliament's own institutional deficiencies and challenges such as its internal fragmentation on politically factional lines, among others, have worked to ensure that the Legislature has become softly reactive to the challenge of executive dominance. The consequence has been a seeming expansion of executive authority beyond what may have been conceived by the framers of the Constitution.

The conferment of appointing, resource allocating and disbursement powers on the Executive, among others, appears to have heightened the relative powers of that institution within the framework of checks and balances. This situation seems to have been compounded by certain cultural predispositions as a result of which the Executive has been patronized. This subject will be revisited later, save to say at this stage that the question of executive dominance within the governance framework established under the Constitution mainly has roots in places other than the Constitution itself. Yet, the failure of the framers of the Constitution to appreciate and incorporate these extra-constitutional factors into the body of that document is worth noting. By ignoring certain contextual politico-cultural variables and reposing significant powers in the Executive, the Constitution has diluted the very essence of the regime of functional checks and balances established - given the fact of Executive dominance under the Fourth Republic. The issue of institutional weaknesses gauged from the standpoint of other institutions, therefore, transcends the provisions of the Constitution. In fact it brings up important issues worth

examining such as the cultural predispositions of the various constitutional bodies, including the Executive, in their various complex interrelationships.

The consequence has been a monopolization of power and wider interpretations of guaranteed power or authority by the Executive. Thus, while the powers granted the Executive may appear wide and far reaching, the design of the governance framework established under the Constitution should ordinarily have kept the Executive in check from the abuse of its powers. Thus, the impression of executive dominance has come about as a result of the dysfunctional relationships that have come to be cultivated by the various institutions in their relationship with each other and how prevalent cultural tendencies have bred patronage, and laxity, in the exercise of the oversight responsibilities of constitutional organs.

POLITICAL INCLUSIVENESS VS. LEGAL PROVIDENCE

The electoral system and framework established under the Constitution promotes partisanship and political factionalism. This provision is ostensibly designed to reinforce the tenets of constitutional democracy, under which governance is both competitive and cooperative. The established regime has consequently promoted a system in which the winner at an electoral contest succeeds to political power and assumes the reins of government with wide discretion to choose and compose its government. At this level, the framers of the

Constitution implicitly intended that the flexible latitude accorded the President, as the repository of executive power, would enable him or her to design an agenda and assemble a team needed to accomplish government's programme.

Again, the power given to the executive president in this vein appears consistent with best practice, especially in the light of questions of political accountability and the need not to constrain the Executive in the framing and execution of its policies. That design has led to a number of unintended consequences. Beyond the allocation and distribution of political power at the apex the dynamic of political partisanship has had, and continues to have, a systemic effect on nearly all facets of governance dealing with resource allocation and distribution, and general entitlements in Ghana. Thus, under Ghana's Fourth Republic, the conclusion of elections and the inauguration of new governments have been marked by compulsory retirements, dismissals of persons working in the civil and public services, abrogation of contracts, cancellations of entitlements and general persecutions of certain political opponents or persons deemed as such.

The key question that needs answering is whether the Constitution contemplates political inclusiveness in spite of its promotion of partisan factionalism. It may seem that while the Constitution appears to have contemplated political inclusiveness as a virtue, false assumptions that parties will reach out have led to the phenomenon of winner-takes-all as a key feature of Ghana's current political landscape. What then is the

manifestation of the practice characterized as the “winner-takes-all” and what is its place under the constitutional regime of the Fourth Republic? As earlier argued, the framework of laws and constitutional provisions accords an elected government adequate powers to allocate and distribute resources, positions and rights with restraints which in practice have tended to be minimal. When viewed in the context of factional politicking, the notion of wide executive powers to appoint and allocate entitlements translate into the phenomenon of “winner-takes-all” in which winners of elections indulge in political compensation to followers by rewarding them with appointments and contractual favours to the exclusion of those perceived as opponents.

There is an inherent strategic thinking assumed by political actors when adopting a “winner-takes-all” posture/mentality. By appointing members of their own political leanings to positions, as well as disbursing resources with factional considerations in mind, new governments have come to expect that their followers would be appeased and motivated to further work towards the retention of political power. In addition, the expectation is that party followers would be better enriched through resources disbursed, and rights allocated, to support the financial demands of running a party capable of winning elections.

The menace of “winner-takes-all” is driven by pragmatic factors, for after all politics survives on *real politik*. In a country where political parties have no funding from the state, and in which ideology plays little or no role in the support base of parties, the reality has

been that since the inception of the 1992 constitutional regime, political parties have funded their operations and very survival from resources generated while in government. This has been executed through a combination of legitimate earnings, corrupt and rent seeking behaviour and donations by party members. Merely suggesting political inclusiveness without addressing the fundamental causes would represent an act in futility. The “winner-takes-all” phenomenon is sustained by the desire to strengthen the party in power through a variety of compensatory schemes and a tactically systematic means of depriving the opponent and its members (actual and perceived) of all resources, entitlements and positions, and ultimately weakening them.

Through this, incoming governments are able to fulfil pre-electoral promises of providing for their followers and exerting power over their opponents. The notion and menace of the “winner-takes-all” phenomenon has been characteristic of each government formed under the Fourth Republic. Incoming governments have used their victory to signal the reality of the new “era” and their control over power and resources. As has often been the case under the Fourth Republic, the assumption of political authority has been used as a means of demonstrating control and the consequent marginalization of perceived political opponents from access to key resources and occupation of certain offices.

A CASE OF MUST WIN OR RISK IT ALL: DANGERS OF WINNER TAKING IT ALL

Experience under the 1992 Constitution has shown the costly dimensions of losing an election. Typically, a political party which loses an election loses its material and resource base, as contributors would be cash strapped - having been cut out of entitlements through contract abrogation and terminations of appointment. Electoral defeat also comes with the loss of influence and the diminution of the capacity to win the next election resulting from the depletion of its resource base and overall influence. The overall impact of a loss, therefore, transcends the mere fact of not having the opportunity of prosecuting the party's electoral agenda, but goes to the question of the very survival of the party, its members and its capacity to ever regain power.

Indeed, the reality of the overbearing influence of a government and persistent claims of influencing electoral officials appointed by it, have meant that a political party losing elections sees itself as being potentially blocked out of the prospect of coming back into power. The complex mix of mistrust, institutional inefficiency and electoral malpractices by political parties, among others, has meant that the stakes at each election becomes higher than is apparent from the structure of the governance framework. The massive cost-benefit imbalance during elections has meant that elections have become *a must win* event with the alternative not being a reasonable option worth considering.

The inevitable consequence is that the phenomenon of “winner-takes-all” promotes and reinforces risky incentives towards the outcomes of elections. Politicians become better motivated to reject electoral defeat knowing that the cost of losing is unbearable with effects transcending a single election. By

being excluded from the share and distribution of national resources and entitlements, and being further sidelined in the area of political influence, losing parties exploit the weaker links in the electoral system and ultimately end up rejecting results by criticizing constitutional institutions with mandate on election matters.

In other words, the phenomenon of “winner-takes-all” provides a powerful counterweight to the prospect of contestants in an election accepting voting results. In many ways this tendency de-legitimizes the very essence of democracy understood as a system of governance based on participatory decision-making and resource allocations. The exclusion of whole sections of political groups, and people, from governance and access to resources creates tension, undermines any prospects at bi-partisanship in governance and promises to undermine the stability of the state. In addition, the phenomenon promotes and implicitly legitimizes corruption by creating an impression of entitlement in the minds of loyalists who come to think of the exploitation and use of national resources and positions as “privileges” gained from victory at the polls and in respect of which they are not accountable. This dangerous psyche feeds into other issues such as rent seeking, nepotism and ceaseless political bickering that characterizes our governance dynamics in-between elections.

WAY FORWARD

A paradigm shift from the practice of “winner-takes-all” is a necessary step for the stability of our experiment at constitutional and democratic governance. Yet while change from the status quo may generally be agreed upon by stakeholders, the strategies for achieving the ideal outcome are not as clear. I disagree with the school of thought which proposes constitution reform as a medium of

addressing the “winner-takes-all” phenomenon. I will argue that the complexity of the practice is one that cannot be addressed by legal additions. As I have already indicated, the problem transcends the text of the Constitution and survives on a mix of socio-cultural pre-dispositions and institutional failures. Thus, in order to arrest the further perpetuation of the practice, Parliament must overcome its own internal weaknesses and reinforce its efforts to hold the Executive to account. A shift from the perceived rubber stamping of Executive action would significantly weaken the Executive's resolve to allocate resources, entitlements and positions on the basis of party affiliation. To overcome this, Parliament must deal with its own fragmentation and other structural issues and assume its dominance as intended by the framers of the Constitution.

More critically, Ghana's governance framework needs to deal with the nagging issue of political compensation and how to indemnify political actors against losses from investment in seeking public office. Politics and the assumption of public office has been said to be an act of public service from which people must not have an expectation of profit. Yet the reality has been that unlike other jurisdictions where money donated for political causes are given without an expectation of personal returns, experience under the 1992 Constitution has shown that politicians have had to depend on the investment of private citizens and corporations with the expectation that a successful capture of political power would result in reimbursement and profiteering. Therefore the absence of a structured system of funding political activities in Ghana, coupled with a failure to adopt a policy approach to the compensation of political actors for pre-electoral services, have led to the negative sub-cultural behaviour manifested in the “winner-takes-all” system.

Public offices and national resources have become “benefits” to be distributed and shared among the faithful of a winning party to the exclusion of all others whose behaviour is either not deemed fanatical enough or is downright opposing to the ideology of the winning party.

Finally, the phenomenon being mainly cultural can only be eradicated in a regime where there is sufficient political will on the part of the political players to end it. Surprisingly in this regard, it needs mentioning that opposing parties have been known to even induce the practice - if not champion it. Thus, it is common practice for members of an opposition party appointed in a new government to reject the offer. Indeed, in some cases they are pressured to reject the appointment by members of their own party. This tendency reinforces the mentality of “winner-takes-all”. The polarization of Ghana's politics has led to an era of mutual hatred between members of the various political parties. Thus, far from seeing themselves as collaborators in governance, following the end of an election, political actors see each other as obstacles in their quest to attain political power and one which ought to be eliminated or dealt with accordingly.

A significant change in the cultural predisposition in this regard would imply a major change in attitudes to power and conceptions surrounding the essence of public service

through political authority. A move away from group-centered parochialism in politics to inclusive governance would help harness the talents of all and maximize the returns on the political energies of Ghanaians. Overall, embracing political inclusiveness would lead to bi-partisanship in governance and enhance the effectiveness of Ghana's political system.

BIBLIOGRAPHY

1. Karys, D., *The Politics of Law: A Progressive Critique*, New York: Pantheon, 1982.
2. Kymlicka, Will & Bashir Bashir, (Eds.), *The Politics of Reconciliation in Multicultural Societies*, New York: Oxford University Press, 2008.
3. Macedo, S, *Deliberative Politics: Essays on Democracy & Disagreement*, New York: Oxford University Press, (1999).
4. Van Cott, D.L., *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America*, Pittsburgh: University of Pittsburgh Press, 2009
5. Williams, Robert F., *State Constitutional Law Processes*, *William & Mary Law Review*, Vol. 24, Winter 1983, Number 2, p. 169.

*Mr. Ernest Kofi Abotsi is the Acting Dean of the GIMPA Law School.