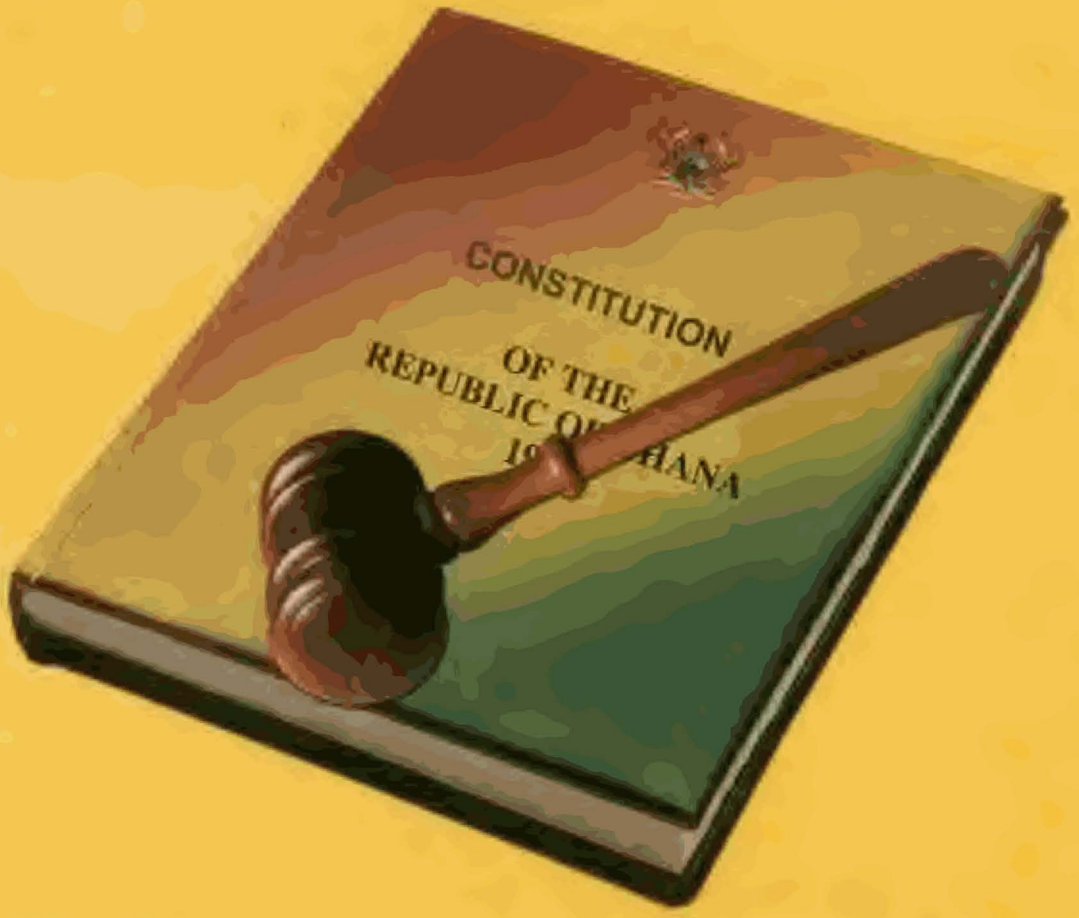
Constitutional Review Series 1

# THE HYBRID CONSTITUTION AND ITS ATTENDANT DIFFICULTIES




IEA Ghana
THE INSTITUTE OF ECONOMIC AFFAIRS

IEA
GHANA
The Institute of Economic Affairs

# THE HYBRID CONSTITUTION AND ITS ATTENDANT DIFFICULTIES

**Hon. Prof. Mike Oquaye,**
**2ND Deputy Speaker of Parliament**

*This work was carried out with the aid of a grant from the International Development Research Centre, Canada under the Think Tank Initiative.*

Publication of this work signifies that The Institute of Economic Affairs regards it as a competent treatment worthy of public consideration. The findings, interpretations and conclusions of this paper are entirely those of the author and should not be attributed to the Institute of Economic Affairs or any organizations that support it.

The Institute of Economic Affairs (IEA) Ghana was founded in October 1989 as an independent, public policy institute dedicated to the establishment and strengthening of a market economy and a democratic, free and open society. It considers improvements in the legal, social and political institutions as necessary conditions for a sustained economic growth and human development.

The IEA supports research, and promotes and publishes studies on important economic, socio-political and legal issues in order to enhance understanding of public policy.

Further information may be obtained from The Institute of Economic Affairs,
P.O. Box OS1936, Osu, Accra, Ghana.

Tel:+233-302-244716/7010714
Fax:+233-302-222313
Email: iea@ieagh.org

ISBN: 988-584-84-9
ISSN: 0855-3238

# PREFACE

As part of a series of lectures on constitutional reforms, The Institute of Economic Affairs (IEA, Ghana) is pleased to publish the full text of a paper delivered by Hon. Professor Mike Oquaye, Second Deputy Speaker of Parliament and Member of Parliament for the Dome-Kwabenya Constituency entitled, 'The Hybrid Constitution and its Attendant Difficulties'.

The paper reviews the background and historical antecedents of Ghana's hybrid 1992 Constitution, which is a fusion of the UK Westminster Prime Ministerial system and the United States Presidential system. The paper provides a detailed analysis of Ghana's experiences since it started operating the Constitution in 1992. These challenges include: the extensive powers of the President, the relationship between the Executive and the Legislature, the Judicial nexus, the appointment of Parliamentarians to public boards, cross-carpeting and the weakness of the decentralization programme.

The paper shows how the fusion of the UK and US systems has resulted in difficulties. It concludes that although the spirit behind promulgating a hybrid Constitution was well-intended, this has not translated into the desired outcomes in the governance of this country. Due to the defects in the constitution, Parliament has been weakened resulting in Executive dominance of the House. This in turn undermines Parliament's ability to oversee and hold to account the exercise of Executive power. Specifically, the best practice doctrine of separation of powers is almost non-existent.

The author therefore suggests that to enhance good governance, boost parliamentary assertiveness, increase effective legislation, and overall, make the Legislative arm of government the true representative body for all Ghanaians, the hybrid provisions in the 1992 Constitution should be amended.

I invite you to read this publication and hope you find it useful.

Mrs. Jean Mensa
Executive Director
The Institute of Economic Affairs

## (A). INTRODUCTION

Ghana's search for constitutional democracy has a chequered history. The trajectories have been myriad as sweet and sour constitutional arrangements took turns in a musical chairs fashion. Various theories and models have been marketed by protagonists during the course of independence in 1957 and the four constitutions – the Independence Constitution of 1960, the Republican Constitution of 1969, the 1979 Constitution, and in the 1992 Constitution. The dominating schools of thought have been the Westminster Prime Ministerial system and the United States Presidential system. Finally, Ghana settled for a hybrid model. How Ghana has fared on this journey is the subject matter of this paper. The author analyses the difficulties encountered in implementing the almost two-decade-old Constitution and makes a number of recommendations.

## (B). BACKGROUND TO THE HYBRID ARRANGEMENT

In 1957, Ghana became the first nation in Africa south of the Sahara to gain independence from colonial rule. The 1957 Constitution Order In Council was the legal instrument that regulated the affairs of State. Essentially, it was based on the Westminster model. The Governor-General represented the Queen of England as Head of State. Dr. Kwame Nkrumah became Prime Minister under that constitutional arrangement by virtue of the fact that his Convention People's Party (CPP) obtained the highest number of seats in the 1956 Elections (72

out of 104). Typical of the British system, fundamental human rights were not formally provided for *in extenso* and guaranteed. This was to create problems in latter years.

In 1960, Ghana adopted a presidential system. Osagyefo Dr. Kwame Nkrumah became the first president of the Republic. Under a system of constitutionalism, the power of every person, body or authority should be limited by law. One would therefore have thought that the moment Ghana opted for a presidential system of governance, fundamental human rights would be fully guaranteed, the power of Parliament to legislate would be limited, and constitutional control of the Executive over the affairs of the State would be provided. But that was not the case.

Adopting the presidential system within the framework of a British mentality led to a constitutional legal tussle exemplified by the case of Akoto.[1] This case arose out of the detention of Baafour Osei Akoto, Chief Linguist of the Asantehene, and others under the Preventive Detention Act (PDA) of 1958. Dr. J.B. Danquah applied for the release of the detainees under the Habeas Corpus Act but failed. Next, Danquah challenged the constitutionality of the PDA itself. He argued that the Solemn Declaration of the President under the 1960 Constitution constituted a Bill of Rights under the Constitution and that the PDA, not being consistent with the Bill of Rights under the Constitution, was therefore null and void. This "American"

[1] Landmark Constitutional case presided over by Chief Justice Arku Korsah.

interpretation was alien to a British conceptualization notwithstanding our adoption of a presidential system. Indeed, the British Attorney-General, Mr. Geoffrey Bing, argued that the sovereignty of Parliament meant its legislative power was unlimited. In effect, Parliament could, as Mr. Krobo Edusei [2] loved to reiterate, make any law except change a man into a woman and a woman into a man. Secondly, Mr. Bing argued that the oath, which the President swore on assuming office, did not constitute a Bill of Rights akin to the US model but was the equivalent of the coronation oath sworn by the British monarch and therefore was of no legal effect. The Supreme Court upheld the viewpoint of the Attorney-General and the case was lost.

The US model *vis-à-vis* the British, which underpinned the current hybrid Constitution, continued to plague Ghana after Nkrumah's overthrow. The mental framework that underscored the 1969 Constitution resonated a deep-seated phobia for presidential dictatorship, hence a return to a full-fledged Parliamentary system. The Constitution provided for a ceremonial President with no executive power, a Prime Minister who was Head of Government, ministers all of whom came from Parliament, and Members of Parliament (MPs) elected by Universal Adult Suffrage.

Nevertheless, in order to guarantee fundamental human rights, Ghana adopted the US model in terms of a written Constitution that provided for fundamental human rights *in extenso*, even beyond the US example. The power of Parliament to legislate was limited by the

[2] A Minister of Interior in the Nkrumah Government.

Constitution. It is important to recap aspects of the Nkrumah regime to explain the fears which underscored the 1969 Constitution as well as the latter ones. The first president, under Article 55 of the 1960 Constitution, could dissolve Parliament and rule by presidential decree. MPs could cross carpet and thereby be wooed by the Executive. The Constitution was later amended to usher in a one-party State. Notably, the 1960 Constitution did not even provide for a vice-president so all power was vested in the first president.

After the Acheampong/Akuffo/Rawlings era which spanned 1972-1979, Ghana decided that the fear of presidential dictatorship had subsided and therefore elected to go the American way. The following were accordingly provided for, among others: president; vice-president; all ministers were to come from outside the Legislature; a Parliament whose power to legislate was limited by the Constitution; the courts could declare laws and executive action unconstitutional to the extent that such laws or actions were inconsistent with the 1979 Constitution.

The 1979 Constitution was truncated by the 31st December Revolution of 1981 that lasted until 1992. The close of revolutionary politics led to the 1992 Constitution. Out of an abundance of caution, Ghana went "hybrid" by the adoption of a constitutional cocktail which picked from both the American and British models. Having arrived at this stage in the search for liberty, it is currently necessary to examine the trajectories of the hybrid experiment in order to chalk the best path forward. This paper seeks to do that.

## C). THE DIFFICULTIES OF THE HYBRID CONSTITUTION

Although the spirit behind promulgating a hybrid constitution for Ghana in 1992 was intended to derive the best of both the UK and US systems, after almost two decades, it has become obvious that the hybrid nature of the Constitution poses several difficulties in practice. The difficulties are: the extensive powers of the President, the relationship between the President and the Legislature which undermines the independence and effective functioning of Parliament, the Judicial nexus, elections, cross-carpeting, MPs freedom to vote, MPs' appointment to boards of public institutions, and weaknesses in the decentralization of governance.

### 1. Executive Powers of the President

A cursory look at Ghana's Constitutions reveals that the President has very extensive powers. When other powers emanating from the hybrid nature of the Constitution are added, then the issue becomes alarming. The Executive power in Ghana is reposed in the President. He possesses overwhelming power of appointment and patronage. The Government of Ghana is his government. He is the source of legislation. The President has tremendous influence and authority over other areas of government. He is the Commander-in-Chief of the Armed Forces, the Fountain of Honour and the Fountain of Mercy. It is therefore important to interrogate the powers of the presidency *vis-à-vis* other organs of state under the hybrid arrangement as a necessary step to heighten the separation of powers and enhance good governance. After all, the essence of constitutionalism is the existence of countervailing power. To

James Madison, *"ambition must be made to counteract ambition."* There should therefore be a conscious effort to bring government *"under control and to place limits on the exercise of its power."*[3]

## 2. The Relations Between the President and the Legislature

Ghana's hybrid Constitution weakens the Legislature *vis-à-vis* the Executive. Throughout the nation's political history, the Executive has dominated the Legislature and by so doing, undermined the age-long doctrine of separation of powers. Every time a coup d'etat was announced, the Legislature was guillotined. In the Nkrumah era, MPs were "nominated" by the President who doubled as leader of the CPP.[4]

Legislative sufferance under the weight of the Executive gives cause for constitutional review in a number of spheres. Article 78 (*1*) of the 1992 Constitution requires that a president shall appoint the "majority" of ministers of State from among members of Parliament. Article 78 (1) reads: *"Ministers of State shall be appointed by the President with the prior approval of Parliament from among members of Parliament or persons qualified to be elected as members of Parliament, except that the majority of Ministers of State shall be appointed from among members of Parliament."* Our experiences for the past seventeen years show clearly that this power of appointment has been to the disadvantage of the Legislature.

---

[3] See Justice G.L. Lamptey, "Ten Years of Constitutional Rule in Ghana 1993-2003 – An Overview", Accra, IEA. Governance Newsletter, July 2003, p. 4.

[4] See Oquaye, Mike, Politics in Ghana, 1972-79, Accra, Tornado Publications, 1980.

In the first place, the oversight role of Parliament is undermined. MPs who are also ministers cannot ask colleague ministers questions on the floor of the House as expected. Notably, the minister/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 criticise the Government on the floor of the House. An MP, once elected, should owe his/her constituents' deliberative and representational duties by standing in their stead in the House. The current situation of holding prior commitment to the Executive authority of the State undermines this basic duty.

Second, it has become the norm that majority side MPs look to the President for ministerial appointments. The "successful" and "leading" MPs are perceived as those who "catch the eye" of the President and are made ministers and not those who perform excellently as legislators and constantly "catch the eye" of the Speaker. Indeed, once appointed, a minister moves to the front benches and he/she moves back when he/she loses his/her ministerial position. Hence, psychologically and in effect, Executive dominance is pervasive because of the appointment system. In light of the above, there is very little ambition for legislators to develop and achieve great heights in the manner known in the US presidential system. If Ghana is to develop its legislators in the manner expected in the modern state, as well as to develop a crop of men and women who are devoted to parliamentary careers and not persons seeking a conduit to become ministers, then the system must change.

The face of the majority in the Parliament of Ghana changed drastically in February 2010. The Majority Leader, the Deputy Majority Leader, the Majority Chief Whip and the Deputy Majority Chief whip– all of who constitute the front bench of the majority side – changed positions and are no longer leaders in Parliament because the Executive appointed them to ministerial positions. The implication is too obvious to warrant protracted comment. Parliament is poorer in the process. However, the appointees should not necessarily be considered opportunists. Under the present constitutional arrangement, a ministerial appointment is regarded by all and sundry as promotion and a logical step in political career advancement. It is therefore necessary to address the fundamental problem.

It is pertinent to dig further into Parliament as the House mandated to ensure oversight and accountability *vis-à-vis* the Executive. The 1992 Constitution envisages that this role should be performed particularly through the Committees of Parliament. Article 103 (1) provides: *"Parliament shall appoint Standing Committees and other Committees as may be necessary for the effective discharge of its functions."* Article 103 (3) adds *"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 Committees are so important that they have the powers, rights and privileges of the High Court. They have the power to enforce the attendance of witnesses and examine them under oath. They can

compel the production of documents and issue a commission or request to examine witnesses abroad. These are over-riding powers given to Parliament by the Constitution and meant to achieve a well-meaning purpose – oversight of Executive power and the administrative machinery. This writer can say authoritatively that this is not happening and that the hybrid aspect of the Constitution is responsible for this deviation which has diluted responsible and accountable governance from 1993 to date.

Those who could lead the process to ensure accountability of the Executive and officials of Parliament are constantly looking toward the Executive rather than to Parliament. In the US, through the Committees and other Senatorial Hearings, inquisitorial processes of the highest order are held with autonomy, authority and a will for assertiveness. Instances abound which constitute the bedrock of the oversight role of the US Legislature. Such instances are absent in Ghana's hybrid arrangement.

Third, when a person serves as an MP and a minister simultaneously, one of the positions is likely to suffer. It is a truism that the duties in Parliament of minister/MPs suffer. In terms of attendance, concentration, contribution and questions, the minister/MP's time clashes with Cabinet meetings, travels, as well as ministerial policy formulation and execution. Regrettably, minister/MPs cannot attend Committee meetings as they should. The Committee, however, is the workshop of Parliament. At that forum, bills are dispassionately discussed, analyses are critically made, and technical expertise is

tapped. When the front-bench runners cannot effectively participate in Committee work to provide qualitative leadership and legislation, Parliament is rendered poorer for it.

The Executive must be accountable to Parliament. In the British system, this is ensured by the vote of censure. Ghana's system is anomalous in that the censure provision in the 1992 Constitution is ineffectual. Article 82 provides that by a two-third majority of its members, Parliament can pass a vote of censure on a minister of State. However, Article 82 Clause 5 provides: *"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."* If the President does not revoke a minister's appointment, Parliament labours in vain. In light of this clause, Parliament is rendered a toothless bulldog and the Executive reigns supreme. Article 82 (5) should therefore be amended to empower Parliament to cause a minister to be removed from office by a two-third majority.

Some commentators have referred to the British model in support of Ghana's current arrangement. The argument is that the appointment of ministers in the UK has not led to undue problems hence, the Ghanaian fears are unfounded and transient. This argument is fallacious. A British Prime Minister does not wield the powers of a Ghanaian President. The Prime Minister himself is an elected Member of Parliament from one constituency and he loses his position if he loses his seat. He is "*primus inter pares*" (first among equals). He can be dismissed mid-term by a conspiracy of colleagues. Besides, a number

of Cabinet members hold their positions as of right. The checks and balances in the British system – formal and by convention – cannot be compared with any other system. Public sector, security, ambassadorial and other appointments are influenced by the Queen, the Privy Council and what is known as "the establishment" in a way unknown in Ghana. A countervailing force promotes democracy. And it cannot be gainsaid that the countervailing force in the British system is non-existent in Ghana. Therefore one should be wary of the British pathway. Furthermore, in the British parliamentary system, Parliament reserves the right to dismiss the Government by a vote of no confidence. This power is not employed rampantly but it exists and compels the Government to be accountable to Parliament. In Ghana, Parliament cannot dismiss any minister through a vote of no confidence. These dissimilarities mandate a re-think of our system.

The futility of the present arrangement in Ghana is made clearer by reference to how it emerged. In 1992, the Committee of Experts recommended a split Executive – President and Prime Minister. Under that system, a majority of ministers would come from Parliament. Parliament could pass a "vote of no confidence" in the Prime Minister and his government while the elected President had a fixed term. The Consultative Assembly rejected the "split Executive" proposal on the main ground that it could easily lead to conflict within the Executive. The Congo saga of Lumumba and Kasavubu was cited, among others. While rejecting the split Executive, the Consultative Assembly maintained the related recommendation that the President should appoint the majority of his ministers from Parliament. We are thus left with a situation where the President's ministers cannot be dismissed by

Parliament, hence, the quagmire of super Presidential and Executive dominance.

Finally, one should not forget that Ghana's 1979 Constitution provided for all ministers to come from outside Parliament as per the US model. During that period, President Limman's budget was defeated in Parliament; amendments were made and it was later approved. It was felt that this rejection by Parliament contributed to the instability of the period. This is wrong and we should revert to the 1979 provision.[5]

It is however not advisable to encourage a dichotomy whereby the Legislature and Executive will not converge in any way. Some meeting points are desirable. In this connection, it is pertinent to refer to Article III of the Constitution, which reads: *"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."* This arrangement is healthy and enough to cater for the convergence school of thought without further mischief. It should also be remembered that "Question Time" in Parliament provides a very useful opportunity for ministers to explain themselves. Ministers are also entitled to make statements on the floor of the House. These are useful opportunities for interaction without dominance.

---

[5] Prempeh Kwasi, H., "The Executive-Legislature Relationship Under the 1992 Constitution: A Critical Review," Accra, CDD-Ghana. Critical Perspectives, No. 15, September 2003. See also, Oquaye, Mike, op. cit.

The next important issue to consider in the Parliament-Executive relations is contained in Article 108 of the Constitution, which provides that unless a bill is introduced or a motion is introduced by or on behalf of the President, Parliament cannot consider it if it has financial implications or will lead to any charge on the Consolidated Fund or other public funds. Both the Legislature and the Executive have taken the position that since the passage and application of laws entail some state expenditure, only the Executive can initiate legislation. One past Speaker of Parliament had vehemently held this position and it has not been since upturned. This stifles initiative and accounts for the absence of Private Members Bills in the Ghana Parliament since 1993. Laws commenced by private members have enriched legislation in many nations. The present state of affairs does not enhance the capacity, strength and dignity of Parliament.

It is vital to fully capture Article 108 of the 1992 Constitution which says:

*"Parliament shall not, unless the bill is introduced or the motion is introduced by, or on behalf of, the President,*

*(a) Proceed upon a bill including an amendment to a bill that, in the opinion of the person presiding, makes provision for any of the following:*

*i. The imposition of taxation or the alteration of Taxation otherwise than by reduction; or*

*ii. The imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction; or*

*iii. The payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal; or*

*iv. The composition or remission of any debt due to the Government of Ghana; or*

*(b) Proceed upon a motion, including an amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in paragraph (a) of this article."*

This simply means that Parliament cannot by its own initiative and at its own instance, propose a law, introduce it in the House and debate a matter just because the matter relates to or involves expenditure from public funds or the raising of taxation. Parliament's traditional control over the use of "the power of the purse" by the Executive is therefore endangered. Ghana needs a constitutional amendment which will clearly allow Private Members Bills. Such an amendment should enable members to take initiatives in a whole variety of areas of national interest including public finance, environment, law and order, gender and children. In the USA, the initiative of lawmakers, the research attendant to the process and their legislation record determine the value of the congressman, rather than the quest for ministerial appointments.

Furthermore, the provision under Article 108 (a) (i) which states that Parliament cannot engage in "the alteration of taxation other than by reduction", means that Parliament cannot reduce budgetary allocation for one sector and increase that of another as it deems appropriate. This is a British practice with antecedents from the monarch's relationship with the House of Commons. Parliament should have the right to make provision in terms of increasing budgetary allocations in certain welfare areas and make deductions in certain areas (such as allocations for the presidency) so far as the total expenditure does not go beyond the projected revenue and expenditure base presented to Parliament. The limited power of Parliament over funds allocation is one reason why Parliament itself is starved of funds leading to a number of negative consequences. MPs have no offices, no tables, no secretaries, no research staff and no computers. They hold meetings in corridors and they lack capacity to access information to put the Executive on its toes.

If the above mentioned constitutional defects are amended, they will go a long way to strengthen Parliament *vis-à-vis* the Executive, resulting in qualitative legislation and greater responsibility and accountability in government. As J.H. Mensah said, *"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."*[6]

[6]Mensah, J.H. (2007). Observing African Excellence as a Prelude to African Renaissance, Accra. Institute of Democratic Governance (IDEG), p. 8.

## 3. Judicial Nexus

The weakening of the Legislature as against the Executive has created problems for even the Judiciary. There has been a lingering displeasure among constitutional analysts in Ghana regarding the fact that there is no limit to how many judges can be appointed by the President to the Supreme Court. In the USA, Congress decided that from their power to approve the budget of the courts and salaries of judges, they also had the power to limit the number of judges on the Supreme Court. Hence, for over 100 years, Congress has by legislation fixed the number of Supreme Court judges at nine (9) only. An attempt by President Roosevelt to pack the Supreme Court in the early 1930s was resisted and it failed. If Ghana's Parliament does not have the muscle to copy from this useful precedent, then the Constitution should be amended accordingly to save legislators the hiccups. A hybrid Constitution with a weak Parliament controlled by the Executive will approve any number of judges appointed by the President and will lack the courage to act as in the Roosevelt Case. It is useful to have ministers from outside of Parliament in order to have a Legislature that can function independent of the Executive as in the USA.

The size and composition of the Supreme Court raise issues of "packing" of the Court with the manipulation of the composition in such a way that the government in effect, may become a judge in its

own. cause. Under Article 128 (1) of the 1992 Constitution, *"the Supreme Court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court."* Hence, there is no maximum as to the number of judges appointed to the Supreme Court. The Executive can add limitlessly to the membership of the Supreme Court. This has the effect of allowing the Executive, through the Chief Justice, to have a standing army of judges from whom it can choose a panel at any given time. It also means that the moment a judge's judgement goes against the Government, the judge can be sent to the isolation ward and may not see the courtroom of the Supreme Court in relation to any case of consequence. In effect, the Executive can neutralize the Supreme Court at any time, if the latter proves "uncooperative," by loading the Court with a fresh crop of judges which will bend to the Government's fiat. This arrangement is very defective and must be rectified.[7] Parliament is mandated by the Constitution to approve judges but it can only save the nation the privilege of Executive mischief if the hybrid element is removed.

The fear expressed above becomes more deeply ingrained if one considers that under Article 128 (2) of the 1992 Constitution, the Supreme Court is "duly constituted for its work by no less than five Supreme Court justices". It is only when the court sits to review its own earlier decisions that a minimum of seven justices is required. It is clear that where the business of the court can be done with less than half of its

7 Oquaye, Mike. (1996). "Independence of the Judiciary and the Search for Democracy in Ghana", in Independence of the Judiciary: Challenges and Constraints, Accra. Hans Seidel Foundation.

composition, then there is room for whoever has the discretion to empanel the court to manipulate the process. This is further underscored by the fact that Article 128 (2) does not provide any rational and mandatory principle for constituting the court from the number of judges available. The practice is that it is the Chief Justice who selects a five member panel at any given time.

One should learn from the US example of how a strong independent legislature, free from a hybrid arrangement, can, through legislation or other controls, strengthen the Judiciary and other institutions including CHRAJ to do justice and promote human rights in the Republic. In short, there will always be gaps in a constitution, which a free and assertive parliament can fill. The hybrid arrangement does not help.

## 4. Elections

The dates for presidential and parliamentary elections affect Parliamentary autonomy. It is recommended that the Constitution should provide for separate dates for presidential and parliamentary elections as is done in the US. This change will reinforce the decoupling of the two arms of government. The decoupling will result in a new culture which will underscore the fact that Parliament is not synonymous with the Executive. Wikipedia's report on the US Congress is instructive. During Roosevelt's administration from 1933 until 1945, the Democratic Party controlled both houses of Congress. Republicans won control of both houses in the 1946 elections only to

lose it in 1948. With Republican Dwight D. Eisenhower's election to the presidency in 1952, Republicans again won both houses. However, after the Democratic Party again won back control in the elections of 1954, it was the majority party in both houses of Congress for most of the next 40 years. Republicans were only able to win control of the Senate for a six-year period from 1981 until 1987. Republicans won a majority in each house of Congress in the elections of 1994 and controlled both houses until 2006, except for the Senate for most of 2001 and 2002. The Democrats had the majority after Jim Jeffords left the Republican Party to become an independent and caucus with the Democrats. In 2006, Democrats regained control of the House of Representatives, and the Senate elections yielded a makeup of 49 Democrats, 49 Republicans, and two independents. In the 110th Congress (2007–08), the Democratic voting bloc had a 51-49 majority in the Senate because the two independents, Joseph Lieberman of Connecticut and Bernie Sanders of Vermont, aligned themselves with the Democratic caucus. In the 111th Congress, which convened in 2009, the Democratic Party holds a majority in each house of Congress.[8]

## 5. Cross-Carpeting

Furthermore, we may want to revisit Article 97 (1) (g) of the 1992 Constitution which 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*

[8] United States Congress – Wikipedia

*party or seeks to remain in Parliament as an independent member".* This arrangement emanated from The First Republic when cross-carpeting was employed by President Nkrumah to lure members of the opposition to the governing party. Those who yielded were given positions but those who resisted were detained. Cross-carpeting became a taint on the character of our Parliament. The concern is that whereas a member may be forbidden from joining another party once elected, he/she should be free to be an independent member. Such an amendment in the Constitution will strengthen members to vote according to their conscience and not to be bullied into undue subjugation. It is therefore submitted that Article 97(1) (g) be amended accordingly.

## 6. MPs' Freedom to Vote

Ghana should employ constitutional engineering to ensure that Members of Parliament are free to vote as in the US. An article on Wikipedia, the Free Encyclopaedia states: *"Members of the U.S. Congress are generally elected from one of two parties, but its members are free to vote according to their own conscience or that of their constituents. Many members can and do cross party lines frequently. Retribution from party leadership for doing so is nonexistent in the Senate and exceedingly rare in the House. In a parliamentary system, members may be compelled to vote with their party's bloc, and those who vote against are often cast out of their respective parliamentary parties and become less influential*

*independents. Theoretically, the lack of super-powerful political parties allows U.S. members to more faithfully represent their constituents than members of parliament can—a member is ultimately responsible to their constituents alone, not to their party. Additionally, as Congress does not wield executive power, dissenting votes from the majority party cannot result in the collapse of the ruling Government and new elections, as occasionally happens in parliamentary systems. Conversely, the U.S. Congress also allows for a larger role for extra-governmental actors such as lobbyists, as the lack of strong party whips present in parliamentary systems exposes members of Congress to greater outside influence."*[9]

Early in 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 did tremendous work in Parliament when he stopped the practice of the Executive going over to Parliament House to inaugurate Parliament. By this act, he brought to the doorstep of the Ghanaian Parliament, the best practice in global legislature. 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 was supposed to be a secret) to those on their left and right. The public saw what happened through TV cameras. At that very moment, ministerial appointments, board memberships and other nominations, which were the preserve of the Executive, were pending. Expectedly, the Executive had its way

[9] United States Congress – Wikipedia, The Free Encyclopaedia, 2010. p. 3.

and the Speaker was voted out. Of course, the Majority Leader who also doubled as Minister for Parliamentary Affairs prior to the 2004 elections retained his position after the exercise.

## 7. Board Membership and Appointments

The 1992 Constitution should be amended to specifically provide against members of the Legislature taking up positions on boards or other public positions offered by the Executive whether with remuneration or not. Incidentally, whenever the National Democratic Congress (NDC) or the New Patriotic Party (NPP) was in opposition, the Party's MPs championed this position which they promptly described as "conflict of interest". But the moment the party concerned got into government, they did the same thing. It cannot be gainsaid that this practice creates a conflict of interest situation, undermines the oversight role of MPs over the Executive, and provides the tempting carrots for which Parliament plays to the Executive. It is useful to refer to a section of the Standing Orders of Parliament itself. A very important duty is imposed on the Committee on Employment, Social Welfare and State Enterprises to oversee all state enterprises. This requires, among others, the insulation from MPs as Directors. Yet, the hybrid element in our governance has compromised the situation.

Order 184 of the Standing Orders of Parliament reads:

*(1) The Committee on Employment, Social Welfare and State Enterprises, composed of twenty Members, shall review and study on a continuing basis the operation of State Enterprises with a view to determining their economy and efficiency and*

*also deal with matters relating to Employment and Social Welfare generally.*

*(2) It shall also be the duty of the Committee:*

*i. to examine the reports and accounts of public enterprises and in the context of their autonomy and efficiency whether their operations are being managed in accordance with sound business principles and prudent commercial practices;*

*ii. to examine the income and expenditure of any public corporation and state enterprises, or other body or organization established by an Act of Parliament together with the Balance Sheets and Statement of Profit and Loss accounts which the Auditor-General may have or been requested to prepare under the Constitution or under the provisions of the statutory rules regulating the financing of the particular corporation, enterprise or body and the report of the Auditor-General thereon;*

*iii. to examine the Statement of Accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Auditor-General either under the direction of the President in accordance with the Constitution or by an Act of Parliament."*[10]

[10]Ghana: Parliament of Ghana. Standing Orders of the Parliament of Ghana. (2000), pp 119-120.

How can a member perform this constitutional duty well if he/she is not insulated from the Executive? Similarly, how can a member perform this constitutional duty well if he/she is a member of a board for which he/she has oversight responsibility on behalf of the State?

## 8. Decentralization

There is the need to establish effective decentralization with MPs as key players. This will help to establish a countervailing authority at the local level and prevent MPs from over-reliance on the centre. In the US, the federalist arrangement and the local government system help a lot. The 1992 Constitution should provide that one-third of total national revenue be channelled to the local level and a new equilibrium be established. The following are proposed:

- MPs should be given a primary role in local development.
- District Assemblies should elect all their members.
- The one-third of members reserved to the President should be given to chiefs and women, who will elect their representatives.
- All District/Metropolitan/Municipal Chief Executives (DCEs/MCEs) should be elected.
- The District Assembly election dates should be two years apart from the national elections.

- The power of Regional Coordinating Councils should be drastically reduced.
- District Assemblies should financially be empowered to fulfil their constitutional mandate under the 1992 Constitution.[11]

Article 252 (2) of the 1992 Constitution provides that *"Parliament shall annually make provision for the allocation of not less than five percent of the total revenues of Ghana to the District Assemblies for development; the amount shall be paid into the District Assemblies Common Fund in quarter instalment."* Parliament had recently increased this 5% to 7½%. Incidentally, the Ministry of Local Government retains part of the money for disbursement according to the Ministry's discretion. The Ministry has over the years made heavy procurements for the Districts and debited their allocations as the Ministry pleases. In reality, the bulk of even the paltry sums "allocated" are disbursed centrally in a variety of centralized procurements. It is therefore proposed that one-third of the total national revenue should be allocated directly to the Districts in cash and should not be tampered with in any way through Central Government purchases or commitments of any kind.[12]

---

[11] For further details on the issue, see Oquaye, Mike, "Challenges Identified in Operating the 1992 Constitution." Paper delivered at the British Council Hall, Accra, June 15, 2009 at a Forum Organised by the Ghana Academy of Arts and Sciences, pp 4-9.

[12] See Oquaye, Mike (2000). Politics in Ghana 1982-1992, Accra. Tornado Publications. Oquaye, Mike. "Decentralisation and Development: The Ghana Case Under the PNDC". Journal of Commonwealth and Comparative Politics, Vol. 33, No 2, July 1995

## D). CONCLUSION

This paper identified several areas of concern which have arisen from the hybrid nature of the 1992 Constitution. It is concluded that the present arrangement has seriously weakened Ghana's Parliament in particular and national governance in general. The arrangement has not promoted the age-long doctrine of separation of powers as propounded by Montesquieu and others. It is the thrust of this paper that relevant amendments should be made to change the hybrid provisions in the 1992 Constitution in an effort strengthen the Legislative arm of government as the true representative body of all Ghanaians.