The Separation of Powers in Ghana a Mirage? Examining the Excess Power of the Executive Arms of Government of Ghana.

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ABSTRACT

This study explores the extent to which the executive arm of government in Ghana exercises excessive power, undermining the principle of separation of powers and its implications for democratic governance. The objective is to evaluate the discretionary powers of the President in appointing key officials and to understand its impact on the autonomy of the legislative and judicial branches, political patronage, institutional effectiveness, and public trust.

The methodology involved a comprehensive review of Ghana's Fourth Republic Constitution (1992) and relevant literature to assess the legal framework and practical manifestations of executive dominance. The study critically analyzed the appointment powers vested in the President, including the roles of the Council of State, Parliament, and other advisory bodies.

The results indicate that the President's extensive appointment powers, as enshrined in the Constitution, significantly compromise the independence of other branches of government. Key appointments, such as those of the judiciary, ministers, and heads of public institutions, are heavily influenced by the executive, leading to a politicized public service and weakened institutional checks and balances. The practice of Winner-Takes-All (WTA) politics exacerbates this issue, fostering political exclusion and undermining democratic inclusivity.

The conclusion highlights the need for constitutional reforms to decentralize appointment powers and enhance the role of independent bodies in the selection process. Strengthening parliamentary oversight and promoting merit-based appointments are recommended to ensure transparency, accountability, and the rule of law. Addressing these challenges is crucial for restoring public confidence in Ghana's democratic institutions and promoting good governance.

Keywords: Executive Dominance, Democratic Governance, Appointment Powers, Winner-Takes-All Politics.

INTRODUCTION

Overview of separation of powers: definition and purpose

The principle of separation of powers refers to the division of government responsibilities into distinct branches—executive, legislative, and judiciary—to limit any one branch from exercising the core functions of another. This framework ensures that power is not concentrated, promoting a balanced and effective governance structure. Montesquieu's theory on separation of powers is often cited as foundational, emphasizing the need to distribute power to prevent despotism. The doctrine of checks and balances is an extension of the separation of powers. It ensures that the three branches of government monitor and limit each other's functions. For instance, the legislature checks executive actions through oversight, the judiciary can strike down unconstitutional laws, and the executive has veto powers over legislative bills. This interplay safeguards transparency, accountability, and rule of law—essentials in democratic governance. This reciprocal oversight fosters good governance and protects democracy (GSDRC, 2023). Ghana's Fourth Republic Constitution (1992) provides the legal foundation for its democratic governance, emphasizing separation of powers among the executive, legislature, and judiciary. However, there are debates around the extent to which the executive dominates other branches, particularly given

the power vested in the President to make appointments, which has implications for governance and independence. The Ghanaian Parliament holds a unicameral structure, and while the judiciary enjoys constitutional autonomy, the executive's role in appointing judges, ministers, and heads of public institutions raises concerns about checks and balances.

In contrast to the parliamentary system, the presidential form of government typically grants the president very broad, concentrated powers. Ghana appears to have taken more cues from the presidential system than the parliamentary system when fusing the elements of both systems into a neo-presidential hybrid setup. Many scholars, including Boafo-Arthur (2003), Debrah (2005), Ninsin (2008), and Prempeh (2003), have debated the extent of the executive President of Ghana's powers. Some contend that the President's appointment powers are overly extensive and should be decentralized. Others have argued that these authorities should be used to advance inclusivity and cross-partisanship, possibly through the application of meritocracy (Gyampo 2015a, 2010; Gyampo and Graham 2014; Boafo-Arthur 2003). Prempeh (2003), Oquaye (2013), Ahwoi (2011), Anebo (2006), Debrah (2005), Boafo-Arthur (2003), Saffu (2007), Ninsin (2008), Gyampo and Graham (2014), and other academics have all addressed and emphasized the risks associated with the wide-ranging and essentially unrestricted powers held by Ghana's Executive President, especially with regard to appointment. These academics have persuasively argued that the unchecked use of appointment powers like these might lead to dictatorship, threaten constitutionalism, and erode significant state institutions that are meant to act as a check on the executive branch's power. This is referred to as Winner-Takes-All (WTA) politics (Gyampo and Graham, 2014). The research aims to evaluate the degree of executive discretion in appointing key officials and explore its influence on Ghana's governance landscape. Key concerns include: Whether the President's powers compromise the autonomy of other branches as an anti-separation of powers principle, the impact of political patronage on institutional effectiveness and public trust, and how these dynamics align with democratic principles outlined in the Constitution.

The concept of separation of power

The Separation of powers is a model for the governance of both democratic and federative states. The model was first developed in ancient Greece and came into widespread use by the Roman Republic as part of the uncodified Constitution of the Roman Republic, The doctrine of separation of powers has emerged in several forms at different periods. Its origin is traceable to Plato and Aristotle, in the 16th and 17th centuries, French philosopher Jean Bodin and British politician Locke expressed their views about the theory of separation of powers. But it was Montesquieu who for the first time formulated this doctrine systematically, scientifically and clearly in his book "Esprit des Lois" (The Spirit of the Laws), published in the year 1748.

The concept of Separation of Powers, also known as trias politica, is a fundamental principle for the governance of democratic societies. It involves dividing the legislative, executive, and judicial functions of government among separate and independent bodies. This separation limits the possibility of arbitrary excesses by government, as the sanction of all three branches is required for the making, executing, and administering of laws, (Milewicz, 2020).

The concept originated in ancient Greece and was widely used by the Roman Republic. The philosopher Aristotle (384-322 BC) in his book "The Politics" stated that the processes of government should involve different elements in society. Aristotle first mentioned the idea of a "mixed government" or hybrid government in his work politics where he drew upon many of the constitutional forms in the city-states of Ancient Greece. He observed that every government, no matter its form, performed three distinct functions; "the deliberative, the magisterial, and the judicative". In modern terminology these activities correlate respectively to the legislative, executive and judicial functions of government. While Aristotle identified these basic powers common to all governments, he did not necessarily suggest that they should be exercised by entirely different branches. The concept was further developed during the reign of Edward I (1272-1307) in England, with the emergence of Parliament, the Council of King, and the courts.

The first modern formulation of the doctrine was by the French political philosopher Montesquieu in "De l'esprit des lois" (1748; The Spirit of Laws), although the English philosopher John Locke had earlier argued that legislative power should be divided between king and Parliament. Philosopher John Locke (1632-1704) in his

work, Second Treaties on Civil Government, Chapter 12-13) who observed the conditions of 17th century England. According to him, it was convenient to separate the legislative and executive powers of government so that the legislature can act quickly at intervals and the executive can constantly be at work so that lawmakers will not exempt themselves from obedience and make the laws to suit their individual interests. In his words,

"it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they made, and suit the law, both in its making and execution, to their own private advantage." Locke, (1690) Chapter XII, Section 143

While john Locke made the case for separating the legislative and executive powers, Montesquieu provided a convincing defense for an independent judiciary:

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty… Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control: for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals." Montesquieu, (1748) Book XI, Chapter 6

Montesquieu's work was widely influential, most notably in America, where it profoundly influenced the framing of the U.S. Constitution, (Galligan, 2014). His idea of separation of powers was a major influence on the founders and framers of the American constitution. Article I; Section 1 vests all legislative powers in the Congress. Article II; section 1 vest all executive powers in the President and Article III; Section 1 vests all judicial powers in the Supreme Court. In the modern era, the doctrine has lost much of its rigidity due to the variety of arrangements of the legislative, executive, and judicial processes in different constitutional systems. However, the principle of Separation of Powers remains a cornerstone of democratic governance. There are three distinct activities in every government through which the will of the people are expressed. These are the legislative, executive and judicial functions of the government. Corresponding to these three activities are three organs of the government, namely the legislature, the executive and the judiciary. The legislative organ of the state makes laws, the executive enforces them and the judiciary applies them to the specific cases arising out of the breach of law. Each organ while performing its activities tends to interfere in the sphere of working of another functionary because a strict demarcation of functions is not possible in their dealings with the general public. Thus, even when acting in ambit of their own power, overlapping functions tend to appear amongst these organs. It is widely accepted that for a political system to be stable, the holders of power need to be balanced off against each other. Duingan and DeCarlo (2019) separation of powers *"…is the division of the legislative, executive, and judicial functions of government among separate and independent bodies" (p. 58).*

Makhijani (2020) believes that separation of powers is: *"…a doctrine of constitutional law under which three branches of government (executive, legislative, and judicial) are kept separate" (p. 41).*

All power cannot be in the hands of one person or one body. If this happens, abuses of power, violations of human rights, and similar negative phenomena are inevitable. Thus, it is necessary to divide all state power into several branches so that no single body has full power. So, in simple terms, the separation of powers is a mechanism for controlling and limiting state power, which implies that different branches of government have their own responsibilities and powers. The principle of separation of powers however deals with the mutual relations among the three organs of the government, namely legislature, executive and judiciary. This doctrine tries to bring exclusiveness in the functioning of the three organs and hence a strict demarcation of power is the aim sought to be achieved by this principle. This doctrine signifies the fact that one person or body of persons should not exercise all the three powers of the government. Montesquieu, a French scholar, found that concentration of power in one person or a group of persons results in tyranny. And therefore for decentralization of power to check arbitrariness, he felt the need for vesting the governmental power in three different organs, the legislature, the executive, and the judiciary. The principle implies that each organ should be independent of the other and that no organ should perform functions that belong to the other. There would be an end of

everything, were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals. Through his doctrine Montesquieu tried to explain that the union of the executive and the legislative power would lead to the despotism of the executive, for it could get whatever laws it wanted to have, whenever it wanted them. Similarly the union of the legislative power and the judiciary would provide no defense for the individual against the state. The importance of the doctrine lies in the fact that it seeks to preserve the human liberty by avoiding concentration of powers in one person or body of persons. The accumulation of all powers, legislative, executive and judicial, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny. Therefore, separation of powers doctrine acts as a check against Tyrannical rule. The purpose underlying the separation doctrine is to diffuse governmental authority so as to prevent absolutism and guard against arbitrary and tyrannical powers of the state, and to allocate each function to the institution best suited to discharge.

Understanding that a governance role is to protect individual rights, but acknowledging that governments have historically been the major violators of these rights, a number of measures have been derived to reduce this likelihood. The concept of Separation of powers is one such measure. The premise behind the Separation of Powers is that when a single person or group has a large amount of power, they can become dangerous to citizens. The Separation of Power is a method of removing the amount of power in any group's hands, making it more difficult to abuse. It is generally accepted that there are three main categories of governmental functions, according to the theory of separation of powers, these three powers and functions of the Government must, in a free democracy, always be kept separate and be exercised by three separate organs of the government. Thus, legislature cannot exercise legislature or judicial power; the Executive cannot exercise legislative or judicial and the Judiciary cannot exercise legislative or executive power of Government.

Separation of powers in the global north

Despite the safeguards against tyranny, the modern-day societies find it difficult to apply the doctrine rigidly. While America adopts the doctrine with only slight modifications, the United Kingdom follows a parliamentary form of government where the Crown is the nominal head and the real legislative functions are performed by the Parliament. The existence of a cabinet system refutes the doctrine of separation of powers completely. It is the cabinet which is the real head of the executive, instead of the Crown. It initiates legislations, controls the legislature and even holds the power to dissolve the assembly. The vesting of two powers in a single body, therefore denies the fact that there is any kind of separation of powers in England. Authors who believe there is an application of the doctrine in the modern United Kingdom have described only the independence of the judiciary as evidence that the model applies.

In the United States, the legislative branch is made up of Congress, which has the power to make laws; the executive branch is headed by the President, who has the power to enforce the laws; and the judicial branch is made up of courts, which have the power to interpret laws. In India, the legislative branch is represented by Parliament, which has the authority to create laws; the executive branch is led by a President who wields power over enforcing the law; and finally, the judicial branch consists of a Supreme Court responsible for interpreting these laws. Canada has a tripartite system of government composed of the legislative branch (Parliament), the executive branch (headed by the Prime Minister), and the judicial branch (Supreme Court). Each has its respective roles: Parliament creates laws, the Prime Minister enforces them, and Supreme Court interprets them. In Australia, laws are established by Parliament in the legislative branch of government, enforced by the Prime Minister and their executive team, and interpreted through Supreme Court decisions in the judicial branch. Working together collaboratively, these three branches provide a stable system of governance that upholds law and order within the nation.

Separation of power in the global south

Although the doctrine has rarely been applied in this extreme and pure form, it provides a benchmark against which one can evaluate empirical manifestations of the separation of powers, a doctrine that at heart is concerned with repelling threats to liberty that come with the concentration of powers (Bradley & Ewing, 2011).

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In providing for separation of powers in post 1990 constitutions, African drafters were guided by traditions they inherited at independence. The two most active colonial powers in Africa, the British and the French, provided the dominant models of separation of powers. Of the two, the British approach was peculiar in that it arose in a country without a written constitution, a result of which was that in drafting constitutions for their colonies, the British borrowed from the design of the United States Constitution, as did later African drafters. The French approach similar in many respects to that taken in many civilian jurisdictions in Europe was adopted not only by francophone but also hispanophone and lusophone African countries (Bilchitz & Landau, 2018).

African countries have different approaches to the separation of powers, but the ultimate goal is to enable the three branches of government to operate as checks and balances against one another (Fombad, 2016). This is manifested at three levels: the relationship between the executive and legislature; between the legislature and judiciary; and between the judiciary and executive. The executive is the most influential branch of government, operating essentially as the engine of the state and having primary responsibility for executing state functions (Fombad, 2016). To ensure constitutional governance in Africa, there is a need to prevent abuse of power by the executive, especially the heads of the executive (presidents).

In Anglophone Africa, there is a fusion of power, with the same persons sometimes part of the executive and legislative branches. In francophone Africa, this admixture of legislative and executive functions is strictly prohibited (Fombad & Nwauche, 2012). However, various measures have been entrenched constitutionally to enable the two branches to check each other. Legislative control over the executive under modern African constitutions operates through impeachment and parliamentary processes of control. In francophone constitutions, the provisions regulating impeachment are often very detailed, covering crimes covered and procedures to be followed depending on whether a matter concerns the president or other members of the executive, such as the prime minister and fellow cabinet members (Adjolohoun & Fombad, 2016).

Parliamentary processes are the most common method of holding governments accountable in African countries (Fombad, 2016). These processes include votes of no confidence, motions of censure, questions, commissions of inquiry, and other committees. However, Fombad (2015), depicts that African parliaments have limited ability to hold governments accountable due to factors such as the dominant-party phenomenon, politicized impeachment proceedings, and high parliamentary thresholds required for impeachment.

French presidents have little to fear from elaborate parliamentary processes and measures intended to hold them accountable for abuses of office (Fombad & Nwauche, 2012). The executive branch in Africa, especially presidents, has little to fear from these elaborate processes. In contrast, the executive can exercise control over parliament, initiating laws and determining the law of bills adopted in parliament after receiving presidential assent (Fombad & Nwauche, 2012). This power is often given to the president in civilian systems, which tilts the balance of power in favor of the president and weakens parliament. The scope for executive lawmaking is more extensive in francophone than anglophone Africa, with most governmental matters regulated by presidential decrees, ordinances, regulations, ministerial decrees, and orders (Bilchitz & Landau, 2018). Executive laws were entirely beyond the scope of judicial reviews assessing the conformity of laws with the constitution until post-1990 reforms expanded the scope for judicial review in civilian jurisdictions (Ackerman, 2000).

Although the notion of executive lawmaking seems to contradict one of the tenets of the separation of powers, it has become an inescapable part of modern constitutional governance (Bilchitz & Landau, 2018). Nevertheless, to reconcile these practical imperatives with the law, some parliamentary control is usually required (e.g., having such legislation tabled before parliament for scrutiny), even if this is hardly ever effective, allowing that parliamentarians often lack the time, not to mention the desire, to review such legislation. More widely, it is clear from the discussion that the executive still in effect dominates the legislature in Africa.

The evolution of separation of powers

However, the original idea of separation of powers may be difficult to be achieved in the contemporary world. Where each arm of government is made to work independently without the force of each other. As Bradley and Ewing (2011, p. 83) point out, in this "pure" sense the doctrine entails at least three things. First, the same person

should not form part of more than one of the three branches of government; for example, ministers should not sit in parliament, nor parliamentarians act as ministers. Second, one branch of government should not usurp or encroach upon the powers or work of another. This means, for example, that the judiciary should be independent of the executive, and ministers should not be responsible to parliament. Third, one branch of government should not exercise the functions of another; for example, ministers should not have legislative powers. There must be the presence of checks from each other on each other. Constitutional governance in Africa had been undermined since independence by the ability of the executive, especially presidents, to abuse power with little regard to the constraints provided for in the independence constitutions; the continent's legislative and judicial branches were too weak to act as a check on executive lawlessness (Fombad & Nwauche, 2012).

The expansion of executive power

Concern about the scope of executive power is not new in comparative constitutional law, the constitutional history of certain regions, such as Latin America, is pervaded by a concern about this issue (Schor, 2006). Nonetheless, some recent trends have arguably created a shift in favor of executive power, while the legislative branch has arguably fallen into something of a constitutional crisis. The precise reasons for these shifts vary from country to country, but the trend as a whole seems widespread, running for example across presidential, parliamentary and semi-presidential systems.

First, technological and social factors have greatly increased the density of regulations and the frequency with which they are changed. This has necessitated as Martinez has stated in his supra note 34, at 563, a growth in administrative states, meaning that legislatures delegate more power to executives, often through broad statutory frameworks that allow administrative officials to do much of the policymaking. Related to this is of course the speed with which each branch is capable of acting. The deliberative nature of a legislature may be an increasingly uncomfortable fit for the fast pace with which legal change needs to take place in the modern world.

Beyond well-known long-term factors, some commentators argue that changes in the international environment have strengthened the executive branch and weakened the legislature. For instance, the Council on Foreign Relations discusses how the increased complexity of international relations and the president's role in foreign policy have led to a gradual erosion of congressional oversight, particularly since the post-9/11 era. This shift is attributed to the president's ability to act swiftly and decisively on the global stage, often bypassing slower legislative processes. In the context of the European Union, scholars have noted that the technocratic orientation of the EU has systematically shifted power towards executive officials. The EU's complex regulatory framework often requires rapid compliance and adaptation, which executive bodies are better positioned to manage than legislatures. This dynamic places executive officials in a privileged position, further weakening legislative oversight. More generally, as the amount of policymaking occurring at the international level has increased, the executive branch may tend to be in a more powerful position to formulate and implement these processes (Lisa, 2000)

Changes in geopolitics heighten these patterns. Scheppele (2007), for example, has tracked the influence of terrorism-related rhetoric on the separation of powers. She finds that new mandates at the international level have also tended to increase the power of the executive branch by requiring and empowering executive branch officials to carry out a number of different tasks, many with a high degree of secrecy and speed. There are also many examples where the executive branch in countries around the world has utilized the rhetoric of terrorism as a way to increase their power, justifying maneuvers that would otherwise be suspect on the grounds of the separation of powers or the protection of individual rights.

Conditions of economic crisis, like the sharp global downturn beginning in 2008, may also contribute to these trends. The European Union's responses to these crises, for example, may have further shifted the balance between the executive and the legislature in member states by largely relying on a model of technocratic, emergency policymaking and negotiation rather than democratic deliberation (Deidre, 2013). The executive branch may also exercise heightened political power in situations where political parties are very weak or deinstitutionalized, which is also a fairly common pathology in many parts of the world (Mainwaring and Timothy, 1995). Without cohesive political parties, legislatures may lack the capacity and willingness to take a significant role in national policymaking (Landau, 2010). The links between executive and legislative officials

may be weaker, encouraging executives to govern around legislatures by using decree power and other means, rather than by seeking to advance policy agendas in legislative institutions.

At the same time, some authors suggest caution with respect to the idea that such a role will or should emerge. Jackson (2017), for instance, argues that while executive power has increased in the United States, efforts by the Supreme Court to rebalance the separation of powers have sometimes borne too little fruit relative to the expenditure of judicial capital, and the Court might be better off not intervening on some questions. In a similar vein, recent developments in Hungary have increased the need for a powerful judicial branch, but some of the very dynamics tending to increase this need the rise of a populist and potentially dominant party that rewrote the constitution to increase its own power have tended to undermine rather than increase judicial power. These examples thus raise questions about the limits of judicial ability to ameliorate broad shifts in power towards the executive (Daly, 2017).

Decreases in the centrality and legitimacy of democratic institutions

A second cluster of problems concerns changes in the centrality of and trust in democratic institutions. These trends again appear to be broad ranging and the product of a number of factors which vary in type and intensity across different countries. A number of developments have tended to reduce the centrality of the role played by national governmental institutions across many countries. In some regions, such as the European Union, much policymaking power has been transferred to the international realm. More broadly, and as has long been argued, globalization may increase the importance of institutions other than the nation-state, such as corporations, while reducing the ability of the nation-state to protect its own citizens (Ohmae, 1995).

According to Moris and Klesner (2010) trends in public trust in both political institutions (legislatures; executives; courts) and the institutions surrounding those bodies (political parties; the media) are somewhat less clear, but they do suggest a crisis of confidence in political institutions across large swaths of both the developing world and mature democracies. In contexts where corruption is very high, such as across much of the developing world, evidence suggests that this sharply reduces public trust in government. In countries with endemic corruption, citizens often do not believe that political institutions are serving their interests. Even without high levels of corruption, confidence in public institutions may decline because of economic stagnation or other factors. Thus the economic crisis of 2008 appears to have been associated with declines in trust in governmental institutions across much of the global north (Roth et. al, 2011). Similar trends are being found in the global south: for instance, a recent survey of the attitudes of individuals in the most populous province of South Africa (Gauteng) conducted by the South African Institute for Advanced Constitutional, Public, Human Rights and International Law found that only 40% of respondents thought that parliament represented them and over 60% found it difficult to access democratic institutions.

A further consequence of the loss of legitimacy of institutions like political parties is that in some countries it has changed the nature of the actors gaining political power. “Outsider” or even “anti-system” actors and political parties are often more likely to be able to win political power in environments where there is little public trust in traditional political institutions. These sorts of “outsider” political leaders have long been prevalent in parts of the global south, for example in Latin America, and more recently similar movements have swept to power in places like Hungary and Poland.

The effects of the evolution of separation of powers on the democracy of Ghana

The question now remains, is there a clear separation of powers in Ghana’s political system, where each arm of government is made to work independently without substantial force of influence from the other? If there is or there is not, what is therefore the effect on the democratic dispensation of the country way forward?

The 1992 constitution of Ghana gives the Executive President of Ghana enormous and extensive powers of appointment. This over the years has led to the manifestations of the Winner-Takes-All (WTA) politics. This power is often given to the president in civilian systems, tilts the balance of power in favor of the president and weakens parliament and the judiciary.

According to the publication made by Enoch Randy Aikins in the graphic, The Winner-Takes-All (WTA) system of politics is one in which all the candidates who do not emerge victorious in an election receive no authorized

role in the politico-legal system of the country, irrespective of the number of votes they obtained in the election and the voices of the citizens they represent. It is usually an outcome of the first-past-the-post electoral system, which is currently practiced in Ghana. (Ghanaian Times, 2022)

WTA politics connotes a "state capture" or the partisan monopolization of state resources, facilities and opportunities, as well as the exclusion of political opponents from national governance. It is a polarizing practice that grants certain exclusive rights to top party echelon and apparatchiks after elections to the neglect of the rest of the citizenry (Gyampo, 2010).

The Oxford University Press posits that, WTA is a form of political competition in which whoever wins political power uses office solely to reward their own supporters, refusing to provide public goods that can be enjoyed by all citizens. Under Ghana's constitutional arrangements, the consequences of the WTA system are even more pronounced in the executive arm of government, in which there is only one position of the president that can be filled.

Gyampo (2016) postulates that, Winner-takes-all is however not merely an electoral formula for determining winners in elections; it also entails two distinct but interrelated elements, namely, (a) "a single winner plurality voting system for majoritarian rule" and (b) the partisan monopolization of state resources and exclusion of political opponents from national governance. It is in this second regard that the WTA is considered most problematic as it manifests as "a zero-sum tendency in politics" characterized by marginalization and exclusion of actors in opposing groups from access to monetary and non-monetary resources.

The framers of the relatively liberal, competitive and democratic 1992 Constitution might reasonably have anticipated that a victorious political party at the polls would reach out to opposition parties to promote cooperation and collaboration for the national good (Abotsi, 2013). However, the nation's experience of constitutional democratic dispensation over the past twenty-two years amply testifies that this lofty expectation has not materialized. Instead according to Gyampo (2016), politicians in Ghana have interpreted the Winner-Takes-All beyond the confines of elections to a more literal meaning that enables state resources to be used for political compensation to supporters and political victimization of opponents and all others who do not belong to the ruling party as well as "contemptuous disregard for the opposition". In this regard, elections have become "a do-or-die affair"; political campaigns have been decidedly intense, fierce, ruthless, dirty, unyielding and perpetual events in the four-year political cycle. In addition, parliamentary proceedings have been fraught with frequent boycotts by the minority as a result of entrenched positions and frustrations they experience from the majority (Oquaye, 2014). Given the dangers of WTA politics, concerns have been raised by many Ghanaians about the need to address the problem. According to Jacob & Paul (2010), Winner-Take-All Politics refers to a phenomenon where the political system disproportionately benefits a select few, often at the expense of the broader population. Ghana's 1992 Constitution prescribed an arrangement for electoral competition and governance which leans on the winner-takes-all (WTA) as a formula for the selection of leaders. However, the WTA is not merely an electoral formula for determining winners in elections; it also entails two distinct but interrelated elements, namely, (a) "a single winner plurality voting system for majoritarian rule" and (b) the partisan monopolization of state resources and exclusion of political opponents from national governance. It is in this second regard that the WTA is considered most problematic as it manifests as "a zero-sum tendency in politics" characterized by marginalization and exclusion of actors in opposing groups from access to monetary and non-monetary resources. The framers of the relatively liberal, competitive and democratic 1992 Constitution might reasonably have anticipated that a victorious political party at the polls would reach out to opposition parties to promote cooperation and collaboration for the national good (Abotsi, 2013). However, the nation's experience of constitutional democratic dispensation over the past two decades amply testifies that this lofty expectation has not been materialized. Instead, politicians in Ghana have interpreted the WTA beyond the confines of elections to a more literal meaning that enables state resources to be used for political compensation to supporters and political victimization of opponents and all others who do not belong to the ruling party as well as to Prof. Aaron Mike Oquaye, "contemptuous disregard for the opposition" (Oquaye, 2013).

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Excessive concentration of executive power leads to less democratic policymaking, as well as potentially heightening the risk posed to minority groups and individual rights. Some of the chapters in this volume suggest that an imbalanced executive power may justify heightened efforts by courts or other actors to formulate policy and to check executive policymaking. Landau (2019), for example, argues that courts can aim, at least in modest ways, to ameliorate defects in party systems and improve the functioning of political institutions through time.

In a consequential catch for "losers" in a WTA election, every other position and their associated powers are derived from the President, who appoints ministers and deputy ministers, Metropolitan, Municipal, District Chief Executives (MMDCEs), and 30 per cent of the members of the local assembly. This is equally backed by the constitution of the land in the case of Ghana and other countries bearing this practice.

The 1992 constitution of Ghana gives the Executive President of Ghana enormous and extensive powers of appointment. As a result, Executive Presidents of Ghana have exercised their powers of appointment to the benefit of only party apparatchiks and loyalists without recourse to appointment based on apolitical or non-partisan meritocracy. In this regard, many Ghanaians, irrespective of their competence, experience and expertise, are denied the opportunity to serve their country simply because they do not belong to the ruling party. Gyampo and Graham (2018), argues that the 1992 constitution of Ghana gives the Executive President so much power in appointing state officials, which promotes WTA politics and deepens clientelism. This appointment powers of the government has stimulated the interest of many scholars and they have discussed and highlighted the dangers of the extensive and the virtually unbridled powers of Ghana's Executive President, particularly in the areas of appointment.

In response to concerns about the institutional arrangements within the 1992 Constitution, President J.E.A. Mills' administration established the Constitution Review Commission (CRC) to reassess the constitution. As part of its review, the CRC recommended that key state officials—such as the Chairperson of the Electoral Commission (EC), the Commissioner of the Commission on Human Rights and Administrative Justice (CHRAJ), and the Auditor-General—should be appointed by the President, but only after consulting with the Council of State and obtaining Parliament's approval (CRC Report, 2011). This recommendation, aimed at introducing greater oversight and cross-partisanship into the appointment process, was endorsed by the government through a White Paper issued in 2012 (CRC Report, 2012).

According to a nationwide public consultations by the IEA on WTA politics, this political position of Ghana has been seen as problematic by many well-meaning Ghanaians across the political divide, and has shaken the trust a lot of people have in government and its institutions.

Against this backdrop, the research questions the effectiveness of the separation of powers enshrined in the 1992 constitution of Ghana pertaining to the appointing powers of the Executive Presidents in Ghana's Fourth Republic. The paper reviews the powers of appointment of the President of Ghana and argues that the 1992 Constitution gives such powers to the President and that such powers are against the principles of separation of powers and therefore has immense implication of the democratic position of Ghana.

A review of the appointment powers of the executive president in ghana's fourth republic and their functions

In Ghana the President under the 1992 Constitution has the power to make several appointments. This is because the President is the Head of State, Head of Government and Commander-in-Chief of the Armed Forces (Government of Ghana 1992). He therefore has the executive power and authority to make such appointments. Sometimes, such appointments are made in consultation with or with the advice or approval of some other bodies.

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List of Presidential Appointees Constitutional Provision, 1992 Constitution of Ghana

Constitutional Provision	Types of Presidential Appointment
Article 70 (1) (a-e) Article 70 (2)	▪ The commission for Human Rights and Administrative Justice and his Deputies ▪ The Auditor-General ▪ The District Assembly Common Fund Administrator ▪ Chairmen and other members of Public Services Commission, Lands Commission, governing bodies of public corporations, National Council for Higher Education. ▪ The chairman, deputy, and other members of the electoral commission.
Article 74 (1)	▪ Persons to represent Ghana abroad
Article 86 (2) (i) (ii)	▪ The Chairperson of the National Development Planning Commission
Article 183(4) (a)	▪ Governor of the Bank of Ghana
Article 185(3)	▪ The Government Statistician
Article 189 (1) (a)	▪ The Chairman and four other Members of the Audit Service
Article 232 (2)	▪ Members of the National Commission for Civic Education.
Article 78(1)	▪ Ministers of State
Article 79 (1)	▪ Deputy Ministers of State
Article 144 (1-3)	▪ Chief Justice ▪ Supreme Court Justices ▪ Justices of the Court of Appeal, High Court and Chairmen of Regional Tribunals
Article 86(2) (i)	▪ The chairman of the National Development Planning Commission
Article 89 (2) (a) (i-iii) (b-d)	▪ The members of the Council of State
Article 153 (n)	▪ Four members (who are not lawyers) of the Judicial Council
Article 166(1)(c)	▪ Two persons of the National Media Commission
Article 211 (d)	▪ Two persons of the Armed Forces Council
Article 212 (1) (a) (b) (2)	▪ The Chief of Defense Staff of the Armed Forces ▪ The Service Chief ▪ Officers of the Armed Forces

APPOINTMENTS IN CONSULTATION WITH THE COUNCIL OF STATE

Appointment of the Commissioner for Human Rights and Administrative Justice and his Deputies

The Commissioner for Human Rights and Administrative Justice in Ghana (CHRAJ) is a crucial figure in safeguarding human rights and promoting administrative justice across the nation. As per the Constitution of Ghana and relevant legislation, the Commissioner undertakes a multifaceted set of responsibilities to advance these core objectives.

The first responsibility is the promotion and protection of fundamental human rights, as enshrined in Ghana's 1992 Constitution and within the framework of international human rights treaties Heather, (2023). This mandate includes the thorough investigation of reported human rights violations and the implementation of appropriate measures to address and redress such infringements. The Commissioner is also responsible for investigating instances of administrative injustice, ranging from maladministration and abuse of power to corruption and inequitable treatment by public entities or officials (1992 constitution of the Republic of Ghana). Through these investigations, the Commissioner strives to uphold principles of fairness, transparency, and accountability within the realm of public administration. The Commissioner also spearheads educational and advocacy initiatives aimed at raising awareness about human rights, administrative justice, and good governance. According Odoi (2021), these efforts target diverse stakeholders, including the general populace, governmental bodies, and civil society organizations. The Commissioner also monitors and reports on compliance with human rights standards and principles by various entities within the public domain, including governmental agencies, public officials, and other relevant actors ((1992 constitution of the Republic of Ghana). Through regular assessments and submission of reports to governmental bodies, Parliament, and international entities, the Commissioner provides comprehensive insights into the prevailing human rights landscape and administrative justice issues in Ghana. Finally, the Commissioner facilitates mediation and alternative dispute resolution mechanisms to address conflicts and grievances arising from human rights violations or administrative injustices (1992 constitution of the Republic of Ghana).

The Auditor-General

The Auditor General of Ghana holds a pivotal position in upholding transparency and accountability within the realm of public finance management in the country (1992 constitution of the Republic of Ghana).Through a series of key functions, this office ensures that the utilization of public funds aligns with legal frameworks and serves the public interest.

Primarily, the Auditor General conducts comprehensive audits across various government entities, including ministries, departments, and agencies, to ascertain the effective and lawful expenditure of public resources. These audits serve as a critical mechanism for verifying that funds are allocated and utilized in a manner consistent with established regulations and guidelines. (Hatchard, 2019). Upon completion of audits, the Auditor General presents detailed reports to the Parliament of Ghana, elucidating any instances of financial mismanagement, irregularities, or inefficiencies uncovered during the auditing process. These reports serve as essential tools for policymakers, offering valuable insights that aid in holding government officials accountable for their stewardship of public finances.

Beyond auditing and reporting, the Auditor General assumes a vital oversight role in scrutinizing financial transactions, systems, and processes to identify weaknesses or areas necessitating improvement in the management of public funds (1992 constitution of the Republic of Ghana). This oversight function serves as a proactive measure to enhance financial governance and minimize the risk of malfeasance or impropriety. Moreover, the Auditor General offers advisory services to government agencies, furnishing them with recommendations and guidance on enhancing financial management practices and bolstering internal controls. By providing expert counsel, the Auditor General contributes to the prevention of fraud, waste, and abuse within the public sector, thereby safeguarding the interests of Ghanaian citizens (Hatchard, 2019).

In essence, the Auditor General serves as a linchpin in advancing principles of good governance, transparency, and accountability within Ghana's public sector. Through diligent oversight, rigorous auditing, and strategic advisement, this office plays an indispensable role in fostering trust, integrity, and efficiency in the management of public finances, thereby fortifying the foundations of democratic governance in the nation (Hatchard, 2019).

District Assemblies Common Fund Administrator

The role of the District Assemblies Common Fund Administrator in Ghana is integral to the effective functioning of local governance and the equitable distribution of resources at the district level. Appointed by the President, the Administrator holds a position of significant responsibility and influence. At its core, the District Assemblies Common Fund Administrator oversees the management and disbursement of funds allocated to district assemblies across the country (District Assemblies Common Fund Act, 1993, Act 455). These funds are

earmarked for the implementation of development projects, provision of essential services, and improvement of infrastructure within the respective districts. As such, the Administrator plays a pivotal role in ensuring that these funds are utilized efficiently, transparently, and in accordance with the developmental needs and priorities of each district (Owusu-Mensah 2015)

Moreover, the Administrator serves as a liaison between the central government, district assemblies, and other stakeholders involved in local governance. They provide guidance, support, and technical assistance to district authorities in financial management, project planning, and reporting requirements (Owusu-Mensah 2015). By fostering collaboration and coordination among various stakeholders, the Administrator facilitates the smooth implementation of development initiatives and promotes accountability in the utilization of public funds.

In addition to their administrative duties, the District Assemblies Common Fund Administrator also serves as an advocate for grassroots development and community empowerment. They engage with local leaders, civil society organizations, and citizens to identify emerging challenges, address grievances, and promote participatory decision-making processes. Through their leadership and advocacy efforts, the Administrator contributes to the enhancement of local governance structures, the promotion of inclusive development, and the advancement of socio-economic wellbeing at the grassroots level (Government of Ghana. Public Procurement Act, Act 663)

Chairmen and other members of Public Services Commission, Lands Commission, governing bodies of public corporations, National Council for Higher Education

The Chairmen and members of the Public Services Commission are tasked with overseeing the recruitment, promotion, and discipline of public servants in Ghana. They ensure that appointments to public offices are based on merit, fairness, and transparency, thereby upholding the principles of professionalism and integrity within the civil service. Furthermore, they provide guidance and advice to the government on matters relating to human resource management, organizational development, and public sector reform initiatives (1992 constitution of the Republic of Ghana).

Similarly, the Chairmen and members of the Lands Commission are responsible for the management, administration, and regulation of land resources in Ghana. They play a crucial role in adjudicating land disputes, issuing land titles, and promoting sustainable land use practices across the country. By ensuring the effective implementation of land policies and laws, they contribute to the protection of property rights, the promotion of investment, and the prevention of land-related conflicts. (1992 constitution of the Republic of Ghana).

The governing bodies of public corporations, appointed by the President, oversee the management and operations of state-owned enterprises in various sectors such as energy, telecommunications, and transportation. They provide strategic direction, monitor performance, and ensure accountability in the utilization of public resources. Additionally, they play a key role in promoting efficiency, competitiveness, and innovation within the public sector, thereby contributing to economic growth and development. (1992 constitution of the Republic of Ghana).

The National Council for Higher Education, chaired by an appointee of the President, is responsible for the regulation and accreditation of higher education institutions in Ghana. It sets standards for academic programs, promotes quality assurance, and fosters collaboration among universities and colleges. By ensuring the provision of high-quality education and training opportunities, the Council plays a vital role in preparing the workforce for the demands of a knowledge-based economy and supporting national development objectives. (1992 constitution of the Republic of Ghana).

APPOINTMENT ON THE ADVICE OF THE COUNCIL OF STATE

The Chairperson, Deputies, and members of the Electoral Commission

The Chairperson, Deputies, and members of the Electoral Commission in Ghana hold positions of immense importance in ensuring the integrity, transparency, and fairness of the electoral process, which is fundamental to democracy and good governance. Appointed by the President, these individuals play a crucial role in upholding

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the principles of free and fair elections, which are the cornerstone of democratic governance (1992 constitution of the Republic of Ghana).

The Chairperson of the Electoral Commission, along with their deputies and members, are entrusted with the responsibility of planning, organizing, and conducting all public elections and referenda in Ghana. They oversee the entire electoral process, from voter registration to the declaration of election results, ensuring that every eligible citizen has the opportunity to participate in the democratic process and that their votes are counted accurately. Moreover, the Electoral Commission is tasked with creating an enabling environment for political competition, where political parties and candidates can campaign freely and voters can make informed choices. They establish rules and regulations governing the conduct of elections, including campaign financing, media coverage, and the use of electoral technology, to promote a level playing field and prevent electoral malpractices (Gyampo and Graham, 2021).

In addition to their role in organizing elections, the Electoral Commission also plays a critical role in voter education and civic engagement. They conduct voter education programs to inform citizens about their rights and responsibilities, the electoral process, and the importance of political participation. By empowering citizens with knowledge and awareness, the Commission fosters active citizenship and strengthens democratic institutions. Furthermore, the Electoral Commission serves as an impartial arbiter in resolving electoral disputes and complaints. They adjudicate disputes related to the conduct of elections, including allegations of voter fraud, irregularities, and violations of electoral laws. Through transparent and impartial adjudication processes, the Commission upholds the rule of law and maintains public confidence in the integrity of the electoral system. **(**Act Of The Parliament Of The Republic Of Ghana Entitled The Electoral Commission Act, 1993)

APPOINTMENTS WITH APPROVAL FROM PARLIAMENT

Ministers and Deputy Ministers of State

Ministers and Deputy Ministers of State in Ghana hold pivotal roles in the country's governance structure, playing essential parts in policy formulation, implementation, and the delivery of public services. Appointed by the President, these officials are tasked with overseeing specific government ministries or departments, with responsibilities ranging from economic development to social welfare and beyond (1992 constitution of the Republic of Ghana).

Ministers of State are typically heads of government ministries, tasked with developing and executing policies in their respective areas of jurisdiction. They lead their ministries in implementing the government's agenda, addressing key issues, and achieving developmental objectives outlined in national plans and strategies. Through strategic planning, resource allocation, and collaboration with other stakeholders, ministers drive initiatives aimed at improving the lives of citizens, fostering economic growth, and enhancing public services. Additionally Gyampo (2015) posits, Deputy Ministers of State support the work of ministers by assisting in policy development, program implementation, and administrative functions within their assigned ministries. They often specialize in specific areas and work closely with their ministerial counterparts to address complex challenges, provide technical expertise, and ensure the efficient functioning of government departments. Deputy Ministers also represent their ministries in various forums, engage with stakeholders, and advocate for policy priorities at both national and international levels. Together, Ministers and Deputy Ministers of State form the core of the executive branch of government, playing crucial roles in the decision-making process and shaping the direction of national policies and programs. They work closely with the President and other government officials to address pressing issues, respond to emerging challenges, and advance the country's development agenda. Through their leadership, vision, and commitment to public service, ministers and deputy ministers contribute to the overall governance and socio-economic development of Ghana (Gyampo, 2015)

Moreover, ministers and deputy ministers serve as liaisons between the government and the public, engaging with citizens, civil society organizations, and other stakeholders to gather feedback, address concerns, and promote transparency and accountability in government actions. By fostering dialogue, participation, and collaboration, they strive to ensure that government policies and programs reflect the needs and aspirations of the people they serve.

APPOINTMENTS IN CONSULTATIONS WITH COUNCIL OF STATE AND APPROVAL OF PARLIAMENT

Chief Justice and Other Supreme Court Justices

The Chief Justice and other Supreme Court Justices in Ghana hold positions of utmost significance within the country's judicial system, entrusted with upholding the rule of law, ensuring justice, and safeguarding constitutional rights. Appointed by the President, these individuals play critical roles in interpreting laws, resolving disputes, and protecting the rights and liberties of citizens.

The Chief Justice serves as the head of the judiciary and is responsible for the overall administration of the judicial system. They preside over the Supreme Court, the highest court in the land, and provide leadership in guiding the direction of legal proceedings, judicial reforms, and the delivery of justice. As the chief guardian of judicial independence and integrity, the Chief Justice plays a pivotal role in upholding the principles of fairness, impartiality, and accountability within the judiciary (1992 constitution of the Republic of Ghana).

Supreme Court Justices, appointed based on their legal expertise and experience, serve alongside the Chief Justice in adjudicating cases of national importance and constitutional significance. They contribute to the interpretation and application of laws, including the constitution, statutes, and legal precedents, in resolving disputes brought before the court. Through their deliberations and judgments, Supreme Court Justices uphold the principles of justice, equity, and the protection of fundamental rights enshrined in the constitution. Together, the Chief Justice and other Supreme Court Justices play a vital role in safeguarding the constitutional order, ensuring the separation of powers, and upholding the independence of the judiciary (Osei, 2022). They serve as guardians of the constitution, providing checks and balances on the actions of the executive and legislative branches of government. Through their decisions, they protect the rights of individuals, uphold the rule of law, and promote public confidence in the judiciary as an impartial arbiter of disputes (1992 constitution of the Republic of Ghana).

Furthermore, the Chief Justice and Supreme Court Justices contribute to the development of jurisprudence and legal principles in Ghana. Through their interpretations of laws and precedents, they establish legal precedents that guide future judicial decisions and shape the evolution of the legal system. Their judgments serve as precedents for lower courts, legal practitioners, and policymakers, influencing the development of laws and legal practices in the country (Oquaye, 2013).

APPOINTMENT WITH NO CONSULTATIONS OR ADVICE FROM COUNCIL OF STATE AND WITH NO APPROVAL BY PARLIAMENT

Members of the National Development Planning Commission, Members of the Council of State, Members of the Judicial Council, Members of the national Media Commission

Members of various commissions and councils in Ghana play crucial roles in shaping national policies, ensuring governance accountability, and upholding democratic principles. Appointed by the President, these individuals bring diverse expertise and perspectives to their respective roles, contributing to the advancement of the country's development agenda and the protection of fundamental rights and freedoms (1992 constitution of the Republic of Ghana).

The National Development Planning Commission (NDPC) is tasked with formulating comprehensive and coordinated development plans for Ghana. Its members, appointed by the President, comprise experts from various sectors, including academia, government, and civil society. Together, they analyze socioeconomic trends, identify development priorities, and recommend strategies for sustainable growth and poverty reduction (Gyampo and Obeng-Odoom, 2013). Through their work, NDPC members play a vital role in shaping national policies, mobilizing resources, and promoting inclusive development across the country.

Members of the Council of State serve as advisors to the President, providing counsel on a wide range of issues affecting the nation. Comprising eminent citizens from diverse backgrounds, including traditional leaders, former government officials, and representatives of professional bodies, the Council acts as a forum for dialogue,

consensus-building, and national unity. By offering their wisdom and experience, Council members contribute to informed decision-making, conflict resolution, and the promotion of good governance in Ghana (1992 constitution of the Republic of Ghana).

The Judicial Council is responsible for the administration of justice and the regulation of the legal profession in Ghana. Its members, appointed by the President in consultation with the Chief Justice, include senior judges, legal practitioners, and representatives of the public. The Council oversees the conduct of judicial officers, promotes judicial independence, and ensures the efficient functioning of the court system. Through their oversight role, Judicial Council members uphold the integrity of the judiciary and safeguard the rights of all citizens to fair and impartial justice.

Members of the National Media Commission (NMC) play a critical role in promoting press freedom, media professionalism, and ethical standards in Ghana. Appointed by the President, NMC members represent diverse interests, including media practitioners, civil society organizations, and the public. They oversee the regulation of the media industry, adjudicate complaints against media organizations, and advocate for the rights of journalists and freedom of expression. By fostering a vibrant and responsible media landscape, NMC members contribute to democratic governance, public accountability, and the protection of human rights in Ghana. (1992 constitution of the Republic of Ghana).

Navigating the complexities inherent in wielding such significant powers of appointment by the executive head of Ghana.

In the Fourth Republic the Executive President has the overwhelming power of appointment and patronage and appoints ‘virtually everybody’ in Ghana. The president has a say in the nomination and appointment of officers he does not appoint directly. From ministers, heads of boards, agencies, commissions, mayors, and members of the council of state, he is the appointing authority (Gyampo 2013). Another challenge, however, is that some of the bodies that advise or are consulted by the President in making appointments, particularly the Council of State, are of doubtful independence and their capacity to act effectively in the discharge of their mandate has been questioned in recent times (IEA 2014; Oquaye 2013).

The membership of the council of state are at a greater percentage the influence of the appointments powers of the president. Although inception of the Council of State traces back to Ghana's traditional governance model known as the "Council of Elders." In this framework, the council comprised leaders representing various lineages and clans within communities, serving as a vital mechanism in overseeing the chief's governance. It was a system wherein the chief had no say in the council's composition and was obligated to abide by their guidance. Non-compliance with their counsel could result in the chief's removal from office. Essentially, the Council of Elders functioned as a regulatory body, curbing the chief's authority and promoting a culture of constitutional governance (Gyampo, 2015). Yet, Ghana’s current Council of state has a membership of thirty-one (31), however, the Council is perceived as weak in terms of composition and mandate. Gyampo (2015) recounts, “generally, the Council of State in Ghana has not been able to work effectively to counter the exercise of power by the President.” This is as a result of the enormous power of appointment of the members of the Council of State by the President. According to the 1992 constitution of Ghana Article 89 (2) (a) **Four (4)** people appointed by the President in consultation with the parliament, Article 89 (2) (d) **eleven (11)** other members appointed by the President. This sum up to fifteen (15) representing **48.39%** of the entire membership are directly appointed by President. Sixteen individuals are chosen from the Regions by the Metropolitan, Municipal, and District Assemblies (MMDAs).

While the President lacks the authority to directly intervene in this selection process, his significant influence stems from his direct appointment and control over the mayors and chief executives of the MMDAs, who oversee the election. This results in dominant authority and promote despotism (Oquaye, 2014). Therefore, the appointment of members of the Council of State by the President certainly undermines the independence of the Council of State and renders it deficient in delivering on its mandate in a manner akin to what pertained in the traditional setting where members owed their office as of right and not to the chief. Another issue concerns the current mandate of the Council, which is strictly advisory and limited to providing consultations solely to the President. Unlike what pertained in the traditional certain, the President is not bound to follow the advice of the Council of State.

The tenure of members in the Council of State contrasts with that of the traditional Council of Elders, who served for life. In the present system, as per Article 89(6) of Ghana's 1992 Constitution, a member's appointment can be revoked by the President with Parliament's consent. Oquaye (2014) suggests that this arrangement could potentially undermine independence, as any member may be dismissed at the President's discretion, particularly if the President's party holds a majority in Parliament. This situation highlights worries about the stability of council members' positions. Overall, the situation threatens the democratic principles of the state and may lead to nepotism or clientelism, ultimately impacting the Council of State's advisory and consultation role.

One more difficulty arises from the constitutional requirement that the president must appoint most of his ministers from within parliament (1992 constitution of Ghana Article 78 (1) and "may in consultation with a Minister of State, and with the prior approval of parliament, appoint one or more Deputy Ministers to assist the Minister in the performance of his functions" Article 79 (1). This practice has been utilized to the detriment of parliamentary oversight, as it allows the executive branch to operate without significant checks from the legislature (Gyampo and Graham, 2014). When parliamentarians also hold ministerial positions, they are unable to fulfill their duty of scrutinizing government actions effectively. They are constrained from questioning their fellow ministers on parliamentary grounds and are collectively responsible for government decisions, limiting their ability to criticize the government. Even those MPs who are not appointed as ministers tend to support the government to enhance their chances of receiving ministerial appointments in the future, viewing it as a career advancement. This trend undermines not only constitutional principles but also diminishes the representative function of MPs, prioritizing the interests of the ruling government over those of their constituents. For instance, in February 2010, President Mills appointed prominent members of the majority side in parliament as ministers, who previously criticized the administration. However, after their appointments, they ceased their critical stance, leading to a decline in parliamentary oversight and adherence to constitutional norms. This shift ultimately weakened both parliament and constitutional governance.

Appointing ministers from within parliament by the executive in Ghana undermines the principles of Separation of Powers and Checks and Balances. This practice fosters Winner-Takes-All (WTA) politics, where the executive, having secured power through elections, extends its control over the legislature by appointing ministers. According to Van Gyampo (2015), consequently, parliament loses its effectiveness in overseeing and scrutinizing the actions of the executive president and it presents significant risks and obstacles to good governance and constitutionalism in emerging democracies like Ghana. The executive often seeks to consolidate its power through various compensatory measures and systematically excluding political opponents from resources, entitlements, and positions, ultimately weakening their influence (Abotsi, 2013). Consequently, governments aim to exert control over all state apparatuses, with Parliament being one of the key institutions significantly impacted by this approach.

Given the huge prestige and material gains associated with ministerial appointments, Member of Parliament 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, 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.

Year Range	Political Party	Number Of Ministers/Deputies	Ministers Appointed from Parliament
1997-2000	NDC	82	20
2001-2004	NPP	80	29
2005-2008	NPP	93	30
2009-2012	NDC	75	39
2013-2016	NDC	94	39
2017-2020	NPP	110	26
2021-2024	NPP	110	34

The table provided offers a clear depiction of the relationship between the executive and legislative branches of government in Ghana, particularly regarding the appointment of ministers from parliament. Across various political administrations from 1997 to 2024, the data reveals consistent patterns of executive influence over

ministerial appointments, with a significant number of ministers being selected from within the ranks of the parliament.

The appointment of ministers from Parliament can significantly undermine the effectiveness and independence of the legislative branch, particularly in the context of Ghana's governance structure. Here are some key points regarding how such appointments weaken Parliament and contravene the principles of separation of powers, as stipulated in Article 76 of the 1992 Constitution of Ghana.

When members of Parliament are appointed as ministers, they often face a conflict of interest. Their dual roles can lead to divided loyalties between their responsibilities as legislators and their duties as executives. This scenario compromises their ability to effectively represent their constituents and to hold the executive accountable. As Gyampo (2015) notes, the situation creates an environment where the lines between legislative oversight and executive authority become blurred, undermining the essence of checks and balances. The practice of appointing ministers from Parliament effectively allows the executive branch to exert significant influence over the legislature. By having a substantial number of ministers also serving as legislators, the executive can steer legislative agendas to align with its policies. This phenomenon is described by Oquaye (2013) as a "contagion" that leads to a situation where the legislature becomes subservient to the executive, thereby eroding its oversight role.

The presence of multiple ministers in Parliament can hinder the body's overall functionality. With a significant number of members preoccupied with executive responsibilities, critical legislative debates may be compromised or sidelined. As indicated by Debrah (2005), this shift reduces the legislative capacity to challenge executive decisions and limits meaningful policy discussions.

The appointments effectively diminish the diversity of voices in Parliament. If a substantial portion of the legislature consists of ministers aligned with the executive, the representation of opposition viewpoints may be significantly weakened. Boafo-Arthur (2003) emphasizes that such a scenario often leads to a "Winner-Takes-All" political climate, marginalizing dissenting voices and fostering an environment of exclusion.

Article 76 of the Ghanaian Constitution mandates that the government must appoint not less than 10 and not more than 19 ministers. However, recent administrations have appointed many more than the stipulated range, effectively normalizing the practice of over-representation of the executive within Parliament. This breach not only raises concerns regarding adherence to constitutional provisions but also undermines the very spirit of the rule of law, which relies on adherence to established legal frameworks. The increasing number of executive appointees in Parliament complicates the accountability relationship between the two branches. When ministers from Parliament are called upon to account for executive actions, they may be less inclined to pursue accountability measures against their colleagues in the executive, fearing repercussions or conflicts of interest. This situation is highlighted in the findings of the Institute of Economic Affairs (2013), which underscore the need for stronger legislative independence to foster democratic governance.

The appointment of judges and other judicial officials by the President, as outlined in Articles 144 and 153 of the Ghanaian Constitution, presents significant challenges to judicial independence and the separation of powers. Constitutional Provisions Related to Judicial Appointments

Article 144 (1-3) grants the President the authority to appoint the Chief Justice, Supreme Court Justices, and Justices of the Court of Appeal, High Court, and Regional Tribunals. While the Constitution prescribes certain criteria for these appointments, the overarching power rests with the President, raising concerns about potential biases in judicial appointments. Article 153 (n) provides for the appointment of four members of the Judicial Council who are not lawyers, thus adding another layer of influence that could affect judicial processes. The concentration of appointment powers in the executive branch can lead to a judiciary that is perceived as beholden to the President. For instance, if a President appoints judges who are loyal to their administration or political ideology, it creates an environment where judicial impartiality is compromised. This practice aligns with concerns raised by Sowah (2012), who argues that such political patronage can diminish public confidence in the judiciary. The appointment of judges by the executive can lead to a judiciary that lacks independence. This scenario was highlighted during the tenure of former President John Mahama, who appointed a significant number of judges from among those with political affiliations. As noted by Oquaye (2013), such actions can

result in judges feeling pressured to rule in favor of the executive, particularly in politically sensitive cases. This is contrary to the ideals enshrined in Article 125 of the Constitution, which emphasizes the independence of the judiciary.

The appointment process, as outlined in Article 144, can also lead to a lack of accountability within the judiciary. When judges are appointed by the President, they may be less inclined to challenge executive actions or to uphold the law impartially, fearing repercussions from the executive. This undermines the foundational principle of checks and balances, which is critical for maintaining the rule of law. Ghartey (2016) argues that this lack of accountability can lead to a judiciary that prioritizes the interests of the executive over the rights of citizens.

When the executive has undue influence over judicial appointments, it may lead to a judiciary that encroaches upon legislative functions. For example, during the constitutional review process, there were instances where judicial interpretations appeared to favor executive interests, raising questions about the judiciary's role as an impartial arbiter of justice. As emphasized by Baffoe-Bonnie (2019), this encroachment can blur the lines of separation of powers, diminishing the legislature's role in governance.

ASSESSMENT (CRITIQUE OF CURRENT PRACTICE AND POTENTIAL REFORMS)

Critique of the Current System

The concentration of power in the executive branch of Ghana's government has led to significant democratic and governance challenges. One of the most notable consequences is the erosion of the system of checks and balances, which is a critical aspect of democratic governance. The president's extensive appointment powers, particularly in the judicial and legislative branches, have weakened the independence of these institutions, reducing their ability to effectively oversee executive actions. This imbalance undermines the separation of powers and prevents the establishment of a truly accountable system of governance (Fombad, 2016).

Furthermore, the practice of political patronage and clientelism has exacerbated the issues of inefficiency and corruption within the public service. Appointments based on political loyalty, rather than merit and competence, have led to a politicized bureaucracy. This not only reduces the efficiency of public administration but also fosters widespread corruption, undermining the integrity of government institutions (Gyampo & Graham, 2014). When political loyalty takes precedence over professional qualifications, public offices become more about political allegiances than effective governance, with dire consequences for service delivery and resource management.

Another critical issue is the marginalization of opposition groups under the "winner-takes-all" (WTA) political system. This system exacerbates political polarization by excluding large segments of the population from governance, particularly those who do not belong to the ruling party. By monopolizing power and state resources, the ruling party often undermines democratic inclusivity and narrows the representation of diverse perspectives in the government. This exclusion fuels political divides and diminishes public trust in the democratic process, further eroding the legitimacy of the government (Gyampo & Graham, 2014). In this environment, the true essence of democratic participation is lost, and the governance system becomes one where only the interests of the ruling party are represented, leaving many citizens disenfranchised.

Potential Reforms

To address these systemic issues and restore the balance of power in Ghana's government, a series of reforms could be implemented to strengthen the separation of powers and ensure more equitable governance. A key area for reform is the decentralization of the president's appointment powers. By reducing the concentration of this power and involving independent bodies in the selection process, transparency and meritocracy could be enhanced. For instance, the process for appointing judges could be managed by an independent judicial council rather than being at the sole discretion of the president. This would help ensure that appointments are based on qualifications rather than political loyalty, improving the independence and credibility of the judiciary (Fombad & Nwauche, 2012).

Additionally, strengthening parliamentary oversight is critical for ensuring that the executive is held accountable for its actions. One potential reform would be to require ministers to resign their parliamentary seats upon appointment. This would prevent conflicts of interest and ensure that Parliament can perform its oversight function effectively. With a clearer separation between the executive and legislative branches, Parliament would be better positioned to scrutinize executive decisions and provide the necessary checks on executive power (Gyampo, 2015).

Another crucial reform would involve institutionalizing merit-based appointments throughout the public service. By establishing clear criteria for appointments to key public offices—based on qualifications, experience, and expertise—Ghana can move away from the politically driven patronage system that currently undermines public administration. This reform would not only increase the efficiency and professionalism of the public service but also help reduce corruption by ensuring that positions are filled by individuals who are truly qualified for the tasks at hand (Gyampo & Graham, 2014).

Finally, enhancing the role of the Council of State is another potential avenue for reform. By ensuring that the Council is more independent and reflective of a broader range of perspectives, it could serve as a more effective check on executive power. This could involve rethinking its composition to include representatives from various sectors of society, which would reduce the president's influence and strengthen its capacity to act as a meaningful advisory body (Fombad & Nwauche, 2012). In this way, the Council could play a critical role in promoting a more balanced and accountable governance system.

CONCLUSION

The critique of the current system of separation of powers in Ghana reveals that the excessive concentration of power in the executive branch has led to significant challenges in governance. The erosion of checks and balances, the rise of political patronage, and the marginalization of opposition voices have all contributed to a weakened democratic system. To address these issues, it is essential to implement reforms that decentralize executive power, promote merit-based appointments, strengthen parliamentary oversight, and enhance the role of advisory bodies like the Council of State. These reforms are not only necessary for improving governance but also for restoring public trust in the democratic process. By ensuring that power is more evenly distributed among the branches of government, Ghana can create a more transparent, accountable, and inclusive political system. Ultimately, these changes would contribute to a more resilient democracy, one that truly reflects the will and interests of all its citizens.

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