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بعث أفريقيا الغد في سياق التحولات المعولمة :

رهانات و آفاق

The Legislature and the Executive in Ghana's Fourth Republic: A Marriage of Convenience

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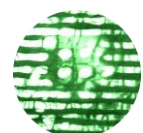


Introduction

In the past two decades, there has been growing recognition among scholars and policy makers about the importance of the legislature for democratic development, particularly in new democracies in Africa. It is argued that the performance and strength of parliaments is a key indicator of the health of a democracy due to their roles in lawmaking, conducting executive oversight, and representing citizens and their interests (Balkan, 2009; Fish, 2006). Increasingly, much of the comparative literature links a competent legislature to democratic consolidation. Steven Fish (2006) for example argues that the strength of a national legislature may be 'the institutional key to democratisation'. He further states that "Stronger legislatures served as a weightier check on presidents and thus a more reliable guarantor of horizontal accountability than did weaker legislatures". Likewise, Joel Barkan (2009) also argues that democracy cannot thrive without an effective and influential legislature to balance the power of the executive. He shows further that, "where they have clouts, these legislatures contribute to the consolidation of democracy by raising the level of accountability by those who govern to those they rule" (Balkan, 231). Similarly, others also contend that a weak legislature may expose fragile democracies like Ghana to the danger of illiberal reversals.

Although scholars have recently demonstrated that the legislature in Africa is emerging as a key "player" in the political process, legislative performance is uneven across the continent (Balkan 2009), and Ghana is no exception. As concluded by Staffan Lindberg and his colleague (2009:148), despite Ghana's image as a political success story in Africa, "...one of its core institutions of democracy, the parliament in Ghana, does not seem to flourish in the same way as democracy in general?". In his study of six legislatures in Africa: Ghana, Kenya, Nigeria, Benin, Uganda and South Africa, Barkan also concluded that, (...the legislature has remained relatively weak, as in Benin and Ghana, its impact on the policy making process and the operations of the state has been small" (Barkan 2009: 3). How may we explain this puzzle of weak legislature despite the growth in democracy in Ghana? How can Ghana strengthen its legislature to effectively undertake its oversight responsibilities, particularly accountability?

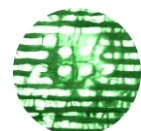
Since independence in 1957, Ghana has experimented with different constitutional models, particularly the presidential and parliamentary systems of government with varied results and outcomes. However, in 1992 Ghana adopted a constitution based on the model of the United States of America. The 1992 Constitution stipulates that the state is based on a quasi-executive presidential system of government. It vested executive power in an executive president elected together with his vice president for four years and eligible for second term only (Articles 57, 60 & 66). Legislative power is vested in Parliament whose members are also elected for a four year term (Article 93); while judicial power is vested in the judiciary with a wide measure of independence and the power of judicial review (Articles 125 & 2 respectively).



However, unlike the American presidential system which maintains a separation of powers, the Ghanaian Constitution incorporates aspects of the British parliamentary system. Article 78(1) enjoins the President to appoint majority of ministers from Parliament. In theory, this constitutional arrangement which is based on the principle of separation of powers and supposed to promote checks and balances, at the same time provides for the fusion of the Executive and Legislature where the majority of ministers must be sitting Members of Parliament raises several salient questions. In the context of the presidential system of government this paper examines the following issues. To what extent has this model affected the running of the presidential system of government, particularly the enforcement of the principle of separation of powers? How is the legislature working under this seemingly complicated system of government? How independent is the legislature in performing its oversight functions and investigative responsibilities? How has the model affected the performance of ministers who are also MPs? What challenges do minister-MPs face in prosecuting their legislative activities? Drawing on interviews and archival sources, the paper argues that the current model where parliamentarians serve simultaneously as ministers leads to conflict of interest with adverse effect on the effectiveness of parliament in performing its oversight functions, particularly, its capacity to promote accountability.

Background: Institutional and Political Context

Ghana gained independence from Britain on 6th March, 1957. Since then the country's political system has vacillated between civilian and military rules. The Independent Constitution (1957 Constitution) was based on the "Westminster" model of parliamentary government. In 1960, Ghana gained republican status with a Republican Constitution (First Republic). And in 1964, Ghana became a one-party state under Kwame Nkrumah's Convention People's Party (CPP). In 1966, the Nkrumah government was overthrown in Ghana's first military coup and the setting up of the National Liberation Council (NLC) government. In 1969, Dr. K.A. Busia was elected as Prime Minister under the 1969 Constitution (Second Republic) which was also based on the Westminster" model of parliamentary government. In 1972, a Military coup led by General Acheampong overthrew the Busia's Progress Party (PP) government and setting up of the National Redemption Council (NRC) government. In 1975, NRC was replaced by the Supreme Military Council (SMC) as executive arm of Government. Further in 1978, General Acheampong was removed as Head of State in a palace coup led by General Fred Akuffo. In 1979, Flt. Lt. J.J. Rawlings staged his first military coup d'état and set up the Armed Forces Revolutionary Council (AFRC). In 1979, Hilla Limann was elected as President under the 1979 Constitution (Third Republic). The 1979 constitution was based on presidential system of government, based on the United States' model of separation of powers (1979 - 1981). However, in 1981, Rawlings staged his second military intervention and overthrew Limann's People's National Party (PNP) government leading to the formation of Provisional National Defence Council (PNDC).



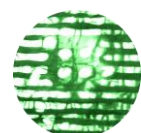
The struggles and agitations for a return to constitutional rule after eleven years of dictatorial rule under Rawlings-led Provisional National Defence Council (PNDC) led to the establishment of a Committee of Experts with a mandate to draw up and submit to the PNDC, proposals for a draft Constitution of Ghana. In its Report, the Committee of Experts recommended that majority of Ministers should be appointed from among Members of the Parliament of Ghana. The recommendation was influenced by difficulties faced by the Executive to get its policies and programmes approved for implementation. The Committee was of the view that the relationship that existed between the Executive and the Parliament of Ghana was hostile and made consensus building under the 1979 Constitution extremely difficult [Report of the Committee of Experts (Constitution) on Proposals for a draft Constitution of Ghana, 1991, p.1]. In light of this, the Framers of the 1992 Constitution of Ghana made Article 78(1) part of the provisions of the draft Constitution. Article 78(1) of the 1992 Constitution of the Republic of Ghana stipulates that *“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”*. The Provision therefore places an injunction on the President to appoint majority of his Ministers from the Parliament of Ghana. The draft Constitution was submitted to a referendum on 28th April, 1992 and it was upheld by the people of Ghana and dubbed the 1992 Constitution of the Republic of Ghana.

Theoretical /Models of Political Systems

There has been growing debate among scholars about the merits and demerits of the three major mechanisms of structuring the relationship between the executive and legislative branches: parliamentary, presidentialism, and semipresidentialism but the debate has been largely inconclusive (Fish 2006:5; Juan J. Linz and Arturo Valenzuela, eds, 1994; Alfred Stepan and Cindy Skach, 1993).

Separation of Powers or Presidential System of Government

A presidential system of government is a system in which the executive arm of government is led by a person who is both head of state and head of government. Under this system, the executive arm exists separately from the legislative arm. The presidential system developed primarily in the Americas because of historical accident, and not programmatic planning or innate predilection according to Sartori (1994). Americans had to choose whether to democratize under a monarchy or move completely away to a republican system in their quest to throw off foreign domination. It will be noted therefore that, in the United States, the rationale for the adoption of the presidential system can be found in their history. Szilagyi (2009) observed that presidentialism owes its origins to the medieval monarchies of France, England and Scotland where executive authority was vested in the Crown, not in meetings of the estates of the realm.



Montesquieu in his classical formulation of the doctrine argued that:

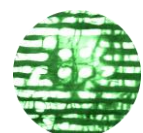
“When the legislative and executive powers are united in the same person, or in the samebody of magistrates, there can be no liberty... Again, there is no liberty if the power of judging is not separated from the legislature and executive. If it were joined with the legislature, the life and liberty of the subject would be exposed to arbitrary control; for the judge will then be the legislator. If it were joined to the executive power, the judge might behave as an oppressor. There would be an end to everything, if the same man or the same body, whether of the nobles or of the people, were to exercise those three powers, that of enacting laws, that of exercising public affairs, and that of trying crimes or individual causes” (Shekleton, 1949).

The doctrine of separation of powers aims to prevent concentration of power in one man or group of men and the emergence of authoritarian and tyrannical government.

Advocates of Presidentialism such as Horowitz (1990), have emphasized the advantages of the system particularly separation of powers. The contend that the “presence of two entities (the presidency and the legislature), each with its own source of electoral legitimacy, reduces the danger of radical missteps” (Fish 2006). They further maintain that since the president is elected by the whole people s/he is an embodiment of the national will than any legislature can. Supporters of presidentialism further note that “a president, as a unitary actor, may be more capable of rapid, decisive action than a legislature” (Fish 2006).

The twin principles of separation of powers and checks and balances in presidential systems mean that there is no concentration of powers in the same person or body. Agabin (2013) for example claims that, the President is directly elected by the people and as a result has a strong claim to democratic legitimacy. The presidential system also promotes stability and continuity given that both the President and the legislature enjoy fixed terms of office, and this allows the President to push even unpopular but necessary programs of government and to accelerate economic development (Agabin, 2013). There is also some continuity of policy. Further, the government can think of long-term policies. The President is also free to choose his ministers thus giving him the freedom to appoint very competent persons as his Ministers or Secretaries on the basis of their experience and expertise. They are accountable only to the President and not to the legislature. As a result, they have time to concentrate on their work and to do their duty efficiently. Again, the President, being all powerful, is in a position to take bold and prompt decisions. His ministers, being subordinate to him, cannot tie hands. They may advise him, but they have to implement his decisions (Samir, 2012).

The presidential system is also said to be best suited in dealing with emergencies. There is speed and decisiveness in the system with some arguing that a President with strong powers can usually enact changes quickly (Szilagyi, 2009). The system is more effective in tackling emergencies as there is unity of control and concentration of executive powers in one person. He can react quickly to any national crisis by taking prompt decisions. Direct election by the



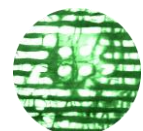
people gives actually gives the president the resolve to govern independently and to disregard pressures from vested interests (Agabin, 2013). There is hardly any need for him to convince others on the spot that the decision he is going to take is good for the nation. The multiparty system is prone to political instability as political parties with different interests pull the political system in different directions. In order to check this, there is the need of a strong executive and the presidential system is said to be best suited to establish stability in a multiparty system. The Presidential executive is of help in forging unity in the nation consisting of diverse regions, communities and cult as he is directly elected by people, they look upon him as the symbol of their unity (Samir, 2012).

Giovanni Sartori (1994) notes three main merits of the presidential system of government. First, there is a directly elected president with a fixed time in office – meaning that the legislature has little or no discretionary control over the process of selection or removal of the president. Secondly, there is Presidential not parliamentary control over the selection and removal of executive office members (cabinet). And thirdly, the President “directs” the executive (which is a purely hierarchical institution) and is able to impact legislative outcomes through this office. The office of the President characterizes the presidential system.

Despite its strengths, the presidential system of government has some weaknesses. The Presidential system of government has been accused of showing authoritarian tendencies. As all executive powers are concentrated in the hands of the President and as s/he is not accountable to the legislature, s/he may be tempted to abuse powers and behave in a dictatorial manner. The presidential system thus concentrates too much power in the hands of one person, and sets the stage for personalistic rule and this personalistic culture impinges adversely on the quality of other political leaders (Agabin, 2013). Also, because the President and his ministers are not members of the legislature, they may find it difficult to persuade the members of the latter to accept proposals from the executive. In such a system, the legislature may be inclined to find fault with the President, and vice versa and this may lead to deadlock in the administration. Also, the President is under the strongest temptation to usurp powers of the other main departments of government (Agabin, 2013).

Westminster or Parliamentary System of Government

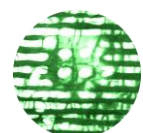
A Westminster or Parliamentary system of government is a system in which the executive arm derives its legitimacy from, and is held accountable to, the legislative arm of government. The executive and legislative arms are thus interconnected. Under this system, the Head of State is normally a different person from the Head of Government. In the United Kingdom that practices a constitutional monarchy, the monarch is the ceremonial Head of State while the Head of Government is a member of the legislature. In Germany, the ceremonial president is the Head of State while the Head of Government comes from the legislature. Under the parliamentary system of government there is no clear-cut separation between the legislative and executive arms of government. The executive which is called the cabinet is headed by a



prime minister or premier who is considered the Head of Government. In most parliamentary systems, the prime minister and the members of the cabinet are also members of the legislature. The leader of the party with majority in the legislature is often appointed as the prime minister. The cabinet can be removed by the parliament through a vote of no confidence while the executive may also dissolve the parliament and call extra-ordinary elections.

Szilagyi (2009) contends that, these parliaments tend to have a more adversarial style of debate and the plenary session of parliament is relatively more important than committees. Strom (2000) notes two basic ideas parliamentary supremacy and the notion of fused, or unified, powers are central to conventional understandings of parliamentary government. He suggests that the notion that the legislature controls the executive branch and the policy-making process is seen as misleading, it is historically important. In its original form, parliamentary government indeed meant parliamentary supremacy, in the majoritarian Westminster tradition (Lijphart 1984). It is the case that, the political activities of parliamentary systems have their focal point in parliament. Lane and Narud (1994, cited in Strom, 2000) have argued that in its pure form, in parliamentary democracy the members of the core executive must also at the same time be members of parliament even though parliamentary supremacy seems strangely at odds with the contemporary realities of parliamentary politics, in which the role of parliament in drafting legislation and budgets appears to be severely circumscribed.

Some advocate of parliamentarism have noted the merits of the system over the presidential system. For example, Linz emphasizes the flexibility of parliamentarism against the rigidity of the presidentialism. It is argued that the rigidity of the fixed terms that presidents serve may “force electorates to suffer an incompetent or malign executive for years—with the flexibility of parliamentarism, which enables legislatures to depose undesirable prime ministers and their governments in short order” (Fish 2006). Linz (1990a:52) stress the superior historical performance of parliamentary democracies. He concludes that, on balance, the parliamentarianism is more conducive to stable democracy than the presidential system. He further notes that especially in countries with deep political cleavages and numerous political parties, parliamentarism generally offers a better hope of presenting democracy. Agabin (2013) shares Linz views when he argues that the parliamentary system of government makes for stability in mature democracies as executive power depends on legislative majorities constituted after parliamentary elections. Others contend that the parliamentary system of government make room for faster and easier passage of legislation (Bates, 1986). The fact that the executive (as the majority party or coalition of parties in the legislature) has a majority of the votes, it enables it to quickly pass legislation. Again, the parliamentary form is more suited for countries with deep ideological or religious cleavages or numerous political parties or sectoral factions.

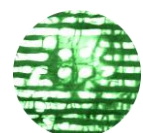


The parliamentary system of government also has a number of weaknesses. In the parliamentary form, the representatives of the people are sometime weakened as against the cabinet, which can threaten to make issues matters of “confidence” sometimes leading to the paralyzation of governmental functions (Agabin, 2013). Agabin further notes that compromises and horse-trading are cardinal features of parliamentary system of government and collective responsibility may lead to a weak government. Also, where the political development of the country has not yet reached a level of maturity where political parties have been strengthened around clear-cut national alternatives and ideologies the system may be plagued by incessant governmental instability. Horowitz (cited in Linz, 1990b) is his critique of Linz stressed that the majoritarian implications of presidentialism – the ‘winner-take-all’ features that have been emphasized by Linz – may also be present in parliamentary systems with plurality elections in single-member districts, especially under the two-party systems that so often go together with Westminster-style parliamentary governments.

The Hybrid System of Government

Semipresidentialism, or the “dual” or “mixed” system, combines features of presidentialism and parliamentarism. Duverger states that a semi-presidential regime has three basic characteristics: the popular election of the president, presidential constitutional powers, and the separate office of a prime minister (**cited in Roper, 2002: 254**). It provides for mutual, and often contested, control of the prime minister and the government as a whole by both the president and the legislature. Like parliamentarism and presidentialism, Semipresidentialism has its own merits and demerits. Since it provides for some separation of powers, it may, like presidentialism, temper the blunders of either the legislature or the president. Since it involves direct election of the president, the people as a whole have a decisive voice in the selection of the chief executive. Yet since it affords the legislature some say over the government, it may reduce the risks of presidential arrogance. The tripartite classification of parliamentary, presidential, and semipresidential constitutions is not the only one in use. For example, in an effort to formulate more finely differentiated categories, some scholars have embraced a distinction between “premier-presidential” and “president-parliamentary” constitutions.

Even though Ghana practices this mixed or hybrid system of government, the most classical and best suited example in the world is France. In this system of government, the electorates directly choose both the parliament and the president. Both Ghana and France meet this obligation but what makes the French system of government so classical is the fact that the president appoints a Prime Minister from the Parliament. It is important to note that, the Prime Minister can be appointed from an opposition party in parliament (NDI, 2000). This combination increases political competition within the executive arm of government. Because the hybrid system incorporates both the Parliamentary and Presidential systems, it has been argued that in practice, it operates as one or the other depending on whether the president and the parliamentary majority are from the same party.

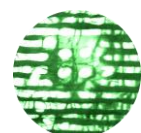


The Hybrid system of government has some weaknesses. This system of government violates the principles of separation of powers which advocates a clear-cut separation among the three arms of government in terms of personalities and functions. Under this system, some Members of Parliament who are of course law makers double as members of the executive who are responsible for the implementation of the laws passed by the legislature. Also, Members of Parliament who are appointed ministers are over tasked by responsibilities and time (Boateng, 1996) for performing such dual functions. Furthermore, the type of Hybrid system where both the president and majority of parliamentarians are from the same party makes it difficult for the private members or the opposition to introduce bills in parliament to effect change. This is due to executive dominance in the legislature, as is the case of Ghana (CDD/Friedrich Naumann 2000) making it difficult for the opposition to influence bills brought before the House.

The Oversight Role and Investigative Responsibilities of Parliament

Ghana's parliament like others in modern democracies is expected to perform four important functions: lawmaking, conducting executive oversight, representing citizens and their interests and constituency service (Balkan, 20096; Fish, 2006). The oversight role "involves monitoring executive activities for efficiency, probity and fidelity" (Barrows et al (2003, p.35). Effective parliamentary oversight is crucial for legislative development and contributes to good governance (Barrows et al (2003, p.118). The oversight role ensures accountability of the Executive to citizens, reduces abuse of government power and corruption and increases value for money for government activities (Barrows et al, 2003, p.135-136). Adjetei and Tachie (2004, p.33) point out that the oversight role allows Parliament to perform its watchdog role over the Executive to ensure that policies conforms to approved developmental agenda and expenditure incurred is in accordance with parliamentary authorizations.

In Ghana under the 1992 constitution, Parliament performs its oversight role in a number of ways: scrutinizing the policies and actions of the Executive through its Committee system Questions to Ministers, Motions, and Censorship of Ministers and also through other mechanisms provided for by its Standing Orders. Chapter Ten (10) of the 1992 Constitution of Ghana provides the mechanisms for the Parliament of Ghana to perform of its oversight role. The Chapter further gives the Parliament of Ghana the authority to regulate its own procedure through its Standing Orders. "Subject to the provisions of this Constitution, Parliament may, by standing orders, regulate its own procedure" [Republic of Ghana Constitution, 1992, Chp.10, Article 110]. Articles 103 and 110 of the 1992 Constitution stipulates the oversight role of the Parliament of Ghana, "Parliament shall appoint standing committees and other committees as may be necessary for the effective discharge of its functions" [Republic of Ghana Constitution, 1992, Chp.10, Article 103(1)]. Further the Standing Orders 151-155 of the Parliament of Ghana (2000) states 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;



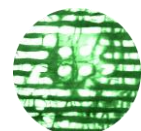
and such investigation and enquiries may extend to proposals for legislation” [Republic of Ghana Constitution, 1992, chp.10, Article 103(3)]. Likewise, Orders 156-214 of the Standing Orders of the Parliament of Ghana (2000), states that, “Every member of Parliament shall be a member of at least one of the standing committees” [Republic of Ghana Constitution, 1992, chp.10, Article 103(4)].

Under Orders 151 and 152 of the Standing Orders of the Parliament of Ghana (2000), Standing, Select and Special/Adhoc Committees are established. The Standing Committees deals with issues of concern to the Parliament of Ghana (Adjetey and Tachie, 2004, p.57), and include the Standing Orders Committee, Business Committee, Committee on Privileges, Public Accounts Committee, Subsidiary Legislation Committee, House Committee, Finance Committee, Appointments Committee and Committee on Gender and Children. The Select Committees are subject matter related committees charged with the responsibility of scrutinizing the activities of Ministries, Departments and Agencies (Adjetey and Tachie, 2004, p.58). The Select Committees include the Committee on Health, Lands and Forestry Committee, Committee on Mines and Energy, Committee on Roads and Transport, Committee on Defence and Interior, Committee on Foreign Affairs, Committee on Communications and Committee on Education. The Special/Adhoc Committees are established to deal with any bill or matter that does not come under the jurisdiction of any of the Select Committees and cease to exist upon completion of the task (Adjetey and Tachie, 2004, p.58).

In pursuance to Article 103(6) of the 1992 Constitution of the Republic of Ghana and “for the purposes of effectively performing its functions each Committee shall have all such powers, rights and privileges as are vested in the High Court of Justice or a Justice of the High Court at a trial in respect of:-

- (i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (ii) compelling production of documents; and
- (iii) the issue of a commission or request to examine witness abroad” (Parliament of Ghana, 2000, Standing Order 155)

Types and procedures for asking Questions are stipulated in Orders 60-69 of the Standing Orders of the Parliament of Ghana (2000). “Ministers shall, by Order of the House, be requested to attend Sitzings of the House to answer Questions asked of them” [Parliament of Ghana, 2000, Standing Order 60(1)]. Also, “Questions may be asked of Ministers relating to public affairs with which they are officially connected, proceedings pending in Parliament or any matter of administration for which such Ministers are responsible” [Parliament of Ghana, 2000, Standing Order 62(1)].



Motions or a proposal made by a Member that Parliament or a Committee thereof do something, order something to be done or express an opinion concerning some matter” (Parliament of Ghana, 2000, Standing Order 7) can also be used to perform parliamentary oversight. The oversight role is also performed through the approval or otherwise of presidential nominees for appointment as Ministers and Deputy Ministers, Chief Justice and other Justices of the Supreme Court, Members of the Council of State and other public officials specified by the 1992 Constitution of the Republic of Ghana (Adjetey and Tachie, 2004, p.34). The Approval or otherwise of presidential nominees is referred to the Appointments Committee of the Parliament of Ghana for its consideration and report. The report of the Appointments Committee is then presented to the plenary for debate after which a decision for the adoption of the report or otherwise is taken. The Public Accounts Committee can also use various accounting ratios to analyse financial statements of Ministries, Departments and Agencies so as to determine whether there are some financial malfeasance. Where financial malfeasance exists, appropriate recommendations are made by the Public Accounts Committee. In recent times, the Public Accounts Committee sittings/hearings are made public through live television coverage.

Watching over the Executive

Various scholars have expressed their views on whether Ghana's current constitutional dispensation that allows parliamentarians to serve simultaneously as ministers have promoted or undermined the effectiveness of parliament in carrying out its oversight responsibilities.

A study by the Institute for Democratic Governance (IDEG) “Executive-Parliament interface in the legislative process (1993-2006)-A synergy of powers?, concluded that: The executive arm of government is becoming more and more powerful than the legislature. The research demonstrated that the Executive is exploiting its power advantage to the detriment of the oversight functions of the Legislature over executive decisions and actions. The study revealed that the more executive power was used in the legislature, the more the legislative power in the exercise of its oversight functions over executive decisions and actions declined and Parliament divided along party lines. The study found that from 2001 to 2006 there has been a higher propensity on the part of the executive to abuse the majoritarian principle in the name of democratic governance. The study stated that the constitution had, in part, made it possible for the executive to accumulate such overwhelming power over the legislature and called for a review of the electoral laws to ensure proportional representation of political parties in Parliament (<http://www.modernghana.com/news/180693/1/executive-arm-too-powerful-ideg.html>).

Another study by Kojo Sekyi, “A survey of MPs' opinions about the challenges of blending executive and legislative functions of government under Ghana's 1992 Constitution” indicate that a solid majority of MPs (90%) said that the fusion of executive and legislative functions affect the work of parliament and effectiveness of policymakers (Sekyi 2010: 269). The study further reveals that thirteen out of twenty MPs, (that is 65%) opined that MPs who are



ministers contribute effectively to policymaking, only seven disagree. However, all respondents (100%) unanimously indicated that participation/ contribution of MPs at various parliamentary committees is very low. Respondents attributed this to the marriage between cabinet and parliament. (Sekyi 2010: 269).

With regard to the independence of cabinet ministers who are legislators, Sekyi found that 65% of respondents indicated that ministers who were MPs are not independent. A majority of respondents are of the opinion that MPs who are ministers have limited autonomy and as a result are unable to check executive abuse of power especially in areas of public spending, taxation and related policy choices. Respondents who held this position attributed the situation to a variety of factors: loyalty to the executive-President and the party, desire to keep ministerial portfolio, support for ruling government's policy and unquestionable loyalty to the ruling party.

In 2009, The Ghana Centre for Democratic Development (CDD), a research think-tank in Accra expressed worry that Article 78(1) could create problems for the President Mills' administration when several Members of the Parliament of Ghana were appointed by the president to chair or serve as Members of Governing Boards and Councils of State Agencies and Corporations. In a statement issued by the CDD-Ghana, it condemned the appointments and called on President Mills to reconsider his decision in order not to erode the progress made under the Fourth Republic. According to CDD-Ghana (2009b):

(i) such appointments undermine efforts to promote good governance and consolidate democracy in Ghana and harmful to the already weak system of checks and balances that underpins Ghana's constitutional democracy;

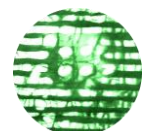
(ii) the action by the President perhaps, was against the background of Article 78(1) and it reinforces the dominance and influence of the Executive Arm of Government over the Legislative Arm which has always existed in the history of the country;

(iii) appointing Members of Parliament to serve on Governing Boards and Councils is not a constitutional provision and so can easily be left out in order not to undermine the oversight role of the Parliament which is already weakened by the whip system of Parliament;

(vi) such appointments deepen the perception that ruling-party Members of Parliament exist to serve the interest of the Executive rather than as a counter-check on the Executive;

(v) such appointments creates other layers of Executive–Legislature fusion which reduces the autonomy of the Parliament of Ghana;

(vi) such appointments also weaken the already feeble systems of public accountability and integrity and impede the country's progress towards good governance and democratic consolidation;

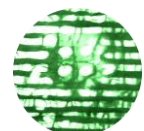


(vii) Members of Parliament with such appointments are more likely to lose the independence and objectivity they are expected to exhibit in exercising appropriate oversight over these same Agencies, Corporations, and Boards within the Executive branch; and

(viii) the proper role of Members of Parliament is to investigate abuses and failures in State Organisations instead of drawing sitting allowances from such Organisations as Chairpersons or Members of Governing Boards and Councils. (cited in Amoateng, 2012: 29-31).

Similarly, The Institute of Economic Affairs (IEA) (2008), a research think-tank in Accra expressed serious reservations about Article 78(1) of 1992 Constitution and suggested that it should be amended because the Provision weakens the Parliament of Ghana. According to the IEA, appointing Ministers from Parliament undermines efforts to promote checks and balances that is central to Ghana's 1992 constitutional (cited in Michael Amoateng, 2012: 31-32). Kwame Ninsin (2008 cited in Sekyi 2010, p.2) is of the view that the fusion of the Executive and the Parliament of Ghana has reduced the independence and stifled the growth of the Parliament of Ghana and made the Executive very influential on the House (cited in Amoateng, 2012: 31-32). Gyimah-Boadi (n. d.) points out that the current system allows the executive to evade parliamentary control over the national purse by failing to submit supplementary expenditures to parliament for approval. Gyimah-Boadi also notes that the executive under the first NDC government circumvented the court ruling against the celebration of 31st December as a national holiday by marking that day as the foundation day for the Fourth Republic. This demonstrates how the executive has not done much to liberate the agencies of the Constitution set up to serve as a check on its activities. This demonstrates a clear violation of the concept of separation of powers, checks and balances as stipulated by the 1992 Constitution.

A study by the CDD-Ghana (2008) reveals that many parliamentary insiders, including several MPs blame the legislature's fiscal dependence on the executive for the perennial capacity and resource deficits that have become characteristics of parliament in the Fourth Republic. Such fiscal dependence also undercuts parliamentary effectiveness because it cows parliament and makes it subservient in its relationship with the president. Another study by CDD/Friedrich Naumann-Stiftung (2000) show that the hybrid system makes it difficult for private members to introduce bills in parliament to effect a change because of executive dominance. Additionally, successive governments through their majority in Ghana's parliaments have not spared the nation by the "tyranny of the majority" decisions on critical national assets and socio-economic contextual projects. The electorates are wallowing in despair of Ghana's representative democracy and wonder if Members of Parliament truly represent the interests and aspirations of their nation and whether elected governments are for political parties' key cronies or are for the nation as a whole. Also, Oquaye's (n. d.) has observed with regards to Hamilton statement on the judiciary holds true under the circumstances of Ghana's hybrid system. Hamilton one of the drafters of the US Constitution points out that, the judiciary from its nature "is beyond comparison, the weakest of the three department of power". Unlike the executive, the judiciary does not control the "sword" and



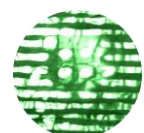
unlike the legislature it does not control the “purse” either. This natural “feebleness” of the judiciary, makes it solely dependent on the executive “for the efficacy of its judgments”. The executive on several occasions have ignored the independence of the judiciary and interfered with the administration of justice in the country.

This is because the 1992 hybrid constitution categorically creates in Article 78(1) a form of executive-parliament fusion which has the tendency of undermining the independence of Parliament to effectively perform its oversight role. According to Agyeman (2011), the dual roles played by legislator-ministers makes the performance of those Ministers less potent and viable. This is because they are burdened with the arduous task of simultaneously performing the daily activities at the various sector ministries and performing their parliamentary duties as well. This situation makes ministers who are MPs less efficient and often incapable of meeting set targets. And in the Ghanaian situation for instance where MPs do not have research assistants to help them in their research duties, they are more often than not deficient in making very relevant contributions during debates and deliberations in parliament.

It has been asserted that Ministers who are MPs risk re-election by their various constituents, and as rational beings, majority of them tend to concentrate more on maintaining constant relations with their various constituents than performing their ministerial roles. It is argued that since majority of the President Cabinet Ministers come from parliament, being a parliamentarian first, is an important step to catch the eye of the president to subsequently appoint one for a ministerial position. Additionally, there is also the tendency for ministers who are MPs to do well in one of the appointments than the other, as alluded in the Holy Christian Book, that “no man can serve two masters for either he will hate the one, and love the other; or else he will hold to the one, and despise the other ...” (Matt. 6:24). Ministers who are also MPs find themselves in this same dilemma which does not augur well for the country’s democratic consolidation journey.

There is also the tendency of MPs frequently absenting themselves and not being punctual to participate in parliamentary proceedings. The dual roles of MP-Ministers makes them so busy sometimes responding to very urgent calls either within the country or outside. As a result, the MP-Minister may not be able to attend parliamentary proceedings to also make relevant contributions. At other times too, the MP-Minister had to attend to very important programmes before coming to take part in parliamentary deliberations or committee meetings, thereby making him or her late for such meetings. This therefore affects parliamentary proceedings. Also, the situation is the same at cabinet meetings.

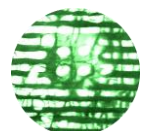
However, Boateng (1996) opines that ministers who are also full time MPs invariably feel much more at home in their appearance before parliament since most of the issues discussed emanates from the executive. They bring bills and follow up to support them to go through. Also, this brings about some sort of efficiency to the executive especially in terms of bills preparation. Since MP-Ministers are parliamentarians, they are able to decipher which bill is



likely to go through parliament and which is likely to fail. They make this expertise available to the executive and therefore facilitate policymaking without delays. The above clearly reveals that despite the fact that majority of the discussion is skewed in the negative side there are also relevant positive dimensions to it.

Conclusion

Ghana's 1992 Constitution is based on a quasi-executive presidential system of government and hence, underpinned by the principle of separation of powers. Executive power is vested in president, legislative power in Parliament and Judicial power in the judiciary. Although the principle of separation of powers is a central feature of the 1992 Constitution, and is expected to promote checks and balances, the constitution also incorporates some elements of the parliamentary system of government by the fusion of the Executive and Legislature under article 78(1). This article places an injunction on the president to appoint majority of ministers from among members of parliament. The 1992 Constitution has vested considerable amount of powers in the legislature to perform its watchdog role, however article 78(1) has undermined the autonomy and independence of the legislature and as a result adversely affected its oversight and investigative responsibilities over the executive. The hybrid system deprives our Parliament of acting effectively as a check on the power of the executive. This is because most parliamentarians have the ambition of becoming ministers of state, as a result act in such a way to catch the eye of the president. Additionally, this posture make the legislators act as a rubber stamp to executive actions (Agyeman, 2011). The fusion of executive and legislature under article 78 (1) creates a marriage of convenience which favors the stronger partner, the president and parliament emerges as the weaker partner and in the end the loser. This model has however undermined the strict adherence to the concept of separation of powers.



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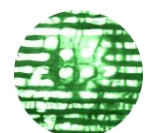
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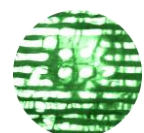
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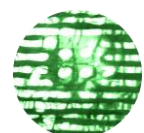
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