

# GOVERNANCE

## NEWSLETTER

A Publication of The Institute of Economic Affairs

Vol. 20 No.1 January/February 2015

### DEALING WITH GHANA'S WINNER-TAKES-ALL POLITICS: THE CASE FOR AN INDEPENDENT PARLIAMENT

By

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## Summary

*This paper is the fourth in a series of publications aimed at contributing to the discourse on the “Winner-Takes-All” politics in Ghana. The 1992 Constitution grants extensive powers to the President in appointing several officials and agencies of the state in a manner that makes these bodies somewhat his appendages. Having won elections and “taken it all”, Ghana's hybrid constitutional arrangement further makes it mandatory for the President to appoint the majority of his ministers from parliament. This undermines the authority of parliament as an oversight body as it, inter alia, makes it subservient to the executive, thereby sacrificing parliamentary oversight responsibility as well as objectivity during parliamentary debates. The imbalance of power created between the executive and other arms of government, particularly the legislature, makes the President too powerful and accentuates the feeling of marginalization associated with the winner-takes-all politics. Thus, the paper critically examines the dangers of Ghana's constitutional hybridity and recommends measures to strengthen parliament to play its role as a countervailing authority to the powers of the President as well as reduce the feeling of marginalization associated with the winner-takes-all politics.*

**IEA**  
**Ghana**

**Governance Newsletter** is a bi-monthly publication of The Institute of Economic Affairs, Ghana, an independent public policy institute. This edition is sponsored by The International Development Research Centre / Think Tank Initiative. Subscriptions to the **Governance Newsletter** are made available to those who make contributions to The IEA. Address all correspondence to:

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ISBN 0855-2453

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## Introduction

The appointment of ministers from parliament weakens the legislature and undermines its capacity to exercise oversight responsibility over the powers of the President. In the various public consultations held by the Institute of Economic Affairs (IEA) in 2010 to make a contribution to Ghana's constitution review process, the overwhelming view held by the citizenry was the need to abolish Ghana's hybrid system and to separate the executive arm of government from the legislature in order to make the latter more independent in the exercise of its oversight role as well as check the practice of the winner-takes-all politics (WTA). However, in its report, the

Constitution Review Commission (CRC) was not emphatic about the need for the separation of the executive arm of government from the legislature (CRC Report, 2011). Its feeble recommendation was to the effect that *"the executive must not be compelled to appoint majority of its ministers from parliament."* This recommendation which was accepted by the Government in its White Paper (2012) issued afterwards, does not adequately respond to the call for the separation of powers between the two main arms of government. Indeed, the recommendation could actually worsen the situation as it does not bar a daring or defiant president from also appointing all his ministers from parliament - a situation that can seriously cripple the legislature and place it fully in the manipulative palm of the executive.

This paper discusses how Ghana's parliament can be independent and work effectively to reduce WTA politics. Data and information for this exercise were generated from the series of nation-wide public consultations on WTA politics held by the Institute of Economic Affairs between 2013 and 2014. Desk study was used to augment information from the public consultations. We operationalize WTA politics as defined already in Series One of the IEA's WTA Politics papers. The

doctrines of Separation of Powers and Checks and Balances are also discussed briefly as frameworks of analysis. The paper also highlights in detail, the challenges and dangers associated with the practice of appointing the majority of ministers from parliament and how it promotes WTA politics. Finally, the paper makes a case for a clear separation of the executive arm of government from the legislature in a manner that serves to reduce the negative and divisive effects of WTA politics and strengthens parliament to serve as a separate check on the powers of the executive.

## The Doctrines of Separation of Powers & Checks and Balances

The doctrines of Separation of Powers and Checks and Balances undergird this study. The doctrine of Separation of Powers was developed by the French political thinker, Baron de Montesquieu (Cohler et al., 1989). Generally, it refers to the division of powers and functions of the main organs of government, namely, the executive, legislature and judiciary, into three distinct compartments so that in terms of personnel and functions, each becomes independent of the other. It is a model of governance that determines who controls the state. The state is divided into branches, each with separate and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches

(Madison, 1788; Corbett, Jacobs and Shackleton, 2011).

In his book, *The Spirit of the Laws* (1878), Montesquieu described the separation of political power among a legislature, an executive, and a judiciary. Montesquieu's approach was to present and defend a form of government which was not excessively centralized in all its powers to a single monarch or similar ruler (Vile, 1998). He based this model on the Constitution of the Roman Republic and the British constitutional system.

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<sup>2</sup> See CRC Report at <http://www.media.myjoyonline.com/docs/201112/scan0005.pdf>.

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Montesquieu took the view that the Roman Republic had powers separated, so that no one could usurp complete power. In the British constitutional system, Montesquieu discerned a separation of powers among the monarch, Parliament, and the courts of law (Vile, 1998; Cohler et al., 1989).

To prevent one branch from becoming supreme, protect the "opulent minority" from the majority, and to induce the branches to cooperate, government systems that employ a separation of powers need a way to balance each of the branches. Typically this is accomplished through a system of "checks and balances", the origin of which, like separation of powers itself, is specifically credited to Montesquieu (Cohler et al., 1989). Checks and balances allow for a system-based regulation that allows one branch to limit another (Stewart, 2004). In this regard, even though the three arms of government are to be separated in terms of personnel and functions, each arm of government is expected to act as a check on the other. For instance, policies, contracts, agreements and budgetary proposals which normally originate from the executive would require parliamentary approval. Similarly, bills deliberated upon and passed by parliament would require an assent from the president before they become laws. In addition, through the power of statutory interpretation and judicial review, the judiciary also acts as a check on the legislature and the executive (Corbett, Jacobs and Shackleton,

2011).

The doctrines of Separation of Powers and Checks and Balances are very useful in promoting human liberties, constitutionalism, democratic rule as well as the orderly conduct of governance in a polity (Cohler et al., 1989; Madison, 1788). The two concepts are theoretically applicable in many countries that operate the presidential systems of government like the United States of America. In the United Kingdom, however, the systems seem practically inapplicable as the arms of

government, particularly the executive and legislature are fused together (Corbett, Jacobs and Shackleton, 2011).

In Ghana, the practice of appointing ministers from parliament by the executive weakens the doctrines of Separation of Powers and Checks and Balances. Such a practice, promotes WTA politics. After capturing the control of executive power through elections, the executive, through ministerial appointments, also takes absolute control over the legislature in a manner that renders parliament ineffective in checking and performing meaningful oversight responsibilities on the activities of the executive president. The fusion of powers and the practice of appointing ministers from parliament may work perfectly in developed democracies like Britain. However, in some fledgling democracies like Ghana, it promotes WTA politics and poses severe dangers and challenges to good governance and constitutionalism. The dangers and challenges are fully discussed in the next section of this paper.

### **The Dangers of Ghana's Constitutional Hybridity**

The Committee of Experts (1991) that drafted the 1992 Constitution recommended that a majority of ministers should be appointed from among members of the parliament of Ghana on the premise that it was extremely difficult, if not impossible, for the executive to get its policies and programmes approved for implementation.

Further, the relationship that existed between the executive and the parliament of Ghana was hostile and so did not allow for easy consensus building under the 1979 Constitution (Committee of Experts, 1991; Bagbin, 2016). The practice of appointing ministers from parliament therefore promotes government business by ensuring the swift legislative approval of government policies and bills as well as creates cordial relations between the executive and parliament. This has the potential to promote consensual politics and efficiency in the discharge of parliamentary duties

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<sup>3</sup> In Series One, we defined WTA politics as a political mechanism for facilitating the inclusion and exclusion of individuals, groups and classes of persons from the spoils of political power, national governance as well as the conferment of economic advantages to only those who win political power (Hacker and Pierson, 2010a; Attafuah, 2013; Hacker and Pierson, 2010b, Abotsi, 2013; IEA, 2014).

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in a manner that enhances the performance of parliamentarians (Sakyi, 2010). Also, appointing ministers from parliament affords members of parliament the opportunity to get in-depth knowledge on imminent policies. This enables them make well-informed contributions in the plenary of parliament and at the committee level (ibid).

However, appointment of ministers from parliament as well as other key officials of parliament by the executive, places parliament under the control of the executive and promotes WTA politics. There is often the desire on the part of the executive branch of government to strengthen its hold on power through a variety of compensatory schemes and tactically systematic means of depriving and excluding political opponents of all resources, entitlements and positions and ultimately weakening them (Abotsi, 2013; Linton and Southcott, 1998). Through this, governments strive to control all state apparatus and one key institution that is severely affected is Parliament.

Ghana's hybrid constitutional arrangement which places parliament under the control of the executive and undermines parliamentary effectiveness has been extensively researched by several scholars. Prempeh (2008), for instance, discussed how Ghana's parliament is unable to perform its functions effectively to promote constitutionalism and act as a check on the powers of the executive as a result of the practice of appointment of ministers from parliament. Lindberg and Zhou (2009) have also argued about the extent to which Ghana's legislative development has lagged behind democratization. In their view, the current constitutional arrangements that place the legislature almost under the control of the executive undermines the attempt to cede power to the legislature or encourage its development by the executive that often resorts to patronage to thwart the development of the legislature. Ninsin (2008) also argued that the application of the majoritarian

principle by a partisan parliamentary majority that looks up to the executive for appointment, and applies "the whip" ruthlessly to obtain conformity even in secret voting, stifles independence of the legislature. Similarly, Saffu (2007) pointed out that the legislature cannot function effectively when its core members are poached by the executive and the rest of the majority also lobbies to be poached by the same chief executive.

As a modest contribution to the debate over the hybridity of Ghana's system of government, this paper also examines how the appointment of ministers from parliament also promotes WTA politics and ultimately undermines effective parliamentary oversight of the executive. Under the aegis of the WTA politics, governments take control of parliament and render it a mere rubber-stamp of their decisions and policies. Article 78

(1) of the 1992 Constitution requires that a President shall appoint the "majority" of

Ministers of State from among Members of Parliament. In addition, the president plays an influential role in the selection of the Speaker, First Deputy Speaker as well as some key officials of parliament. In this regard, the president does not only focus on the enjoyment of powers associated with his office as an executive. He also

"takes it all" at the level of the legislature too. This clearly makes parliament subservient to the executive. Indeed, appointing ministers from among MPs does not only weaken parliament, it also promotes the WTA politics as it enhances the executive's dominance and control over parliament (IEA, 2013; IEA, 2014; Hutchful, 2007; Prempeh, 2003).

Historically, the Executive has had a huge control over Parliament in Ghana. The Nkrumah regime sought to control Parliament when the President directly nominated people as parliamentarians.

Again, all subsequent military takeovers also announced the suspension of Parliament (Lindberg, 2008; Douglas, 1993). These practices coupled with Article 78 (1) of the 1992

Constitution that requires the President to appoint

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<sup>4</sup> Winner-Takes-All politics in this instance is promoted in the sense that the President "takes it all" not only at the executive level but also takes full control of parliament.

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the “majority” of ministers from Parliament, promotes WTA politics and undermines the role of Parliament in several ways. In the first place, the oversight role of Parliament is undermined.

Oquaye (2013:2) sums up the challenge as follows:

*MPs who are also Ministers cannot ask colleague ministers questions on the floor of the House as expected. Notably, the ministers/MPs lead, control, direct and influence the other MPs on the majority side. Furthermore, ministers owe collective responsibility for all government decisions and cannot, therefore, criticize the government on the floor of the House. An MP, once elected, owes his/her constituents deliberative and representational duties by standing in their stead in the House. Prior commitment to the executive authority of the State undermines this basic duty.*

Secondly, it is a common practice for the majority side parliamentarians to boot-lick and offer blind support to the executive in an attempt to gain ministerial appointments. The very respected and “well-to-do” MPs are perceived as those who catch the eye of the president and are made, ministers and not those who perform excellently as members of parliament and constantly catch the eye of the Speaker (Oquaye, 2013:3; Lindberg, 2008; IEA, 2014). Consequently, the desire to build a career by Ghanaian MPs in Parliament is undermined. Article 103 (1) provides that: “Parliament shall appoint Standing Committees and other Committees as may be necessary for the effective discharge of its functions”. Article 103 (3) stipulates that: “Committees of Parliament shall be charged with such functions, including the investigation and inquiry into the activities and administration of ministries and departments as Parliament may determine; and such investigation and inquiries may

extend to proposals for legislation”. Under the Constitution (Article 103 (6)) such a Committee is so important that it has the powers, rights and privileges of the High Court. These powers granted Parliament were to enhance its control over the Executive.

However, it is obvious that the appointment of not only majority of ministers from Parliament, but also the Speaker and First Deputy Speaker, Majority Leader in Parliament has led to a situation under which the Executive somehow influences the composition of committees of Parliament, etc. – an unhealthy development that has further undermined the independence of Parliament and made it difficult for Parliament to carry out its oversight functions (IEA, 2014; Lindberg, 2008). As argued by Oquaye (2013:4), “... those who will lead the process to ensure the accountability of the Executive and officials to Parliament are constantly looking towards the executive rather than to parliament...” In the US, for instance, the legislature through its appropriate committees is able to independently investigate the conduct of governments, and other agencies of state in a manner that makes its oversight role real.

This can certainly not happen in Ghana where majority of ministers come from Parliament.

Another monumental challenge posed by the practice of appointing ministers who are parliamentarians is that the appointees tend to concentrate more on their role as ministers to the neglect of their parliamentary duties. As ministers, they attend several meetings and often travel outside the country for international duties. In the end, most of them are unable to attend parliamentary sessions and committee meetings. Indeed, sometimes parliamentary sessions are suspended because of the inability to start sessions with a quorum. For example, parliamentary sessions were adjourned because of inability to form a quorum on 16<sup>th</sup> October, 2008<sup>7</sup>, 22<sup>nd</sup> February 2011<sup>8</sup>, 2<sup>nd</sup> August 2012<sup>9</sup>, 2<sup>nd</sup> February, 2014<sup>10</sup>, and 20<sup>th</sup> December, 2015<sup>11</sup>. Those who are able to attend parliamentary sessions are also

<sup>5</sup> I am grateful to Prof Atsu Ayee, Visiting Adjunct Fellow of the Institute of Economic Affairs for this enlightened contribution.

<sup>7</sup> See <http://www.modernghana.com/news/186582/1/parliament-argues-over-adjournment-of-proceedings-for-lack-of-quorum.html>

<sup>8</sup> See <http://www.ghanaweb.com/GhanaHomePage/economy/artikel.php?ID=203672>

<sup>9</sup> See <http://politics.myjoyonline.com/pages/news/201207/89443.php>

<sup>10</sup> See <http://www.graphic.com.gh/news/general-news/18115-lack-of-quorum-forces-parliament-to-adjourn.html>

<sup>11</sup> See <http://www.newsghana.com.gh/lack-of-quorum-halt-government-business-in-parliament/>

caught in the web of divided attention and this, coupled with the fact that they are unable to conduct meaningful research to aid their contributions as a result of their work pressure as ministers, compromises the quality of their contributions to debates on the floor of parliament is compromised (Lindberg, 2008; Douglas, 1993). Furthermore, executive dominance over parliament through appointments makes it difficult for the former to be held accountable to the latter. In line with Ghana's constitutional hybridity, successive governments have appointed ministers and deputy ministers from

Parliament. Table 1 shows the number of MPs who have been appointed ministers and deputy ministers from 1997 to 2016.

As Table 1 shows, not every MP gets the opportunity to be appointed as minister or deputy minister. Given the huge prestige and material gains associated with ministerial appointments, MPs who do not get the opportunity to be appointed as ministers do all they can to please the Executive on the floor of Parliament in order to "catch the eye of the President and be considered in future ministerial reshuffles or appointments" (Oquaye, 2013:7). In this regard, not only MPs

**Table 1: Appointment of Ministers and Deputy Ministers from Parliament: 1997-2016**

YEAR RANGE	TOTAL NUMBER OF MINISTERS/DEPUTY MINISTERS APPOINTED	NUMBER OF MPS APPOINTED AS MINISTERS/DEPUTY MINISTERS
1997-2000	82	20
2001-2004	80	29
2005-2008	93	30
2009-2012	75	39
2013-2016	94	39

**Source:**Archives:Ministry of Information, Republic of Ghana;<http://www.presidency.gov.gh/minister.pdf> ;Gyampo, R.E.V & Anamzoya, A.S.(2010). Ministerial appointments and government expenditure in developing democracies: A case study of Ghana's fourth republic. *Journal of Arts and Education*, 40(1),49-73.

who have been appointed as ministers do the bidding of the Executive but those who look for such appointments from the Executive are louder and more vociferous in sacrificing their independence to please the President.

The history of Ghana's Fourth Republic shows that political parties that win presidential elections also secure majority seats in Parliament. With their numbers, they are able to bulldoze their way in Parliament in a manner that renders Parliament

as a mere rubber-stamp of decisions taken by the Executive. For instance, Table 2 below shows the statistics of the two main political parties in Ghana, namely, the National Democratic Congress (NDC) and New Patriotic Party (NPP).

Members of parliament who are part of the government are unable to vote against decisions of the Executive on the floor of the House. Again, they are unable to pass a vote of no confidence in their colleague MPs who are ministers. And as indicated earlier, MPs who have not yet been

See [www.uscongress.org](http://www.uscongress.org)

See <http://www.modernghana.com/news/186582/1/parliament-argues-over-adjournment-of-proceedings-for-lack-of-quorum.html>

See <http://www.ghanaweb.com/GhanaHomePage/economy/artikel.php?ID=203672>

See <http://politics.myjoyonline.com/pages/news/201207/89443.php>

See <http://www.graphic.com.gh/news/general-news/18115-lack-of-quorum-forces-parliament-to-adjourn.html>

See <http://www.newsghana.com.gh/lack-of-quorum-halt-government-business-in-parliament/>

appointed as ministers generally do not criticize the Executive in the hope of being appointed

ministers or deputy ministers (Oquaye, 2013). Those who asserted their independence and

**Table 2: Number of Parliamentary Seats of the NDC and NPP, 1996-2012**

Party	Election Year	Number of Seats in Parliament
NDC	1996	131
NPP	1996	63
NDC	2000	92
NPP	2000	100
NDC	2004	94
NPP	2004	128
NDC	2008	116
NPP	2008	107
NDC	2012	148
NPP	2012	122

Source: [www.ec.gov.gh](http://www.ec.gov.gh)

openly scrutinized or criticized their governments were sidelined by the Executive and “punished” by not being appointed as ministers or deputy ministers. Examples include P.C. Appiah Ofori, the NPP MP for Esikuma-Odobeng-Brakwa and Michael Teye Nyaunu, the NDC MP for Lower Manya Krobo. Some other MPs who were appointed as ministers and were still critical of the government were subjected to frequent reshuffles and sometimes altogether dropped as ministers.

Examples include Alban Bagbin, Cletus Avoka, John Akolgo Tia and E.T. Mensah all from the NDC. In the NPP too, Dan Botwe was dropped as Minister for Information for his independent mindedness and critical stance against his own government.

In a typical presidential system like the US, where Parliament is independent of the Executive, members are free to be critical of their own government and a vote of no confidence can be passed to remove a secretary (equivalent of a minister) from office. Also, in Britain, a vote of censure by Parliament can get a minister out of

office. However, the constitutional arrangement in Ghana makes it difficult for a vote of censure to be passed. Even though Article 82 provides that by a two-third majority, MPs can pass a vote of censure against a minister of state, it is practically impossible for MPs who are also part of government to support any such move. What worsens the situation is that Article 82, Clause 5 provides that: “where a vote of censure is passed against a minister under this article, the President may, unless the minister resigns his office, revoke his appointment as Minister”. According to Oquaye (2013), if the President does not revoke the appointment, Parliament labours in vain. But parliament is very unlikely to vote to impeach its own. Indeed, the majority side who are also members of the ruling government would not tolerate this. It must be noted that the appointment of ministers from Parliament in Ghana is not necessarily the same as what pertains in Britain. Per the political arrangements in Britain, there is a fusion of powers but this has not in any way undermined the independence of the British Parliament. Indeed, the UK Parliament is so strong

<sup>12</sup>The data commences from 1996 because in 1992, the opposition boycotted parliament. The NDC won the Presidential Elections of 1992, 1996, 2008 and 2012 while the NPP won the 2000 and 2004 Presidential Elections.

<sup>13</sup>I am grateful to Prof Atsu Ayee, Senior Adjunct Fellow of the IEA for this view

and independent that, it has been touted as being capable of “doing anything except to turn a man into a woman and vice versa.” In this regard, whoever wins elections in UK “does not take it all”. The UK Parliament exists to check the powers of the Executive. Similarly, in the US and Nigeria where the Executive arm is separated from the Legislature, Congress (in US) and the National Assembly (in Nigeria) exist to effectively play their role as a countervailing authority to the powers of the Executive and to check WTA politics. Indeed, President Olusegun Obasanjo's bid to amend the Nigerian Constitution for a third term in office was shot down by the Nigerian legislature, a feat that would be difficult for Ghana to achieve under its current hybrid arrangement.

The appointment of ministers from Parliament also undermines the MPs' freedom to vote. Indeed, it undermines the principle of secret balloting. In their quest to please the Executive and benefit from appointments, MPs are sometimes whipped to show their votes on issues to their colleagues in a manner that does not only undermine their freedom to vote objectively on issues but also downplays the interest of the constituents who voted the MPs into Parliament. This does not happen in the US where as a result of strict separation of powers, members of the House of Representatives are free to vote against their party positions<sup>17</sup>. In this regard, Article 97 (1) (g) may have to be altered so that “whereas a member may be forbidden from joining another party once elected, he/she should be free to be an independent member. This will strengthen members to vote according to their conscience and not to be bullied into undue subjugation.” (Oquaye, 2013:11).

Article 108 of the 1992 Constitution provides that “unless a bill is introduced or a motion is

introduced by, or on behalf of, the President, the Parliament cannot consider it once it has financial implications or will lead to any charge on the Consolidated Fund or other public fund.” Even though this provision stifles parliamentary initiative and the introduction of Private Members' Bill, both the legislature and executive have taken the position that since the passage and application of laws entail some state expenditure, only the executive can initiate bills (Oquaye, 2013). This current situation benefits the executive and promotes WTA politics and since 1992, MPs have not dared to overturn this arrangement to make them assertive as legislators. In this regard, they are unable to effectively scrutinize and when necessary, reject budgetary estimates and other bills submitted to them by the executive. They are unable to increase budgetary allocations to them to deal with their own financial resource and other logistical constraints.

Unfortunately, it is unlikely that the status quo would be altered so long as MPs from the majority are appointed as ministers and the rest look up to the president for ministerial appointments.

Finally, the appointment of ministers from parliament is also dangerous as it undermines and weakens the oversight role of parliament in checking corruption. Indeed, if ministers are appointed from parliament and the rest look up to the largesse of the executive in terms of ministerial appointments, it would certainly be difficult for the MPs to stand in the way of the president and fight corruption as they are whipped into supporting the executive at all times. One of the very experienced MPs in Ghana and currently the Majority Leader of Parliament, Alban Bagbin has constantly bemoaned the practice of appointing ministers from parliament as it promotes corruption. At the Third Dialogue Series

<sup>14</sup> Interview with Alban Bagbin, Majority Leader of Parliament in Accra on Thursday 23<sup>rd</sup> June 2016.

<sup>15</sup> See more on Rules of Procedures regarding motions of No Confidence available at <https://web.archive.org/web/20120709234757/http://parliamentofindia.nic.in/Is/rules/rulep17.html>

<sup>17</sup> In the UK, the prime minister is only the head of government is not the head of state unlike a Ghanaian President who wields both powers. The prime minister who is himself an elected MP can lose his position if he loses his seat as an MP. He can be dismissed by parliament when necessary through a vote of no confidence. Most of the important appointments in the UK, which in Ghana makes beneficiaries subservient to the president, are influenced by other powerful forces outside the prime minister's jurisdiction including the Queen's Privy Council. Unfortunately, these checks are absent in Ghana. The following excerpts from Mike Oquaye's paper titled “Addressing the Imbalance of Power between the Arms of Government – A Search For Countervailing Authority”, No. 35, IEA Monograph, 2013, highlights the problem in detail: According to Prof. Mike Oquaye who was an MP for the Dome-Kwabanya Constituency, “early 2005, MPs in Ghana assembled to elect a new Speaker. It was generally agreed among several members of the Majority and virtually all the Minority that the incumbent should be retained. Rt. Hon. Peter Ala Adjetey had done tremendous work in Parliament. He had stopped the practice of the Executive coming over to inaugurate Parliament. He had brought to the doorstep of the Ghanaian Parliament the best practices in global legislatures etc. Nevertheless, the whip was stringently applied for all Majority MPs to vote against Mr. Adjetey. No one was allowed to vote according to his/her conscience. Members were directed to show their vote (which the law required should be secret) to those on their left and right. Order 9(1) of the Standing Orders of the Parliament of Ghana provides: ‘where more than one person is proposed (for election of Speaker) a motion shall be made and seconded in respect of each person, and the House shall proceed to elect a Speaker by SECRET (emphasis added) ballot...’. In order to protect the integrity of the secrecy provision, Order 9(5) further provides that ‘Each ballot shall be folded so that the name written on it cannot be seen...’. The public saw what was happening through TV cameras. At this very moment, Ministerial appointments, Board membership and

other nominations which were the preserve of the President were pending. Expectedly, the Executive had its way and the Speaker was voted out."

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organized by the National Commission for Civic Education in Accra on 23<sup>rd</sup> April 2015, Alban Bagbin aptly observed that "...Parliament cannot effectively fight corruption if the constitution is not amended to give it the absolute independence to operate. The constitutional mandate given to the President to appoint Members of Parliament as Cabinet Ministers makes it difficult for the House to confront the Executive on issues relating to corruption..." Alban Bagbin's view is instructive, given his pedigree as a seasoned politician and an experienced MP.

### **Policy Recommendations - A Case for Clear Separation**

From the foregone discussion, the following policy recommendations are proffered to strengthen parliament in effectively playing its role as a check on the executive and in reducing the WTA politics. First of all, the executive must be completely separated from the legislature in a manner akin to what pertains in the US. The Constitution Review Commission's (CRC) recommendation that grants a blank cheque to further weaken parliament ought to be reconsidered as the nation prepares for the implementation of the report of the Commission. The call for separation of powers by many Ghanaians during the review process was not heeded (Government White Paper, 2012:16). The CRC proposed an amendment to give the president a free hand to appoint ministers from within or without parliament (Constitution Review Commission, 2011). This proposal which the government gladly accepted could be described as spurious. This is because even though the amended constitution would no longer

enjoin the president to appoint the majority of his ministers from parliament, the recommendation opens the floodgates for a power drunk leader to perpetuate the status quo or even appoint all his ministers from parliament in a manner that can further weaken parliament, sacrifice constitutionalism and undermine the popular call for separation of powers as a mechanism to check executive manipulation of parliament and reduce WTA politics (Gyampo and Debrah, 2014). This is because the CRC proposal did not place any limit on the number of ministers that may be appointed by the president from within parliament (Constitution Review Commission, 2011).

The Constitution Review Implementation Committee (CRIC) should rethink the CRC recommendation and be mindful of the fact that the call for total separation of the executive from the legislature was a popular demand from Ghanaians during the CRC's own public consultations (IEA, 2014). In this regard, any MP appointed a minister must vacate his seat. This would enable MPs to build a career as parliamentarians and be able to play their role as a countervailing authority to the powers of the executive. Under the WTA politics, the president is very powerful and in the view of Lord Acton (1907) "power corrupts and absolute power corrupts absolutely". One key mechanism to check the excessive powers of the executive is an independent parliament and one practical way to create an independent parliament is to separate it from the executive. The CRIC has the mandate to receive more inputs into the constitution review process as they supervise the implementation of the review proposals (Gyampo and Debrah,

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<sup>17</sup>The following excerpts from Mike Oquaye's paper titled "Addressing the Imbalance of Power between the Arms of Government – A Search For Countervailing Authority", No. 35, IEA Monograph, 2013, highlights the problem in detail: According to Prof. Mike Oquaye who was an MP for the Dome-Kwabanya Constituency, "early 2005, MPs in Ghana assembled to elect a new Speaker. It was generally agreed among several members of the Majority and virtually all the Minority that the incumbent should be retained. Rt. Hon. Peter Ala Adjetey had done tremendous work in Parliament. He had stopped the practice of the Executive coming over to inaugurate Parliament. He had brought to the doorstep of the Ghanaian Parliament the best practices in global legislatures etc. Nevertheless, the whip was stringently applied for all Majority MPs to vote against Mr. Adjetey. No one was allowed to vote according to his/her conscience. Members were directed to show their vote (which the law required should be secret) to those on their left and right. Order 9(1) of the Standing Orders of the Parliament of Ghana provides: 'where more than one person is proposed (for election of Speaker) a motion shall be made and seconded in respect of each person, and the House shall proceed to elect a Speaker by SECRET (emphasis added) ballot...'. In order to protect the integrity of the secrecy provision, order 9(5) further provides that 'Each ballot shall be folded so that the name written on it cannot be seen...'. The public saw what was happening through TV cameras. At this very moment, Ministerial appointments, Board membership and other nominations which were the preserve of the President were pending. Expectedly, the Executive had its way and the Speaker was voted out."

<sup>18</sup>Article 97 (1) (g) of the Constitution provides as follows: "A member of Parliament shall vacate his seat in Parliament if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member".

2014). It must therefore take the opportunity to review the current hybrid arrangement.

A clear separation would also ensure that MPs have absolute freedom to vote according to their conscience and in a manner that reflects not only the interests of their parties, but the supreme interests of their constituents. It would indeed promote some objectivity in parliamentary deliberations. The excessive partisanship that continues to characterize parliamentary deliberations is partly as a result of the hybrid arrangement that renders many MPs zealous to please their party and president. Such entrenched partisan posturing sometimes results in boycotts of parliamentary sessions, and other unhealthy practices such as needless hecklings and the use of unparliamentary remarks that undermine dialogue, consensus building on key national issues and parliamentary democracy. Since 1992, there have been close to fifty parliamentary boycotts. These include the NPP's 1997 boycott of sessions over their call for ministerial vetting; the NDC's boycott of parliament in 2001 over the

Truth and Reconciliation Bill; the NDC's boycott of parliament in 2002 over the arrest of a former minister Dan Abodakpi for willfully causing financial loss to the state; the NDC's boycott of parliament in 2003 over the National Health Insurance Bill; NPP's boycott of parliament in 2012 over the arrest of one of its supporters, Nana Baafi for making derogatory remarks about Jerry Rawlings, founder of the party; and the NPP's boycott of parliamentary session during the 2013 Election Petition at the Supreme Court (Bagbin, 2016). Table 3 below shows the picture clearly.

In dealing with these excessively partisan posturing of parliamentarians, this paper recommends the need for political parties to be separated from government. It is a truism that political parties give birth to governments in multiparty democracies. However, the original intention behind the creation of the executive presidency is to separate government from party.

Consequently, once governments are formed, they ought to rule in the interest of the nation, and all its constituents, including both those who

**Table 3: Examples of Parliamentary Boycotts and Reasons**

YEAR	POLITICAL PARTY	REASON FOR BOYCOTT
1997	NPP	Calls for vetting of ministers who had be reshuffled not heeded to
2001	NDC	Disagreement over the Truth and Reconciliation Bill
2002	NDC	Arrest of Dan Abodakpi, a former minister for willfully causing financial loss to the state
2003	NDC	Disagreement over the National Health Insurance Bill
2012	NPP	Arrest of Nana Baafi, one of its supporters, for making derogatory remarks about former President Rawlings, founder of the NDC
2013	NPP	Election Petition at the Supreme Court

**Source:** Interview with Alban Babgin, Majority Leader of Parliament)

<sup>19</sup>See full details of this at <http://www.ghanaiantimes.com.gh/parliament-handicapped-in-fight-against-corruption-bagbin/http://www.ghanaiantimes.com.gh/parliament-handicapped-in-fight-against-corruption-bagbin/>

<sup>20</sup>See mandate of CRIC at <https://info.undp.org/docs/pdc/Documents/GHA/Narrative%20and%20Financial%20Report%20CRIC.pdf> Also, see <https://www.modernghana.com/news/421418/ag-inaugurates-constitution-implementation-committee.html>

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support the ruling party and those who do not (Oquaye, 2013). Similarly, MPs primarily represent their constituents; partisan interest should be secondary. They must therefore be mindful of the interests of Ghanaians and in particular, their constituents during their deliberations and activities on the floor of parliament. Indeed, separating governments from party is critical as it gives MPs the freedom to be assertive in playing their role as a countervailing check to the powers of the executive (ibid).

It must however be noted that even though the separation of parliament from the executive is desirable in checking WTA politics as well as executive excesses, water-tight separation of the two may not be absolutely possible. In this regard, some convergence between the executive and legislature may be tolerated and the framers of Ghana's 1992 Constitution may have anticipated the need for such convergence when they made provisions in Article III that:

The vice-president or a minister or deputy minister who is not a member of parliament, shall be entitled to participate in the proceedings of parliament and shall be accorded all the privileges of a member of parliament except that he is not entitled to vote or to hold an office in parliament.

According to Oquaye (2013), the current constitutional arrangement deals effectively with the concerns of those who argue for some convergence between the two arms of government. Lindberg (2008) also argues that some convergence between the two is achieved when ministers, per Ghana's constitutional arrangements, are given the opportunity to make statements on the floor of parliament; to contribute to discussions; and provide responses to issues during "Question Time" in parliament.

Separating parliament from the executive must

lead to the restoration of the former's power that has been inadvertently or deliberately undermined by the executive, i.e, oversight responsibilities over the activities of the executive. This key role of parliament has been undermined by the hybrid arrangement and contributed to the creation of an all-powerful president who controls both the executive and parliament, thereby accentuating the practice of WTA politics. In this regard, the interpretation given to article 108 of the 1992 Constitution must be reviewed to enable the legislature initiate the law-making process either directly by itself or through a Private Members' Bill. Again, the provision under Article 108 (a) (i) that parliament cannot engage in "the alteration of taxation other than by reduction", means that parliament cannot reduce budgetary allocation for one sector and use the money to increase that of another as it deems appropriate. However, for an independent parliament to perform its oversight responsibilities, it should have the right to make provision in terms of increasing budgetary allocations in certain welfare areas and making deductions in certain areas so far as the total expenditure does not go beyond the projected revenue and expenditure base presented to parliament (Oquaye, 2013).

### Conclusion

Although the appointment of ministers from parliament has some advantages, the woes of Ghana's parliament and its inability to perform its oversight responsibility to counter the powers of the executive and to check the practice of WTA politics largely lies in the nation's hybrid constitutional arrangement as well as the influential role of the executive in the appointment of other key officials of parliament such as the Speaker, Deputy Speaker, Majority Leader, etc. There may be other factors that undermine the independence of parliament such as the lack of office space, research assistants, limited resource availability, and issues related to institutional renewal. Notwithstanding these other factors, the hybrid arrangement and the

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I am grateful to Prof Atsu Ayee, Senior Adjunct Fellow of the IEA for this view

appointment of certain key officials of parliament under the influence of the executive are serious drawbacks of parliament. Indeed, these essentially undermine the independence of parliament. A clear separation of the two arms of government will go a long way to strengthen parliament vis-à-vis the executive, resulting in qualitative legislation and greater oversight responsibility and accountability in government.

As aptly noted by J.H. Mensah, "one of the quickest ways for Ghana to climb up the ladder of democratic excellence is to strengthen its Parliament... Neither civic society pressures, nor random opinionating in the media can ever replace a well-functioning Parliament as the bulwark of People's control over Executive power."

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<sup>22</sup> Article 108 of the Constitution provides that: unless a bill is introduced or a motion is introduced by, or on behalf of, the president, then parliament cannot consider it once it has financial implications or will lead to any charge on the Consolidated Fund or other public fund. Unfortunately, the interpretation given to this provision since 1992 has been that since the passage and application of laws entail some state expenditure, only the executive can initiate legislation. This has also undermined the introduction of a Private Members Bill in Parliament.

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<sup>23</sup> J.H Mensah's quotation was cited in Oquaye (2013:9)





