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Winner-Takes-All Politics in Ghana: The Case for Effective Council of State

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Abstract

This paper is the sixth in a series of publications aimed at addressing the severe challenges posed to Ghana's effort at national development and cohesion by the practice of "Winner-Takes-All" (WTA) politics. It discusses WTA politics, highlighting its dangers such as the conferment of excessive powers on the president, marginalization of perceived political opponents and the feeling of exclusion from the governance process by those who do not belong to the government/ruling party. It reviews the performance of Ghana's current Council of State as a potential countervailing constitutional arrangement to bridle the excessive powers of the executive and promote inclusive politics. The paper finally makes recommendations to strengthen the Council of State as an effective check on the powers of the executive and mechanism for promoting inclusive politics in Ghana.

Keywords: Winner-Takes-All; Politics; Inclusivity; Council of State; Ghana; 1992 Constitution

Introduction

Winner-Takes-All (WTA) politics can be explained in terms of the partisan monopolization of state resources, facilities and opportunities, as well as the exclusion of political opponents from national governance. It is considered very problematic as it manifests as "a zero-sum tendency in politics" characterized by marginalization and exclusion of actors in opposing groups from access to resources and other entitlements and incentives (Abotsi, 2013). Even though Ghana's constitution provided for Winner-Takes-All, it was only intended to serve as a formula for selecting leaders. It is instructive that the framers of Ghana's 1992 Constitution wanted to ensure an effective executive presidency. However, they did not contemplate a "winner-takes-all situation" by which the political party that forms the government following a general election would in the exercise of its powers, antagonize and completely exclude the political opposition from national governance (ibid).

The scholarly works of Oquaye (2013), Linton and Southcott (1998), Abotsi (2013), Prempeh (2003), and Ayelazuno (2011) have highlighted the pervasiveness and polarizing dangers of the problem of winner-takes-all politics in Ghana and in many other African countries. In addressing the challenges posed by WTA politics, policy and scholarly recommendations

such as the need for an independent parliament to play the role of countervailing authority to the powers of the executive; the need for an inclusive and bi-partisan preparation of a long term national development plan that benefits from the input of all across the political divide and is implemented by all successor regimes; as well as the need for a review and possible adoption of a customized variant of the proportional representation formula for selecting leaders in Ghana have all been discussed by scholars such as Oquaye (2013); Abotsi (2013); Gyampo (2015a) and Gyampo (2015b).

This paper is a radical departure from the studies of the scholars highlighted above. It identifies the absence of an effective Council of State as one major cause of WTA politics in Ghana and discusses the need for a strong Council of State to play a role that checks the unbridled exercise of power and promote inclusivity in a manner akin to the traditional Council of Elders in Ghana and many parts of Africa. One major feature of WTA politics is that it confers excessive powers on the executive arm of government. However, given that power corrupts and absolute power corrupts absolutely¹, the framers of the 1992 Constitution provided for the Council of State as a possible check on the excessive powers of the executive and WTA politics.

The Council of State emanated from the concept of “Council of Elders” in Ghana’s traditional political setting as. In the traditional setting, members of the Council of Elders were the various lineage and clan heads who represented their people in the chief’s palace and played a key role in checking the political excesses of the chief (Busia, 1951). The chief had no hand in the selection of members of the Council and he was bound to follow whatever advice given him by them. One ground for the removal of a chief was his failure to heed to the advice of the Council of Elders (ibid). The role of the Council of Elders in the traditional setting is therefore to play a role as countervailing authority to the powers of the chief (executive) in a manner that fetters the exercise of power and promote constitutionalism (ibid).

On the contrary, it has been argued that Ghana’s Council of State established under the 1992 Constitution is a mere pale shadow of its counterpart in the traditional setting. How did Ghana’s Council of State evolve? How is it composed? What are its roles? How has it been effective in checking the powers of the executive and promoting inclusive governance? How can it be strengthened to play its role as an oversight countervailing authority to the powers of the executive and an effective mechanism in fighting WTA politics? The subsequent chapters of this paper are devoted to answering the questions posed.

The Council of State

Brief Historical Note: The Council of State was perceived with Ghana’s traditional political system in mind as an advisory and countervailing authority to the powers of the chiefs. As indicated earlier, members of the traditional Council of Elders were the respective clan or lineage heads who assisted the chief in the day-to-day administration of the traditional political community. They were in the chief’s palace as of right and proffered authoritative advice on all governance and political issues which had binding effect on the chief (Busia, 1951). Members of the traditional Council of Elders held permanent positions in the chief’s palace and in this regard, their tenures overlapped that of the chiefs. Per their permanent positions, they were the repositories of traditional customs, values and conventions which

imbued them with enough wisdom and positioned them as credible sources of advice to the chief (Oquaye, 2014). The Akans say, “*ye wo ohene no, na obrempon te ase*”, meaning, before the chief was born, the elders were already in existence. This makes it imperative for the chief to listen to wise counsel from the elders (ibid). Again, an Akan chief who for instance attempted to disobey the advice of members of the Council of Elders was quickly reminded that “*nana, wo be to yen*”, to wit, “you came to meet us here in the palace”. The position and role of the Council of Elders in the traditional political setting was therefore an exalted position that made them it a powerful check on the powers and political excesses of the chief (Busia, 1951).

The Current State of Affairs: Article 89 clause 1 of Ghana’s 1992 Constitution provides for a Council of State to counsel the President in the performance of his function in a manner akin to what pertained in the traditional setting. However, the Council is perceived as weak in terms of composition and mandate. Generally, the Council of State in Ghana has not been able to work effectively to counter the exercise of power by the President. Three main reasons account for this challenge. In the first place, the President has an overriding power of appointment in terms of the composition of the Council. Notably, the Council of State which was first conceptualized under the 1979 Constitution was crafted with the concept of the Chief’s Council in the traditional system in mind as already indicated.

However, the fundamental principle underscoring the membership of the Chief’s Council in the traditional setting has been ignored. In the traditional Ghanaian society, no chief appoints any member of his Council of Elders. The Council Members are Heads of the various groups or lineages in the society and are sub-chiefs themselves (Busia, 1951). They come to the Council as of right and are independent of the chief. The Members of the Council normally support the chief to rule but if the latter should abuse his position, the Council Members will take a bold stand against the chief. To disregard an advice from the Council of Elders is indeed a ground for removal of the chief.

However, Ghana’s current constitutional arrangements give the President the powers to appoint some members of the Council of State. It is also possible for the President to influence the selection of the other members of the Council from the regions. Most invariably, the President ends up appointing or having an influence over the appointment of almost all members of the Council of State². Indeed, there are three categories of members of the Council appointed by the President. First, Ten People elected from the Regions by the various Metropolitan, Municipal and District Assemblies (MMDAs). Even though the President cannot override this process, he has enormous influence in determining who is elected by the various MMDAs in view of his direct appointment and control over the mayors and chief executives who heads the MMDAs.

Secondly the President is expected to appoint, four (4) persons who come through institutional representation – one former Chief Justice; one former Chief of Defence Staff (CDS); one former Inspector-General of Police (IGP) and President of the House of Chiefs. Here too, the President may have a choice if more than one former occupant is alive. Finally, the President has a free hand to choose or appoint eleven (11) other persons to serve as members of the Council. This is alien to the Ghanaian culture as no chief selects/appoints members of his Council. They are sub-chiefs who come as of right. This results in a

countervailing authority and avoids 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.

The second issue relates to the mandate of the Council which is presently purely advisory and with regards to the President only. Unlike what pertained in the traditional certain, the President is not bound to follow the advice of the Council of State. The Council of State does not also play any role in the day-to-day administration of the state as the Council of Elders did in the traditional political setting. It is instructive to note that the Committee of Experts on the 1992 Constitution made a number of recommendations, which go to the root of the Council's powers³. These were not included in the 1992 Constitution and should be revisited. Article 90(1) of the 1992 Constitution provides: "A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State if the President so requests". The Committee of Experts provided differently and more broadly under section 4(1) as follows: A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State –

- (a) If the President requests;
- (b) If the chairman of the Council of State determines;
- (c) If no less than five members of the Council of State so demand; or
- (d) If the bill was passed under a certificate of urgency.

Notably, this was already in existence by Article 107(1) of the 1979 Constitution. Why was it removed in the 1992 constitution to weaken the Council of State? The Committee of Experts also provided for Judicial Committee of the Council of State akin to the Privy Council in the U.K. Five eminent Judges who are qualified to be Supreme Court Judges under the Constitution and four other experts will be invited to assist the Council of State in a variety of ways and assume membership by dint of their expertise. Among other things, they will assist in determining the constitutionality of a bill, any important measure proposed by the Executive, any appointment or vital issue of State whatsoever. Unfortunately, this was also watered-down in the 1992 Constitution in a manner that has rendered the Council of State a pliable tool in the hands of the President (Oquaye, 2014).

The third issue of relevance is the term of office of the Council of State. Members of the traditional Council of Elders held their office so long as they lived. They were already in the chief's palace before the chief was installed and they remain when the chief is no more. However by article (89) (6) of the 1992 Constitution of Ghana, the appointment of a Member of the Council of State can be terminated by the President with the prior approval of Parliament. In the view of Oquaye (2004), this is enough to tame an independent mind because any person can be removed by a President since the President can easily obtain a majority through his/her majority party in Parliament.

Effectiveness of the Council of State

Given the above challenges, we do not need a soothsayer to tell us about the ineffective role of the Council of State in bridling the powers of the executive and checking WTA politics. Indeed, in the IEA-WTA public consultations held in 2014, the Council was variously

described by a cross-section of Ghanaians as “superfluous” “toothless bull dog” “unnecessary” “wasteful charge on public expenditure” “too much attached to the President”, “not capable of giving independent or meaningful advise”. It was in demonstration of the lack of confidence in the Council of State that many well-meaning Ghanaians called on the President to broaden consultations beyond the Council of State in seeking or appointing a new chairperson of the Electoral Commission.

Civil society organizations such as the Institute of Economic Affairs (IEA-Ghana), Ghana Centre for Democratic Development (CDD-Ghana), Institute for Democratic Governance (IDEG) and other seasoned statesmen including the national chairmen of the four main political parties with representation in parliament were unanimous in calling on the President not to only rely on the advice of the Council of State (which he is not bound to follow) but to consult key stakeholders in Ghana’s democracy to promote inclusive politics and ensure easy acceptance of the appointee. These calls arose as a result of the dent on the mandate, credibility and effectiveness of the Council of State. Professors Daniel Adzei-Bekoe and Kofi Nyidevu Awoonor, former Chairmen of the Council of State during the administration of the respective regimes of Kufuor and Atta Mills regime have all recounted their frustrations as chairs of the Council at one point in time or the other. Whiles Kofi Awoonor lamented the appointment of party faithful and sycophants to the Council in a manner that compromised their sense of objectivity and complained about the presidency not being easily accessible to the Council⁴, Adzei-Bekoe noted that “...the Council has really no powers. Even though the President is obliged to consult us on certain appointments, he was not bound to take our advice...”⁵ The comments from these eminent statesmen speaks volume about the ineffectiveness of the Council and satisfy the akan adage that “when the toad comes from the sea to tell you the crocodile is dead, you don’t challenge it”.

Recommendations

In addressing the weaknesses of the Council of State, some Ghanaians including the IEA-WTA Advisory Committee have recommended the need for the Council of State to be transformed into a Second Chamber of Parliament with oversight responsibilities beyond their current advisory role. However there are clear cut conditions that countries must satisfy in order to opt for bicameralism⁶. The two most important of these conditions include the size of a country’s population and the nature (homogenous/heterogeneous) of the population (O’Neill, 2006; Ball and Peters, 2005; Chazan, 1982). In terms of size, Ghana is a relatively small country of just about 25 million people compared to countries like Nigeria, US and other populous countries that have Second Chambers. Again, research and empirical studies on the nature of Ghana’s population points to a fairly homogenous population compared to the heterogeneous nature of the Nigerian, UK or US population. In other words, even though Ghanaians seem to be polarized, the population is homogenous. There are about 92 ethnic groups in with the major ones being the Akan (49.1%), Ga-Adangbe (8.0%), Ewe (12.7%), Grunsi (2.8%), Guan (4.4%), Gurma, (3.9%), Mande-Busanga, (1.1%) and Mole Dagbani (16.5%).⁷ The ethnic diversity of the country has nevertheless not seriously dented and compromised the homogenous nature of its population (Frimpong, 2006; Handelma, 2006). Again, in spite of the fact that recently ethnic-voting seems to be rearing its ugly head in voting patterns, the kind of divisive ethnic cleavages and divisions in the population of the magnitude that warrants the adoption of a Second Chamber is not what is witnessed in Ghana today (Shillington, 1992; Chazan, 1982; Frimpong, 2006). It is

even more significant to note that even though Nigeria's population is heterogeneous with over 250 ethnic groups⁸, their adoption of a Second Chamber has not solved the fragmentation and feeling of marginalization by some ethnic minorities (Handelma, 2006). In this regard, for Ghana to transform its Council of State into a Second Chamber as a solution to WTA politics may be simplistic.

To give more teeth to Ghana's Council of State, first, the entire architecture captured in the 1992 Constitution should be reframed in line with the recommendation of the Committee of Experts who drafted the Constitution. Article 89 (1) of the 1992 Constitution says: "There shall be a Council of State to counsel the President in the performance of his functions". By Section 3(1) under Council of State, the Experts provided: "The Council of State shall aid and counsel the President, the Council of Ministers, Parliament and other organs of State in the performance of their functions under this Constitution or under any other law".

Secondly, in terms of composition the Committee of Experts provided for "all former Presidents able and willing to act as members of the Council of State". President Rawlings rejected this because he did not want former President Hilla Limann (Shillington, 1992, Oquaye, 2014). However, the era of personal idiosyncrasies should be over and as a people, we should include former Presidents and Vice Presidents on the Council except those who left office on impeachment.

Third, membership of the Council of State should emphasize institutional representation without a single nomination from any serving President. Mike Oquaye's list of institutional representation is instructive and may be considered as follows:

- i. Every former Chief Justices
- ii. Every former Chief of Defence Staff or General Officer Commanding the Armed Forces.
- iii. Every former Inspector General of Police.
- iv. Every former Governor of the Bank of Ghana.
- v. Every former Speaker and deputy Speaker.
- vi. Every Former Majority and Minority Leader of Parliament.
- vii. Every Former Auditor-General.
- viii. The Secretary General of TUC
- ix. 10 chiefs, each from the 10 Regional Houses of Chiefs.
- x. 10 women, nominated by the Regional Queen mothers, though nominees need not be Queen mothers.
- xi. Representatives of identified Civil Society groups - The Christian Council, The Catholic Secretariat, The Muslim Council, the Ghana Bar Association/Professional Bodies Association, the Ghana Journalists Association, Women Groups, Student Groups, TUC, Association of Ghana Industries etc.

Furthermore, the term of office of members of the Council should be six years and separate from that of the President. By Article (89) (6), the appointment of a Member of the Council can be terminated by the President with the prior approval of Parliament. As argued earlier, this is enough to tame an independent mind because any person can be removed by a President since the President can easily obtain a majority through his/her majority party in Parliament. It is recommended that once a person is brought to the Council by an

institution, only that body can recall the member by a prescribed method devoid of political manipulation.

The new Council of State should be free to operate and advise ALL State bodies. Hence, Article 92 (8) should be amended. It reads: "The Council of State may, with the approval of the President, commission experts and consultants to advise it or assist it in dealing with any specific issue". In the view of Oquaye (2014), this is tragic as it makes it difficult for the Council to investigate any controversial application of public funds and corruption associated with the President or his ministers. The question is, will the President approve such request? The Council should be empowered to independently engage experts to help it arrive at "scientific" conclusions in all its investigations. The Council of State should be strengthened to become so inquisitorial that it can even advocate impeachment process against the President where necessary.

Another anomaly is found in Article 90(1) of the Constitution: "A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State if the President so requests". The Committee of Experts provided differently and more broadly under section 4(1) as follows: A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State –

- (a) If the President requests;
- (b) If the chairman of the Council of State determines;
- (c) If no less than five members of the Council of State so demand; or
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Notably, this was already in existence by Article 107(1) of the 1979 Constitution. Why was it removed in the 1992 constitution to weaken the Council of State? The Experts also provided for Judicial Committee of the Council of State akin to the Privy Council in the U.K. Five eminent Judges who are qualified to be Supreme Court Judges under the Constitution and four other experts will be invited to assist the Council of State in a variety of ways and assume membership by dint of their expertise. Among other things, they will assist in determining the constitutionality of a bill, any important measure proposed by the Executive, any appointment or vital issue of State whatsoever. Why this was also sacrificed?

Conclusion

A return to the recommendations on the Council of State by the Committee of Experts who drafted Ghana's 1992 Constitution as well as the provisions of the 1979 Constitution on the Council of State would help strengthen the Council and enable it deliver on its mandate in a manner that checks the excesses of the executive and reduces WTA politics. Indeed, the advice from such a strengthened and powerful state body may not be binding but can certainly not be ignored by the President.

Endnotes

¹See Lord Acton @ <http://www.brainyquote.com/quotes/quotes/l/lordacton109401.html>

²See article 89 clauses 2 to 4 of Ghana's 1992 Constitution

³See Committee of Experts' Report on Ghana's 1992 Constitution

⁴Author interviewed Prof Kofi Awoonor on 11th September 2011 in Accra.

⁵Interview with Prof Daniel Adzei-Bekoe on 23rd September 2015 in Accra.

⁶A bicameral legislature is a Two-Housed Legislature, divided into a Lower House or First Chamber and an Upper House or Second Chamber.

⁷Ghana Statistical Service Report (2000)

⁸Nigeria, Africa's most populous country, has more than 250 ethnic groups. The most populous and politically influential ones are the: Hausa and Fulani 29%, Yoruba 21%, Igbo 18%, Ijaw 10%, Kanuri 4%, Ibibio 3.5%, and Tiv 2.5%. See more details at <http://start.csail.mit.edu/startfarm.cgi?query=How+many+ethnic+groups+exist+in+Nigeria>.

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